VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, APPELLANT,

vs.

UNITED STATES OF AMERICA, ET AL.

No. 27

SOUTH DAKOTA, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

No. 28

MINNESOTA, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

No. 12 filed December 1, 1958

No. 27 filed January 2, 1959

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[fol. 1] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

4-57 Civ. 423

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, a Minnesota corporation, Plaintiff,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

COMPLAINT. Filed November 29, 1957

I.

Plaintiff The Minneapolis & St. Louis Railway Company (hereinafter "Minneapolis") brings this suit to enjoin, annul, suspend and set aside the order of Division 4 of the Interstate Commerce Commission issued on May 31, 1957, and the order of the Interstate Commerce Commission issued on October 30, 1957, served on Minneapolis on November 4, 1957, in proceedings entitled "Finance Docket No. 18201 Toledo, Peoria & Western Railroad Company Control" and "Finance Docket No. 19850 Toledo, Peoria & Western Railroad Company Control". The report of the Interstate Commerce Commission in said proceedings which accompanied the order dated May 31, 1957 and dated the same day, is attached hereto as Exhibit A; the order of May 31, 1957 is attached hereto as Exhibit B; and the order of October 30, 1957 is attached hereto as Exhibit C.

[fol. 2]

II.

Plaintiff Minneapolis is a corporation of the State of Minnesota, is a common carrier by railroad subject to the provisions of Part I of the Interstate Commerce Act (Title 49, United States Code, Sec. 1, et seq.) and is engaged in the transportation of property and passengers in interstate

and intrastate commerce in the states of Minnesota, South Dakota, Iowa and Illinois.

III.

Jurisdiction of this Court over this action is provided by Title 28, United States Code, Secs. 1336, 2284 and 2321-2325, inclusive, which authorize suits to be brought in the District Courts of the United States against the United States of America to enjoin, annul, suspend and set aside orders of the Interstate Commerce Commission (hereinafter "Commission"). Venue of this action is in this Court pursuant to Title 28, United States Code, Section 1398, because of the fact that the principal office of Minneapolis is at 111 East Franklin Avenue, Minneapolis 4, Minnesota.

IV.

Pennsylvania Railroad Company (hereinafter "Pennsylvania Railroad") is a corporation of the Commonwealth of Pennsy[illegible]nia and is subject to the provisions of Part I of the Interstate Commerce Act. Pennsylvania Railroad and its wholly owned or controlled subsidiaries operate lines of railroad in the District of Columbia and in the thirteen states of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia.

[fol. 3] V.

Atchison, Topeka & Santa Fe Railway Company (hereinafter "Santa Fe") is a corporation of the State of Kansas and is subject to the provisions of Part I of the Interstate Commerce Act. Santa Fe operates lines of railroad in the twelve states of Illinois, Iowa, Missouri, Kansas, Nebraska, Colorado, Oklahoma, Texas, Louisiana, New Mexico, Arizona and California.

VI.

Pennsylvania Company is a corporation of the Commonwealth of Pennsylvania. Its entire outstanding capital stock is owned by Pennsylvania Railroad. Pennsylvania

Company and Pennsylvania Railroad have identical directors.

VII.

Plaintiff Minneapolis operates approximately 1400 miles of railroad. Its lines serve the Minneapolis and Peoria gateways but do not reach any other important gateways such as Chicago, St. Louis or Kansas City.

Minneapolis is predominantly an east-west railroad providing a by-pass of the Chicago area via the Peoria Gateway. Minneapolis ranks sixtieth in size among the 127 Class I railroads of the nation based on investment. It is one-fortieth the size of Pennsylvania Railroad and one-twentieth the size of Santa Fe. Minneapolis is a light density railroad largely dependent upon agricultural and related products; its traffic is not well balanced with manufactured articles.

VIII.

Pennsylvania Railroad ranks first among Class I railroads of the nation in the matter of investment, freight [fol. 4] traffic, total freight revenues and by any standard used to indicate size and volume of business handled. Pennsylvania Railroad's lines tap the major industrial centers of the nation serving all the major railroad gateways east of the Mississippi River and also St. Louis, Missouri.

The Wabash Railroad Company is owned by Pennsylvania Railroad and the former's lines extend westwardly to Des Moines, Iowa, Omaha, Nebraska, and Kansas City, Missouri.

IX.

Santa Fe ranks first in mileage operated, fourth in number of employes, fifth in freight volume, third in freight revenue, and third in total revenues among the Class I railroads of the nation.

X.

Toledo, Peoria & Western Railroad Company (hereinafter "Western") is a corporation of the State of Dela-

ware, with its principal office at East Peoria, Illinois; and is subject to the provisions of Part I of the Interstate Commerce Act. Western operates 234 miles of main line and 5 miles of branch line track in interstate and intrastate commerce in the three states of Illinois, Indiana and Iowa. Its main line extends from Effner, Indiana, on the east, through Peoria, Illinois, to Lomax, Illinois, and Keokuk, Iowa, on the west; with a branch from Hamilton, Illinois, to Warsaw, Illinois. Western is essentially a carrier of overhead or bridge traffic, that is, traffic originating and terminating off its lines but which moves over the Western for a portion of the through movement from origin to destination. Over two-thirds of Western's total revenues are de- [fol. 5] rived from overhead or bridge traffic. Western is an east and west carrier by-passing the Chicago and St. Louis areas and has connections at various points on its lines for interchange of traffic with sixteen other railroads, including Minneapolis, Pennsylvania Railroad and Santa Fe.

In 1927 after a prolonged ownership of Western by Pennsylvania Railroad and Chicago, Burlington & Quincy Railroad Company, which ended in receivership, George P. McNear took control of Western and operated it until his death in 1947. Since that time the trustees under his will, owning 82 per cent of the total capital stock of Western, have controlled it. Those trustees during all pertinent times herein were the Wilmington Trust Company of Wilmington, Delaware, and Guy A. Gladson, an individual.

XI.

On June 10, 1954 and at all times thereafter to and including May 26, 1955, Minneapolis actively sought to purchase the stock of Western from those trustees. Minneapolis' activities were commenced and pursued by it long prior to any negotiations by Pennsylvania Railroad or Santa Fe to acquire such stock and control. Minneapolis failed in its endeavors only because of the concerted action by Pennsylvania Railroad and Santa Fe as hereinafter described.

XII.

A union of Minneapolis and Western had been under discussion and consideration for years prior to 1954; it was considered among railroads, including Pennsylvania Railroad, to be a natural combination and Pennsylvania Rail-[fol. 6] road had been favorable to the acquisition of Western by Minneapolis. Minneapolis' acquisition of Western would preserve all the strategic transportation advantages of Western, would accomplish important savings in transportation costs to the shipping public in using the united service of Minneapolis and Western, would improve service to the shipping public, would diversify Minneapolis' traffic base with the inclusion of the overhead or bridge traffic of Western in manufactured products, and would enhance the financial stability of both Minneapolis and Western—all in accordance with the undisputed intendment of Congress in enacting Section 5(2) of the Interstate Commerce Act.

XIII.

Pennsylvania Railroad and Santa Fe were not interested in jointly acquiring Western until January 1955. At that time Pennsylvania Railroad was informed that interests friendly to Minneapolis were buying into the Monon Railroad, and of a rumor of a plan whereby through affiliation of Minneapolis, Western and Monon, an outer outer-belt line would be established so as to enhance traffic through the Peoria Gateway and furnish more intense competition with the Chicago Gateway. Immediately Pennsylvania Railroad's favorable attitude toward acquisition of Western by Minneapolis changed. Pennsylvania Railroad and Santa Fe officials thereupon took concerted action through Wilmington Trust Company, one of the co-trustees, to stop acquisition of Western by Minneapolis.

From January 1955 to May 26, 1955 Pennsylvania Railroad and Sante Fe actively sought acquisition of the trustees' stock of Western and handled all their negotiations to [fol. 7] that end through Wilmington Trust Company. Pennsylvania Railroad and subsidiaries of Pennsylvania Railroad had four interlocking directors on the board of

Wilmington Trust Company, and because of this interlocking relationship Pennsylvania Railroad and Santa Fe were able to prevent Minneapolis from obtaining, and obtained for themselves, contracts to purchase the stock of Western. Specifically, on April 15, 1955 Pennsylvania Railroad, through its wholly-owned subsidiary Pennsylvania Company, and Santa Fe made contracts with the co-trustees for the purchase of 56,800 shares, or 52 per cent of the total number of shares outstanding of Western. In the negotiation and execution of these contracts Wilmington Trust Company represented the co-trustees.

These dealings in securities by Pennsylvania Railroad were in direct violation of Section 10 of the Clayton Act (*Title 15, United States Code, Section 20*). During all these times Santa Fe was involved in a joint venture with Pennsylvania Railroad and conspired with Pennsylvania Railroad to acquire the stock of Western so as to keep it out of the hands of Minneapolis, and thereby Santa Fe unlawfully participated in a transaction prohibited by Section 10 of the Clayton Act.

The contracts of April 18, 1955 above mentioned for 52 per cent of Western's stock, were followed by a later contract dated May 26, 1955 between the co-trustees and Santa Fe, whereby all the stock owned by the co-trustees was to be sold to Santa Fe. On information and belief, Santa Fe, during all these times, had a common understanding with Pennsylvania Railroad that it would share equally the ownership of Western, and to consummate this understanding Santa Fe made a contract with Pennsylvania [fol. 8] Company, dated June 28, 1955, whereby Santa Fe agreed to sell, and Pennsylvania Company, the wholly-owned subsidiary of Pennsylvania Railroad, agreed to buy, 50 per cent of the stock of Western which Santa Fe would be able to purchase, including the co-trustees' stock. The contracts of April 18, 1955, May 26, 1955 and June 28, 1955 were in furtherance of, a part of, and a culmination of the transaction initiated in January 1955 in violation of Section 10 of the Clayton Act between Pennsylvania Railroad and Wilmington Trust Company.

XIV.

On July 8, 1955 Pennsylvania Company, Pennsylvania Railroad and Santa Fe (hereinafter "Pennsylvania-Santa Fe") filed with the Interstate Commerce Commission an application under Section 5(2) of the Interstate Commerce Act, in Finance Docket No. 18991. By said application Pennsylvania-Santa Fe sought authority to control Western through exercise of its contracts to purchase its stock. It was the intention and purpose of Pennsylvania-Santa Fe and persons controlling them and affiliated with them, by means of such application to prevent Minneapolis from acquiring control of Western. Minneapolis was authorized by order of the Commission dated August 2, 1955 to intervene in Finance Docket No. 18991 and to become a party in opposition to the Pennsylvania-Santa Fe application.

XV.

On October 13, 1955 Minneapolis filed an application with the Interstate Commerce Commission under Section 5(2) of the Interstate Commerce Act, Finance Docket No. 19086, requesting approval and authority for Minneapolis to ac- [fol. 9] quire control of Western through acquisition of its capital stock and for Minneapolis' application to be considered comparatively with that filed by Pennsylvania-Santa Fe, Finance Docket No. 18991.

XVI.

By order dated December 13, 1955, Division 4 of the Interstate Commerce Commission assigned Minneapolis' and Pennsylvania-Santa Fe's applications for consolidated hearing which was held in Peoria, Illinois, from February 1 to 14, 1956. The record of that hearing contains extensive detailed evidence offered by Minneapolis in support of its application and in opposition to that of Pennsylvania-Santa Fe.

XVII.

On or about November 19, 1956, an examiner of the Interstate Commerce Commission served a proposed report

recommending the grant of Pennsylvania-Santa Fe's application and the dismissal of that of Minneapolis, on the ground that since Minneapolis did not have a contract to purchase the Western stock, its application could not be considered.

XVIII.

On or about December 31, 1956, Minneapolis filed extensive detailed exceptions to the examiner's proposed report.

XIX.

By report and order dated May 31, 1957, Division 4 of the Interstate Commerce Commission approved the application of Pennsylvania-Santa Fe, overruled objections of Minneapolis thereto, and dismissed Minneapolis' application, stating the only question for determination was whether the sale of Western stock to Pennsylvania-Santa Fe was consistent with the public interest, and grounding its [fol. 10] approval on the asserted continued "independent" operation of Western through Pennsylvania-Santa Fe control. See Exhibits A and B hereto attached.

XX.

On July 25, 1957 Minneapolis filed a petition for reconsideration by the full Commission of the report and order of Division 4 dated May 31, 1957, and requested oral argument. The order of May 31, 1957 was stayed on July 26, 1957 pending disposition of pending petitions for reconsideration.

XXI.

By order dated October 30, 1957 (see Exhibit C hereto attached) the Interstate Commerce Commission overruled all of Minneapolis' objections to Pennsylvania-Santa Fe's application, denied Minneapolis' petition for reconsideration and request for oral argument, and affirmed without additional findings or conclusions the order of Division 4 dated May 31, 1957, approving and authorizing the application of Pennsylvania-Santa Fe, and dismissing the application of Minneapolis.

XXII.

The acts of the Interstate Commerce Commission herein complained of and its report and orders of May 31, 1957 and October 30, 1957 in Finance Dockets Nos. 18991 and 19086 denied to Minneapolis due process of law, to the prejudice and damage of Minneapolis; were made without full comparative consideration of the competing applications; were arbitrary, capricious and an abuse of discretion; were not in accordance with legal standards; were in excess of statutory jurisdiction; were against the weight of the evidence and unsupported by substantial evidence; [fol. 41] and were in violation of the Interstate Commerce Act, the National Transportation Policy, the Administrative Procedure Act, the Sherman Act and the Clayton Act in the following respects among others:

(a) The Commission failed to accord Minneapolis a comparative consideration of its application with that of Pennsylvania-Santa Fe.

(b) The Commission failed to find that on a comparison of the two competing applications, the application of Minneapolis alone is consistent with the public interest and the National Transportation Policy enunciated by Congress to guide the Interstate Commerce Commission in its administration of the Interstate Commerce Act. The contrary finding in favor of Pennsylvania-Santa Fe is unsupported by any substantial evidence and is against the weight of the evidence.

(c) The Commission failed to find that because of the undisputed fact Western will be sold, union of Western with Minneapolis is the only natural combination consistent with the public interest so as to enable Western to continue its public service; and failed to find that the union of Minneapolis and Western would strengthen the service and finances of both railroads without loss to the public. Contrary findings in these respects in favor of Pennsylvania-Santa Fe are without substantial supporting evidence of record and seriously endanger the future ability of both

Minneapolis and Western to serve the public as required by law and particularly the Interstate Commerce Act.

[fol. 12] (d) All the basic criteria which the Commission has heretofore established in repeated decisions as determinative of the public interest under Section 5(2) of the Interstate Commerce Act, such as the achievement of economies and efficiencies, the improvement in service, the balancing of competitive strength, the strengthening of weaker carriers and the fostering of competition, compel a grant of Minneapolis' application and a denial of that of Pennsylvania-Santa Fe. No reason of substance was advanced by the Commission to justify departure from these established criteria of the public interest.

(e) The Commission's basic assumption and ground for decision that Western will be operated as an independent neutral carrier under the dominating control and influence of Pennsylvania-Santa Fe, is arbitrary and capricious, ignores the commission and court decisions on the domination and influence inherent in intercorporate relationships, and renders meaningless Section 5 of the Interstate Commerce Act and the National Transportation Policy.

(f) The Commission failed to find that in contrast with Minneapolis which enters only the Peoria gateway, the pyramiding of the gateway route of Western via Peoria on top of the competitive gateway routes controlled by or preeminently occupied by Pennsylvania-Santa Fe will promote monopolization of the important east-west gateways and suppress, lessen and restrain competition. The contrary findings of the Commission are unsupported by the evidence of record, and not in accord with the requirements of Section [fol. 13] 5(11) of the Interstate Commerce Act so as to exempt such results from the impact of the federal anti-trust acts, particularly Section 1 of the Sherman Act (*Title 15, United States Code, Section 1*) and Section 7 of the Clayton Act (*Title 15, United States Code, Section 18*).

(g) The Commission failed to find that a grant of the Pennsylvania-Santa Fe application will divert traffic from the Minneapolis, imperil its financial stability and jeopardize its ability to render adequate transportation service in the states of Minnesota and South Dakota. The contrary finding by the Commission is unjustified and unsupported by the evidence of record and therefore inconsistent with the public interest which is the sole criteria of Section 5 of the Interstate Commerce Act.

(h) The Commission erred because the conditions included in its orders and the purported checks and balances referred to therein will not operate to protect Minneapolis against diversion of its bridge traffic by Pennsylvania and Santa Fe through their sole ownership of Western; and will subject the traffic, service and finances of Minneapolis to irreparable injury and loss.

(i) There is no substantial evidence supporting the finding that Pennsylvania-Santa Fe built up Western following its receivership to its present state of prosperity. On the contrary, the evidence supports only a finding that the independent management of West-
[fol. 14] ern alone caused such result.

(j) The Commission erred in failing to find that Pennsylvania-Santa Fe seek to acquire Western solely for their own purposes and to prevent Minneapolis from acquiring Western, and not for purposes of continued public utility, interest and benefit.

(k) The finding of the Commission that the purchase of stock by Pennsylvania-Santa Fe from Wilmington Trust Company did not violate Section 10 of the Clayton Act is against the weight of the evidence, unsupported by substantial evidence, is a wrong legal conclusion, and involves the determination of a judicial question. The Commission's action in that respect was arbitrary and capricious and in excess of its statutory jurisdiction. The Commission lacks power and juris-

diction to approve or immunize a transaction in violation of Section 10 of the Clayton Act.

(l) The proposed acquisition of Western by Pennsylvania is contrary to the conditions under which Pennsylvania was permitted to acquire control of the Wabash Railroad Company (*Wabash Control Case*, 247 I.C.C. 365).

(m) The report of Division 4 ignores the undisputed facts of record underlying the public interest, stresses the bigness and power of Pennsylvania-Santa Fe and stamps with approval their acquisition of Western to stifle competition. There is no evidence to support an exemption to Pennsylvania-Santa Fe from [fol. 15] the impact of the federal anti-trust acts, particularly Section 1 of the Sherman Act and Section 7 of the Clayton Act. In purporting to grant such an exemption the Commission erred in failing to follow the standards promulgated by the Congress and the courts.

(n) Division 4 finds that Minneapolis' proposal contemplates the disappearance of Western as a "neutral connection for the other 15 carriers with which it (Western) presently works." This is untrue and is an erroneous interpretation of the effect and result which would flow from a granting of Minneapolis' application. There is no evidence of record to support this conclusion.

(o) The Commission also finds that Minneapolis' proposal to establish new service routes via additional direct interchange points along Western east of Peoria with other railroads "would be extremely harmful to other carriers." There is no evidence to that effect; the evidence is contrary; that such new interchange points would open up new routes of transportation to the shipping public not now serviceable.

(p) The Commission finds that such a new route with the Wabash via Forrest, Illinois, would "imperil" Wabash, "and possibly could result in the abandonment of Wabash's Des Moines Branch. Other intervening

carrier connections similarly would be adversely affected by the Minneapolis proposal." There is no substantial evidence of record in support of these findings. The Commission declined to accept Minneapolis' [fol. 16] conditions to protect connecting carriers in respect of through routes and joint rates, although accepting the same conditions from Pennsylvania-Santa Fe for like protection to Western's connecting carriers, finding as to the latter that the conditions would be adequate and sufficient. There is no evidence of record to support the discrimination between applicants and no finding why the conditions would be adequate in one instance and not in the other.

(q) The Commission finds that Western's service Lomax to Peoria is "superior" to Minneapolis' service Nemo to Peoria; that the latter is "inferior"; that Minneapolis' traffic "does not move on a competitive service basis;" that "Shippers using the Santa Fe, who prefer the Peoria gateway for service reasons, presently route their traffic via the Western at Lomax because of the inferior service via Nemo;" that "The only traffic moving via the Minneapolis (through Nemo) is traffic on which shippers desire to give it (Minneapolis) a haul, and the Santa Fe parity policy would not affect the continuation of such desires to favor the Minneapolis with a portion of their traffic. Consequently, there would be little or no effect upon the traffic now moving between Nemo and Peoria." There is no evidence of record to support these findings. The evidence, on the contrary, showed the Nemo-Peoria route as an excellent service route on a par with Western's via Lomax, but in jeopardy if Santa Fe controlled Lomax on the Western.

[fol. 17] (r) The Commission found that Minneapolis' business via the Omaha and Kansas City gateways "would not be lost so long as the Minneapolis and the connections handling it continue the same effective solicitation effort that is being exerted today and the service via the Minneapolis through Peoria is not further impaired." There is no evidence to support

either the finding that such business would not be lo
or the unwarranted assumption that Minneapolis
impaired its main line interchange service. The ev
dence is to the contrary.

(8) The Commission's approval of the Pennsylvani
Santa Fe's application is contrary to the public inte
est. Comparison of the two competing applicatio
shows that Minneapolis' application alone is consis
ent with prior commission and court decisions inte
preting the standards and objectives of Section 5 of t
Interstate Commerce Act, and that it alone is con
sistent with the standards of the National Transporta
tion Policy.

(9) In view of the uncontroverted evidence as to t
background and motivation of the purchase by Penn
sylvania Santa Fe, the Commission erred in findi
that the price to be paid by Pennsylvania Santa F
for the stock of Western is fair and reasonable.

(10) The violation of Section 10 of the Clayton Ac
by Pennsylvania Railroad and the unlawful conspira
by Pennsylvania Santa Fe to prevent Minneapolis from
acquiring Western, which unlawfulness permeated th
entire purchase transaction of Pennsylvania Santa Fe,
[fol. 18] warranted a summary denial of their applica
tion.

(11) The Commission acted arbitrarily and capri
ciously in applying different standards in its consider
tion of the Pennsylvania Santa Fe application from
those it applied in its consideration of the Minneapolis
application. As an example, the Commission finds that
Pennsylvania Santa Fe's use of Western as a new rou
could divert traffic presently moving via other gate
ways, but that such diversion would not jeopardize
the maintenance of adequate transportation service by
those carriers which intervened in opposition to Penn
sylvania Santa Fe. Conversely, on Minneapolis' pro
posal to acquire Western and its use of Western as a
new route, the Commission found that such use would
divert traffic from other gateways with an adverse
effect upon the same objecting intervening carriers.

(w) The Commission acted arbitrarily, capriciously and unlawfully in favoring the Pennsylvania-Santa Fe application on the ground that it was supported by existing written contracts as against the Minneapolis application which was not supported by existing written contract.

(x) The Commission acted arbitrarily, capriciously and unlawfully in failing to give effective consideration to the transportation economies which would result from a grant of the application of Minneapolis.

XXIII.

Notwithstanding the gravity of the errors in fact and in law upon which the report and order of Division 4 dated [fol. 19] May 31, 1957 are grounded, the extensive detailed evidence of record supporting Minneapolis' claims, the substantial public interest involved, and the far-reaching nature of the precedent established, the Commission by order of October 30, 1957 denied Minneapolis' petition for reconsideration and oral argument, affirmed the order of Division 4 dated May 31, 1957 and made it effective as of December 4, 1957.

XXIV.

Unless the orders of the Commission are restrained and enjoined by order of this Court, the Pennsylvania-Santa Fe acquisition of the stock of Western may be consummated immediately and Pennsylvania-Santa Fe may immediately take control of Western.

XXV.

If Pennsylvania-Santa Fe are permitted to acquire control of Western pursuant to the order of the Commission dated May 31, 1957, and made effective as of December 4, 1957, Minneapolis will be deprived of the rights and protections afforded to it by the Constitution and laws of the United States, most of which rights and protections will be irretrievably lost and will not be compensable in damages. Unless this Court issues an interlocutory and per-

manent injunction restraining the Interstate Commerce Commission from authorizing Pennsylvania-Santa Fe to acquire control of Western, and from dismissing, for that reason, the application of Minneapolis to acquire control of Western, plaintiff Minneapolis will suffer irreparable damage.

XXVI.

Plaintiff Minneapolis has no adequate remedy at law.

[fol. 20] Wherefore, Plaintiff Minneapolis prays:

1. That process may issue against the United States of America and Interstate Commerce Commission.

2. That this Court, by a temporary restraining order or preliminary or interlocutory injunction, stay, suspend, restrain, and enjoin the operation, application and effectiveness of the Report and Order of the Interstate Commerce Commission dated May 31, 1957, and the Order of the Interstate Commerce Commission dated October 30, 1957, in Finance Dockets 18991 and 19086, and suspend and stay the effective date of said orders of the Interstate Commerce Commission pending the final hearing and determination of this action.

3. That a Court constituted as required by Title 28, United States Code, Sections 2284 and 2321-2325, be convened.

4. That said Court, upon final hearing of this action, enter a decree herein permanently suspending, enjoining, setting aside and annulling the aforesaid orders of the Interstate Commerce Commission.

5. That plaintiff have recovery of the proper costs of this action.

6. That plaintiff be granted such other and further re-
[fol. 21] lief as may be just and equitable.

Respectfully submitted,

Richard Musenbrock, William J. Powell, 111 East Franklin Avenue, Minneapolis 4, Minnesota.

Dorsey, Owen, Barker, Scott & Barber, James E. Dorsey, 1300 First National-Soo Line Building, Minneapolis 2, Minnesota. Attorneys for Plaintiff.

Duly sworn to by A. W. Schroeder, jurat omitted in printing.

[fol. 22]

EXHIBIT A TO COMPLAINT

Interstate Commerce Commission
Finance Docket No. 18991[1]
Toledo, Peoria & Western Railroad Company Control

Decided May 31, 1957

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1. Acquisition by the Atchison, Topeka & Santa Fe Railway Company and the Pennsylvania Company, and through the latter by the Pennsylvania Railroad Company, of control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock, approved and authorized. Conditions prescribed.

2. Request of the Chicago, Rock Island & Pacific Railroad Company and the New York, Chicago & St. Louis Railroad Company, under section 5(2)(d) of the Interstate Commerce Act, for authority to be included on an equal basis in the acquisition of control, through stock ownership, of the Toledo, Peoria & Western Railroad Company, denied.

3. Application of the Minneapolis & St. Louis Railway Company for authority to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock dismissed.

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[1] This report also embraces Finance Docket No. 19086, Toledo, Peoria & Western Railroad Company Control

J. C. Gibson, R. S. Outlaw, Starr Thomas, Carl Bagge, J. B. Reeves, Edwin A. Lucas, John B. Prizer, Robert H. Bierma, and *Thomas O. Hunter*, for applicants in Finance Docket No. 18991.

Burton K. Wheeler, Edward K. Wheeler, Richard Mastbrock, Eldon S. Olson, and *Robert G. Seaks* for applicant in Finance Docket No. 19086.

Latham Castle and *Harry R. Begley* for the State of Illinois.

Phil Saunders, Herman L. Bode, Charles A. Carr, and *C. A. Merkle* for the State of South Dakota and the South Dakota Public Utilities Commission.

Miles Lord, Harold J. Soderberg, Oliver A. Ossanna, and *Paul A. Rasmussen* for the State of Minnesota and the Minnesota Railroad & Warehouse Commission.

[fol. 23] *Bryce L. Hamilton, Howard P. Robinson*, and *Martin M. Lacante* for various McNear interests.

Bruce Ducnell, Eaton Adams, M. L. Cassell, Thomas W. Broker, Eugene S. Davis, Eldon Martin, Harold E. Spencer, Erle J. Zoll, Jr., Edgar Vanneman, Jr., Albert S. Long, Jr., Merrill Shephard, John B. Goodrich, and *John W. Adams* for railroad interveners.

Verle W. Safford, Max J. Eipkin, Fred V. Stiers, Miles Fleming, Don B. Pioletti, Lynn C. Sieberns, Fred Ranger Miller, Lyman R. Fort, Leon L. Lamet, Blaine Ramsey, Lawrence B. McNunn, C. V. O'Hern, Jr., Paul C. Cation, John L. Bordes, and *Robert H. Walker* for other interveners.

Clarence M. Mulholland, Richard R. Lamm, and *H. C. Thompson* for railway labor organizations.

REPORT OF THE COMMISSION

Division 4, Commissioners Mitchell, Arpaia, and Winchell.

By Division 4:

Exceptions and replies to exceptions were filed to the report proposed by the examiner, and the cases have been argued orally. Exceptions and requested findings not specifi-

cally discussed herein or reflected in our findings or conclusions, have been given consideration and found not justified.

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), the Pennsylvania Company, and The Pennsylvania Railroad Company (Pennsylvania), on July 8, 1955, in Finance Docket No. 18991, applied under section 5(2) of the Interstate Commerce Act, as amended, for authority (1) to the Santa Fe and the Pennsylvania Company to acquire direct control of the Toledo, Peoria & Western Railroad Company (Western), through ownership by each of 50 per cent of the capital stock of the latter; and (2) to Pennsylvania, by virtue of its 100 per cent stock ownership of the Pennsylvania Company, to acquire indirect control of Western.

On October 13, 1955, in Finance Docket No. 19086, The Minneapolis & St. Louis Railway Company (Minne-
[fol. 24] apolis) applied for authority under the same section of the act to acquire control of Western through ownership of its entire capital stock.

A consolidated hearing on both applications was held February 1 to 14, 1956, inclusive, at Peoria, Ill. Prior to, or at the hearing, numerous petitions for leave to intervene were granted. Applicants in Finance Docket No. 18991 intervened in opposition to the Minneapolis application in Finance Docket No. 19086, and the Minneapolis intervened in opposition to the authority sought in Finance Docket No. 18991. Unless otherwise indicated, all points hereinafter mentioned are in the State of Illinois.

Position of intervening railroads—The New York, Chicago and St. Louis Railroad Company (Nickel Plate) and the Chicago, Rock Island and Pacific Railroad Company (Rock Island) each requests authority under section 5(2)(d) of the act to be included in the acquisition of the stock of Western on an equal basis with the successful applicant or applicants. The Chicago, Burlington & Quincy Railroad Company (Burlington), and the Wabash Railroad Com-

Hereinafter in this report, as throughout the record, the various railroads involved sometimes will be referred to by the abbreviated designations shown in parentheses.

pany (Wabash), have no objection to the granting of the application of Santa Fe and Pennsylvania, provided appropriate conditions are contained in the order for the continued maintenance of present routes and channels of trade via existing junctions and gateways, and the continuance of all existing traffic and operating relationships and arrangements. In the event any railroad other than the Santa Fe and the Pennsylvania is authorized to acquire an interest in the stock of Western, the Burlington and Wabash ask to be included in the transaction to the same extent as any such other railroad.

The Illinois Central Railroad Company (Illinois Central) the Gulf, Mobile and Ohio Railroad Company (Gulf), and the Chicago and North Western Railway Company (North Western) request that, if either application is granted, appropriate conditions be imposed with respect to the maintenance of all routes and channels of trade via existing gateways.

The Monon Railroad requests that, in the event the application of the Santa Fe and the Pennsylvania is approved, one of the conditions to be attached to such approval includes a requirement that the Pennsylvania negotiate and enter into a contract giving the Monon trackage [fol. 25] rights over the Pennsylvania lines between Effner and Reynolds, Ind., approximately 35 miles, upon reasonable terms and conditions, subject to our approval. If such a condition is not included, Monon requests that the application of the Santa Fe and the Pennsylvania be denied.

Other interveners—Various communities, civic organizations and shippers, many of whom are located along the line of Western, intervened in support of the Santa Fe-Pennsylvania application; and the Railway Labor Executive's Association and the Brotherhood of Railroad Trainmen intervened to protect the interests of carrier employees. The States of Minnesota and South Dakota, with their respective Public Utilities Commissions, supported, and the State of Illinois opposed, the application filed on behalf of the Minneapolis.

History, policies, and description of Western—The main line of Western extends from its eastern terminus at Effner

on the Illinois-Indiana State line, via Peoria, to the western termini at Keokuk, Iowa, and Lomax, approximately 234 miles. A branch line extends from Hamilton to Warsaw, approximately 5 miles. It has connections for the interchange of traffic with 16 railroads, the principal ones being with the Pennsylvania at Effner, with the Santa Fe at Lomax, and with several carriers at Peoria, a point almost midway between Chicago and St. Louis, Mo. Other points of interchange are maintained at Keokuk, and at Sheldon, Webster, Watseka, Gilman, Forrest, Fairbury, Honegger, Cienoa, El Paso, Eureka, Washington, Farmdale, Canton, Cuba, Bushnell, Ferris, Elvaston, and Hamilton. The headquarters, shops, and yards of Western are at East Peoria, just across the Illinois River from Peoria.

Western began its modern existence in 1927, when George P. McNear acquired the property after a prolonged ownership by the Pennsylvania and the Burlington, which ended in receivership. *T. P. & W. R. R. Acquisition*, 124 I. C. C. 181. Under the guidance of McNear, Western was built into a fine railroad, and upon his death, in 1947, the present management took over and continued with much success. The policy of Western has been, and now is, to maintain strict neutrality between all connections, and to participate in any haul of traffic no matter how slight. Such policy emphasizes the strategic position of an overhead carrier through Peoria as an alternative route, bypassing the [fol. 26] congested terminals of Chicago and St. Louis. Much of the success of Western as a bridge line dates from the construction of a western connection with the Santa Fe at Lomax in 1927, authorized in *T. P. & W. R. R. Construction*, 124 I. C. C. 278. In 1928, the first full year after completion of the Santa Fe-Western Lomax connection, the Western interchanged a total of 29,697 carloads of traffic with the Pennsylvania and 7,264 carloads with the Santa Fe. By 1955, the corresponding figures increased to 58,543 carloads, or 97 per cent, and 34,755 carloads, or 378 per cent, respectively.

Over the years, the Santa Fe and the Pennsylvania have cooperated with Western in coordinating their schedules and services. In 1930, arrangements were made for the establishment of coordinate schedules for the handling of

perishables from Santa Fe origin territory, and the Western constructed icing facilities at Peoria to accommodate such traffic. Today, the Santa Fe, Western, and Pennsylvania schedules are set up to provide a fully competitive service over the Western route. On westbound traffic moving between Effner and Kansas City, Mo., the Western-Santa Fe service west of Peoria would be a full day faster than if the traffic were handled by the Minneapolis from Peoria to Nemo, thence by the Santa Fe to Kansas City. Eastbound it would be from 11 to 14 hours faster.

Western traffic and revenues—At present, more than two-thirds of the total revenues of Western are derived from overhead or bridge traffic. Much of the remainder is produced by the handling of interline traffic which originates or terminates along its line. Less than 9 per cent of its revenues is produced from local traffic.

For the year ended June 30, 1955, the latest period for which both car and revenue data were available, the total freight revenue of Western was $6,920,422. Of a total of 105,705 cars of interline traffic handled during the period, 74,772, or 70.7 per cent, were interchanged with the Santa Fe and of Pennsylvania. Such interchange accounted for $4,404,318 or 63.8 per cent of Western's gross revenues for that year. The Burlington and the New York Central Railroad Company ranked third and fourth in the volume of interchange with Western, and the Rock Island, Nickel Plate and Minneapolis ranked fifth, sixth and seventh, respectively. The protection of interchange traffic was one of [fol. 27] the principal reasons advanced by the applicants, and recognized by us in approving acquisition of control in *Detroit, T. & I. R. Co., Control*, 275 I. C. C. 455.

Capitalization—Western has outstanding 90,000 shares of capital stock of which 73,800 shares, or 82 per cent, are held by the trustees of the McNear estate hereinafter referred to as the trustees. The remainder is held by the Hanover Bank, by other members of the McNear family, and by the president of Western. The Santa Fe has entered into agreements for the purchase of all the capital stock of Western at a price of $135 a share. Each agreement provides for consummation of the purchase of the stock within a reason-

able time after our approval. The purchase price is to be paid upon delivery of the stock at the time of settlement, in cash or by certified cashier's or treasurer's check, and the stock is to be delivered to Santa Fe free and clear of all liens, encumbrances, trusts, or obligations of any kind or nature.

Valuation data—The value of the Western's property for rate-making purposes as reported by division 1 as of June 30, 1917, was $7,121,384. Additions and betterments less retirement from the date of valuation to December 31, 1954, as reported by the carrier, amounted to $5,708,109 for carrier-owned property and $749,974 for noncarrier-owned property.

Negotiations leading to sale of stock—The trustees determined to sell the controlling interest in Western in order to diversify the holdings of the trust estate. In June, 1954, the Minneapolis made the original offer to purchase the shares held by the trustees at a price of approximately $69.50 per share. Subsequently, the purchase price per share was increased to about $80. In the spring of 1955, the Santa Fe and the Pennsylvania actively became interested, and on April 15, 1955, actually obtained commitments from the trustees for 26 per cent of the Western stock, each at a purchase price of $100 per share.[1] A dispute arose, and apparently still exists, with respect to the validity of such commitments.[2] Thereafter, the Minneapolis [fol. 28] made a further offer of $133 a share, but on May 26, 1955, before that offer was accepted, the president of the Santa Fe, acting on behalf of that carrier alone, agreed to purchase all the stock held by the trustees for $135 per share, subject to our approval. Thereafter, separate agreements in like tenor were made with the remaining stockholders of Western.

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[1] About that same time the Rock Island made an offer to the trustees for a similar block of 26 percent of the stock.

[2] Regardless of the outcome of the dispute, it is the intent and purpose of the Santa Fe and the Pennsylvania that each is to own exactly 50 percent of the capital stock of Western.

Agreement between Santa Fe and Pennsylvania.—By agreement dated June 28, 1955, the Santa Fe, subject to our approval, agreed to sell to the Pennsylvania Company, a wholly owned subsidiary of Pennsylvania, 50 per cent of the entire outstanding capital stock of Western at an average price of $135 a share. Such purchase is without prejudice to any claims, causes of action, or rights which Pennsylvania may have against the trustees with respect to the transaction of April 15, 1955, involving 23,400 shares of such stock; and in the event Pennsylvania acquires all of any of such shares, the obligation under the contract is to be reduced accordingly.

The parties to the agreement, each with the other, and not for the benefit of others not parties thereto, agree that they will exercise their stock ownership of Western to accomplish the following objectives:

1. Western will continue to be operated as a separate and independent carrier with responsible management located along its lines in order to preserve to shippers and communities the present direct access to its officials.

2. The properties of Western, including line and equipment, will be maintained and improved in keeping with the requirements of a railroad of its character and importance.

3. Western will continue to maintain its own solicitation forces and will be entirely free to solicit traffic in such manner as best to serve the interests of Western.

4. All existing routes and channels of trade via Western will be maintained and kept open without discrimination between connecting lines of railroad.

5. The board of directors of Western shall consist of 11 members, of whom 1 shall be the president of the company, 2 shall be officers of Santa Fe, 2 shall be officers of the Pennsylvania Company, or Pennsylvania, or both, and the remaining 6 shall be prominent citizens not connected with any one of the parties to this agreement but selected by the parties thereto and the subject of mutual agreement between them.

[fol. 29] *Proposals before the Commission*—Four alternatives have been proposed for the disposition of these proceedings on the basis of the public interest involved. They are:

1. Authorization of joint and equal control of Western by the Pennsylvania and the Santa Fe.

2. Authorization of sole control by the Minneapolis.

3. Authorization of either application subject to a condition requiring the inclusion, pursuant to the provisions of section 5(2)(d) of the act, of one or more of the railroad intervenors expressing a desire for such inclusion.

4. Denial of both applications, or the dismissal of the Minneapolis application in Finance Docket No. 19086, for the reason that no transaction within the meaning of section 5(2) is presented for our determination.

These proceedings represent a new and more complicated phase in the administration of section 5, since it involves 2 applications for authority to control the same property, and petitions by 4 other carriers for inclusion in the transaction under varying circumstances. We must weigh whether each application is consistent with the public interest, with or without inclusion of other railroads, considering not only other intervening petitioners seeking such inclusion but also the other applicant and nonparticipating railroads as well.

The burden of proof, therefore, has become most heavy for an applicant in a proceeding like this, because it must not only overbalance the claims of those seeking to share in the control but also of those seeking to exclude it from the transaction. As a practical matter we, in such a proceeding as this, must arrive at a standard of public interest and determine which of the various plans of control most nearly approximates it. The applications and petitions for inclusion must be denied unless there are advantages in the public interest.

Santa Fe and Pennsylvania systems—These applicants are two of the largest rail carriers in the United States. Their lines converge at Chicago. The Santa Fe system ex-

tends from that point to the Pacific coast. It serves 12 States, ranks first in mileage operated, third in freight and total revenues, fourth in the number of employees, and fifth in freight volume. The Santa Fe is strong in two of [fol. 30] the fastest growing sections of the country, namely, the southwest and California, and is favored with the long haul of diversified traffic. Except for 3 years during the 1930's, it paid dividends on its stock each and every year since 1901. During the first 9 months of 1955, as compared with the similar period of 1954, the tonnage and freight revenues of the Santa Fe increased approximately 11 per cent, and its net income increased 22.4 per cent. About 64 per cent of its freight revenues was derived from the transportation of manufactured products originating on its lines.

Except for the New England States, system lines of the Pennsylvania and its subsidiaries blanket the east. As owner of the Wabash, such lines extend westwardly to Des Moines, Iowa, Omaha, Nebr., and Kansas City. Although the Pennsylvania controls the Wabash through ownership of practically all its capital stock, the latter is independently operated with its own management and operating departments.

Pennsylvania operates in 13 States and the District of Columbia. It ranks first among class I rail carriers in the matter of investment, freight traffic, total freight revenues, or by practically any standard used to indicate size and volume of business handled. It has paid a stock dividend each year since 1847. In 1954, the freight revenues of the Pennsylvania, together with its independently operated subsidiaries, amounted to 11.9 per cent of the freight revenues of all class I rail carriers, and 170.6 per cent of the freight revenues of the next largest aggregate combination, the New York Central system. During the first 9 months of 1955, as compared with the similar period of 1954, the Pennsylvania enjoyed substantial increases of 19 per cent in freight tonnage, 12 per cent in revenues, and 171.7 per cent in net income. A little more than one-half of its freight revenues is derived from the transportation of manufactured products originated on its lines. In this respect it is the largest originator of rail traffic in the country.

Minneapolis—The Minneapolis operates approximately 1,400 miles of railroad lines in 4 States, the principal route extending from Minneapolis, Minn., through Oskaloosa, Iowa, to Peoria. It also operates lines between Minneapolis, through Winthrop, Minn., to Aberdeen and Leola, S. Dak.; from Winthrop, through Tara, Iowa, to Des Moines and beyond; and from Albert Lea, Minn., through Cor- [fol. 31] with, Iowa, to Fort Dodge, Iowa. Its lines do not reach the important gateways of Chicago, St. Louis, or Kansas City. At Peoria, the Minneapolis maintains direct connections for the interchange of traffic with Western, the Peoria & Pekin Union Railway, the Rock Island, and the Peoria Terminal. A complete description of the Minneapolis is contained in *Associated Rys. Co. Acquisition and Securities*, 228 I. C. C. 277. It serves 57 communities in Minnesota and 17 cities and towns in South Dakota.

Since 1936, Minneapolis has spent more than $84 million out of operating revenues on physical rehabilitation of its property. This expenditure has made Minneapolis a modern and efficient operating plant providing exceptionally good service to the public. It is completely dieselized and owns well conditioned rolling stock in adequate supply to accommodate and handle, in a safe and expeditious manner, an increase of at least 25 per cent in the volume of tonnage now available to it.

Minneapolis is predominantly an east-west railroad, bypassing the congested Chicago area. It is largely dependent upon agriculture and related products, and has not proportionately benefited from the tremendous increase in manufacturers' and consumers' goods in recent years. In 1954, agriculture represented 41.2 per cent of the Minneapolis' originated tonnage, 25.9 per cent of its total tonnage, and 30.4 per cent of its total freight revenues. Products of animals, mines and forests, together with farm products, aggregated 80.6 per cent of its originated tonnage and 52.4 per cent of its revenues. Without doubt, Minneapolis is a substantial railroad rendering good service to the shippers and communities on its lines. It constituted one of the bright spots in providing freight cars for the 1955 grain movement.

For the period 1936-55, the Minneapolis' average annual gross operating revenues were $15,845,000, and its current annual railway operating revenues approximate $20,000,000. For the first 9 months of 1955, as compared with the similar period of 1954, the freight tonnage and revenues of Minneapolis rose by only a few percentage points, and its net income increased 5.6 per cent. On the basis of investment, Minneapolis ranked sixtieth in size among the 127 class I railroads in the country in 1955. It ranks approximately the same with respect to other comparisons usually considered in determining the relative importance [fol. 32] and size of railroads generally. It is now reasonably prosperous, with a financial and physical picture that has been steadily improving over the past few years. Minneapolis has paid dividends regularly since 1943. Its capitalization is not burdened with outstanding preferred stock, and the relatively small amount of unfunded long-term debt will not mature until 1967.

During the 4 years 1950-53, 67 per cent of Minneapolis' aggregate loaded tonnage consisted of traffic originated or terminated on, or local to its lines, and 33 per cent constituted overhead or bridge traffic. In the same period, the Minneapolis' interchange with Western at Peoria averaged 12,995 revenue carloads per year which constituted an average of 5.9 per cent of the Minneapolis' total revenue loads and accounted for 8.1 per cent of its total annual freight revenues. In 1954, approximately one-half of the Minneapolis-Western Peoria interchange represented Minneapolis bridge traffic handled in conjunction with the Santa Fe to and from Nemo.

Nickel Plate and Rock Island—These two interveners are grouped together because their respective interests are identical. Each desires a proportionate share of the capital stock of Western irrespective of which pending application is approved, and in the event the applicant or applicants are unwilling to accept, as a condition to approval of their application, participation on an equal basis of ownership by the Nickel Plate and the Rock Island, the latter are ready and anxious to undertake the purchase of the stock for their own accounts. They believe that the true inde-

pendence and neutrality of Western best can be assured and intended only if the stock-control transaction is thrown open to all interested connections desiring to participate.

Nickel Plate is the sixth largest railroad in size in eastern territory. It serves directly the gateways of Chicago, Peoria, and St. Louis. Nickel Plate is dependent upon the Western for access to western lines, particularly the Santa Fe, via the Peoria gateway, and Western is Nickel Plate's largest single connection at Peoria. Statistics of record indicate that the Western interchange represents 26 per cent of all the traffic handled in Nickel Plate trains to and from Peoria.

The Rock Island operates 7,895 miles of lines in 14 States, extending generally from Chicago, St. Louis, and Memphis, Tenn., on the east, to Tucumcari, N. Mex., and [fol. 33] Denver, Colo., on the west. Its line to Peoria branches off the Chicago-Denver main line at Bureau. In 1954, Rock Island's operating revenues totaled more than $187,000,000, and it earned $28.84 per share of preferred stock and $10.96 per share of common stock.

Wabash and Burlington—As indicated heretofore, the Wabash and the Burlington have no objection to the granting of the application of the Santa Fe and the Pennsylvania, provided the usual conditions for the maintenance of joint rates and through routes are imposed. But, if any carrier other than the Santa Fe and the Pennsylvania is authorized to acquire control or an interest in Western, then the Burlington and the Wabash desire to participate in such control to the same extent.

Since 1859, Wabash has operated under trackage rights over Western's line between Elvaston and Hamilton. At the latter point these two carriers operate a jointly-owned track which connects the Western main line with the municipal bridge across the Mississippi River used by both to serve Keokuk. The Wabash also operates over the main line of Western between Forrest and Fairbury to get to and from its branch line serving Streator. The contractual relationships between Wabash and Western include provisions for the maintenance and operation of stations and interlocking facilities. The current contract contains a l-

year cancellation provision, and it is vitally important to the Wabash, and the shipping public served by its Streator branch, that control of Western will not be acquired by a carrier or carriers detrimental to the interests of the Wabash. Loss of the trackage rights now enjoyed by the Wabash over the Western would require consideration of the abandonment of both the Streator branch and the Keokuk branch north of Meredosia. In 1955, the Wabash interchanged a total of 3,438 carloads of revenue freight with Western at 5 different junction points, the most important of which, from the standpoint of volume, was Forrest.

Minneapolis' proposals—The Minneapolis is opposed to joint or multiple ownership of Western. It seeks to acquire exclusive control in order to increase the operating efficiency of its plant, diversify its traffic base, establish new service routes; provide suitable land for the location of industries on its lines, enhance its financial stability, effect substantial economies through elimination of duplicate [fol. 34] facilities, and render an improved transportation service to the public. The Minneapolis is willing to enter into agreements similar to those now existing between the stockholders of Western, on the one hand, and Santa Fe, on the other. In payment for such stock, the Minneapolis would issue $12,000,000 of first-mortgage sinking-fund bonds, bearing interest at the rate of approximately 4½ per cent per annum, maturing 30 years from the date of issue, with equal annual sinking-fund payments of $480,000, commencing in the sixth year. The remaining $150,000 of the purchase price would be paid in cash from funds available in its treasury.

The proposal of Minneapolis unequivocally contemplates the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works. Only the corporate existence of Western would remain. For all practical purposes Western would be integrated, consolidated and merged into the Minneapolis for ownership, management, and operation. Western's headquarters and general offices would be moved from the present location at Peoria to the city of Minne-

apolis, and all policies and directions for the operation of the joint properties would emanate from that point. An estimated 250 positions, most of them on Western, would be affected by the plan. Of the 24 executive positions on Western at the present time, only a trainmaster and a roadmaster would be retained for direct supervision of Western's trackage.

Only the Minneapolis and its supporting interveners, the States of Minnesota and South Dakota, advocate the disappearance of Western as a separate and independent operating carrier. All the other parties to these proceedings, including the railroad interveners, the communities served by Western, and the shippers who appeared as witnesses, insist that the separate and independent operation of Western under its present local management is a public necessity. In fact, all the communities on the line of Western between Peoria and the western termini are fearful that under the Minneapolis' control the western portion of the line will be abandoned because of the competition that line furnishes the line owned by the Minneapolis between Peoria and Nemo. While at one time officials of the Minneapolis considered such an eventuality, the instant record conclusively demonstrates that abandonment of any portion of [fol. 35] Western is not included in the present plans of the Minneapolis in seeking control. The latter is willing to accept a condition to that effect.

The Minneapolis contends that its acquisition of control of Western not only will give the Minneapolis direct interchange connections with the Nickel Plate, Illinois Terminal and Burlington at Peoria, but will also provide additional direct interchange points east of Peoria with the Pennsylvania at Effner, the Gulf at Chenoa, the Illinois Central at Gilman and El Paso, the Chicago & Eastern Illinois at Watseka, the New York Central at Sheldon, the Wabash at Forrest, the Nickel Plate at Farmdale, and the Chicago, Milwaukee, St. Paul & Pacific at Webster. Under unified operations, the Minneapolis proposes to establish coordinated schedules between it, the Western, and the connecting carriers, providing new service routes via these additional junctions for moving traffic in all directions.

The record shows that such a policy would be extremely harmful to other carriers. For example, of a total of 21,041 cars interchanged between the Wabash and the Minneapolis at Des Moines and Albia, Iowa, in 1955, 7,364 cars were destined to or from points in Illinois and points east thereof. Under the Minneapolis' unified-operation theory, a new service route via Forrest would be established for such traffic which would imperil, or at least diminish, the Wabash's participation therein, and possibly could result in the abandonment of the latter's Des Moines branch. Other intervening carrier connections similarly would be adversely affected by the Minneapolis' proposal. The Minneapolis contends that such carriers can be amply protected by appropriate conditions with respect to through routes and joint rates to be attached to the order approving its control of Western.

The Minneapolis further contends that Western is a natural extension of its railroad; that its interchange with Western at Peoria is proportionately greater in carloads and freight revenues than any other carrier interested in these proceedings; that no one can operate Western to greater advantage or more economically than the Minneapolis; and that its failure to acquire control of Western would materially curtail the expansion of Minneapolis' service and the full use and development of the Peoria gateway. Acquisition of control of Western would permit the Minneapolis to abandon its yard at Peoria and use the yard of [fol. 36] Western, thereby eliminating a switching operation at that point and reducing interchanges to 1 yard instead of the 2 now required.

The Minneapolis estimates that economies totaling $1,770,945 can be achieved jointly by it and the Western through elimination of duplicate facilities and traffic agencies, more efficient use of work forces, plant and power, and mechanical accounting. Most of the savings would be effected at the expense of Western's employees. The Minneapolis states that it will seek to minimize any adverse effect upon employees, because it has a number of workers on the payroll who are in the upper age brackets, and as these people are automatically retired, room will be made for the absorption of Western's employees to be released

or displaced. The Minneapolis states that the economies which would result from its operation of Western would redound not only to the benefit of these two small carriers, but would also redound to the benefit of shippers and the public generally, through improved service, thus encouraging the development of the combined territories served and the location of new industries along their lines.

Other benefits and advantages claimed by the Minneapolis in the matter of adequate car supply and the coördinated service which would result if Western were controlled by the Minneapolis are of record, but in view of our findings herein with respect to the disposition of its application, the details thereof need not be specifically described. The Minneapolis insists that it alone has no conflict of interest with Western, or the Peoria gateway, and no incentive other than to maximize the traffic and service that would be rendered over the combined lines. Conversely, it contends that all other carriers interested in the acquisition of all or a portion of the control of Western have their main lines, interests, and investments in direct competition with Western and the Peoria gateway. Hence, acquisition of Western by any other interested carriers would sharply decrease competition, not only in that it would be the acquisition of Western by its competitors, but also in that it would materially decrease the ability of the Minneapolis to compete with such other carriers.

Competition and diversion of traffic—The Santa Fe and the Pennsylvania are complementary to each other insofar as they work through their connections with the Western. [fol. 37] The Rock Island and the Santa Fe are in competition; the Nickel Plate competes with the Pennsylvania and Wabash; and Minneapolis is in competition with the Rock Island and other parties. All the carriers endeavoring to participate in its control are in competition with Western. Santa Fe's and Pennsylvania's routes via the Chicago gateway compete with Western's routes through the Peoria gateway. The Nickel Plate competes with the eastern half of Western, and the Rock Island competes with the western half. The Wabash, the Burlington, and the Minneapolis also compete with Western.

The important thing is not whether there is possibility of competition, but whether there is probability of existing or potential competition being diminished or strangled by the Western under the control of the Santa Fe and the Pennsylvania. Under such control, Western would have an increased opportunity to secure traffic now moving via other gateways. While the Santa Fe and the Pennsylvania ordinarily solicit traffic for their long hauls, they have not worked against Western, and have offered only passive resistance against Lomax and Effner, respectively, in recognition of the benefits they would receive from the Western route. Considering the greater expense of operating through a large congested terminal, Santa Fe and Pennsylvania are just about as well off financially when handling traffic via Western as they would be on the long haul through Chicago. If the Santa Fe obtains a half interest in Western, it intends to place Lomax on a parity with Chicago from a solicitation standpoint, and as the other half owner, the Pennsylvania will recognize Effner as one of its principal interchanges along with Chicago and St. Louis. While the Pennsylvania will continue to solicit its long haul to St. Louis, Effner and Chicago will be on a parity. Of course, if service over the Western is improved under the control of the Santa Fe and the Pennsylvania traffic can be handled over it more economically and efficiently than over existing routes, there may be some diversion of traffic, but such diversion would not jeopardize the maintenance of adequate transportation service by the objecting intervening carriers.

As for solicitation, the record shows that all but a very small part of the nation's traffic is routed by the shipper, and that many factors, the most important of which is [fol. 38] service, influence such routing. Generally, the shipper gives the originating carrier a long haul, or at least a line haul, but junction points are seldom included in the routing. Shippers also desire to maintain friendly relations with as many railroads as possible and, for that reason, there is a tendency to divide the traffic among several railroads. Shippers like to favor small railroads with a part of their traffic, and will use the line of a particular carrier because of a friendly relationship with that

railroad's solicitors. Normally, an industry feels a definite obligation to the originating carrier. The industry seeks rate and routing information from that line, places rate problems before it, looks to it for car supply, and relies upon it for tracings and diversions. These factors are operating today and are reflected in the present division of traffic among all of Western's connections, and since no change in service is contemplated with Western under the control of the Santa Fe and the Pennsylvania, the volume of traffic handled by the protesting intervening carriers should not be materially affected. The self-interests of the Santa Fe and the Pennsylvania provide further assurance that Western's present solicitation and service policies will be continued. Those policies have been responsible for the success of Western in the past, and the best way for the Santa Fe and the Pennsylvania to insure a substantial return on their investments to be made herein is to see that the Western management is left free to continue them.

The Minneapolis contends that with Santa Fe and the Pennsylvania in control of Western $7,000,000 of its traffic would be vulnerable to diversion, of which it thought $1,100,000 was certain of loss. This last figure was obtained by dividing the traffic into 12 categories and applying a percentage to the gross revenue derived from each category. The record does not disclose the basis of the percentages used.

The Minneapolis estimates that 75 per cent of its traffic moving between Peoria and Nemo will be diverted to the Western by the combined influence of the Santa Fe and the Pennsylvania as originating and terminating carriers. It contends that this will be accentuated by the placing of Lomax on a parity with Chicago. We are of the opinion that the placing of Lomax and Chicago on the same level for the solicitation of traffic would have little effect on the [fol. 39] Nemo-Peoria traffic of the Minneapolis. The Santa Fe has solicited that traffic for its long haul to or from Chicago. The Western has solicited it via Lomax, and all other carriers connecting with the Santa Fe west of Chicago have solicited it. Notwithstanding this intense

competition, the Minneapolis has been able to handle the traffic.

It is evident that the Peoria-Nemo traffic secured by the Minneapolis is traffic which does not move on a competitive service basis. The record shows that the Minneapolis does not co-ordinate schedules with the Santa Fe at Nemo, nor has it been making its connections with the Western and the Nickel Plate at Peoria on eastbound traffic. In 1953, the Minneapolis canceled its guaranteed schedules on perishable traffic moving through Nemo in conjunction with the Nickel Plate at Peoria. The large volume of traffic presently moving via the Western route is evidence of the superior connecting service it provides.

Shippers desiring to favor the Santa Fe now route their traffic via the Santa Fe's long haul to Chicago. The diversion of this traffic to Lomax as a result of placing it on a parity with Chicago would have no effect on the Minneapolis, because the Minneapolis does not share in the haul on this traffic today. Shippers using the Santa Fe, who prefer the Peoria gateway for service reasons, presently route their traffic via the Western at Lomax because of the inferior service via Nemo. The only traffic moving via the Minneapolis is traffic on which shippers desire to give it a haul, and the Santa Fe's parity policy would not affect the continuation of such desires to favor the Minneapolis with a portion of their traffic. Consequently, there would be little or no effect upon the traffic now moving between Nemo and Peoria. On the other hand, the Pennsylvania's policy of placing Effner on a parity with Chicago would divert a portion of traffic now moving through Chicago to Effner and the Peoria gateway, thus giving the Minneapolis an opportunity to solicit the haul to and from its connection with the Western at Peoria.

The Minneapolis estimates that it would lose 50 per cent of the traffic moving through Peoria and the Kansas City and Omaha gateways, which it now bridges between Peoria and junction points other than Nemo. It states that such traffic would be subject to diversion over the Pennsylvania-Western-Santa Fe route. The present routing of this traffic [fol. 40] reflects the influence of the other western carriers which compete with the Santa Fe and which, to a large

extent, are responsible for its movement. The fact that the other western carriers and the Minneapolis overcame the solicitation of the Santa Fe and the Western, which afford a more direct service route, indicates that other factors beyond the control of the Santa Fe influenced the routing of this traffic. Partial ownership of the Western will not alter the degree of the Santa Fe's solicitation influence and will not affect the basis on which this traffic presently moves. This business would not be lost so long as the Minneapolis and the connections handling it continue the same effective solicitation effort that is being exerted today, and the service via the Minneapolis through Peoria is not further impaired. The same solicitation situation exists with respect to the traffic originated and terminated by the Minneapolis at Peoria, a portion of which, it is claimed, would be diverted if the Santa Fe Pennsylvania application were approved.

The Rock Island contends that its traffic vulnerable to diversion with Western under the control of the Santa Fe-Pennsylvania, primarily through the position of the Santa Fe, would amount to an estimated $2,084,309—more than $1,000,000 of which represented traffic originated or terminated at Rock Island points competitive with the Santa Fe and interchanged with the Western at Keokuk. The nature of this interchange traffic is such that the possibility of its diversion to the Santa Fe is remote, particularly in view of the fact that much of it originated or terminated at industries served exclusively by the Rock Island.

Almost $1,500,000 of the alleged loss claimed by the Rock Island through diversion was derived from traffic which moved into and out of Peoria from and to Chicago and Joliet as competitive origins, destinations, or junctions. The small volume of traffic interchanged between the Western and the Santa Fe at Eureka, as reflected by data of record, indicates that the Santa Fe is not a factor in the movement of traffic between Chicago and Peoria via the Western. The Western's route from Peoria to Chicago is via main-line connections with the Wabash at Forrest, the Chicago & Eastern Illinois at Watseka, and the Illinois Central at Gilman. Thus, it appears unlikely that the Santa Fe's partial ownership of the Western could enhance its

competitive position as to traffic for which the Santa Fe maintains no competitive route.

[fol. 41] Neither will the Santa Fe's partial ownership of the Western affect the diversion of traffic moving via the Rock Island between Peoria and points competitive with the Santa Fe in the west. The lack of Santa Fe influence as to this traffic is evidenced by the fact that it has unsuccessfully solicited it. The Rock Island, with direct service at Peoria, enjoys the paramount influence as to this traffic, since it affords shippers at Peoria its services as an originating or terminating carrier. The Western is not afforded such influence, because it maintains direct service to very few industries at Peoria.

With Western under the control of the Santa Fe-Pennsylvania, the Nickel Plate estimates a loss of traffic amounting to approximately $2,200,000, consisting of traffic interchanged with the Santa Fe at Chicago, and with the Western at Peoria. The Santa Fe contends that its policy of placing Lomax on a parity with Chicago will have no effect upon this traffic, because the Nickel Plate is able to solicit it both at Chicago and at Peoria. The divisions accruing to the Nickel Plate at Peoria exceed those at Chicago, and on transcontinental business are equal to those at St. Louis. Thus, it is argued by the Santa Fe that the placing of Lomax and Chicago on a parity will have the effect of increasing the revenues of the Nickel Plate.

The greatest portion of the Nickel Plate's interchange traffic with the Western is bridged via the Western to or from the Santa Fe at Lomax. In 1954, the Nickel Plate interchanged a total of 14,497 cars with Western, of which the Santa Fe participated in the movement of 11,221 cars. Most of the Nickel Plate's traffic bridged from Lomax via the Western is perishable moving, in superior service, to points on the Nickel Plate and its connections. It provides the Santa Fe with a long haul to Lomax on traffic which otherwise might move via St. Louis. If the Western's connection with the Nickel Plate were not maintained as a service route, this traffic would be routed to the Nickel Plate at St. Louis, short-hauling the Santa Fe at Kansas City. Thus, the self-interest of the Santa Fe would assure the continuance of good service to the Nickel Plate at

Peoria and prevent preferential solicitation by the Western for the Pennsylvania at Effner. As stated above, the Western, being dependent upon the traffic of its connecting lines for successful operations, must continue its present policy [fol. 42] of working closely with all its connections or lose the traffic it now interchanges with them. It is evident that such loss would be of no benefit to the Santa Fe-Pennsylvania as owners of the Western. We are convinced that the benefits to be derived from the operation of Western under the control of the Santa Fe and the Pennsylvania as proposed will be in furtherance of the over-all national transportation policy declared by the Congress, and its consummation will not unduly curtail competition in connection with the other carriers. *Compare McLean Trucking Co. v. U. S.*, 321 U. S. 67.

Passenger service—The Rock Island also has a major concern in that it has made commitments in passenger operations to and from Peoria, and has only recently inaugurated a new train between Peoria and Chicago. The Rock Island fears that with the Santa Fe in 50 per cent control of Western, its Peoria passenger business is in jeopardy, and, at the hearing, suggested that the Santa Fe and the Pennsylvania stipulate to a condition that no passenger service would be operated on the Western without application to us for approval. The record shows that the Santa Fe and the Pennsylvania do not contemplate providing passenger-train service on Western, and they have not held out any hopes for such service to the people in the area which it serves. Through passenger service via the Santa Fe and the Western could be established at any time without Santa Fe's control of Western. Passenger service is not an issue in this proceeding and the imposition of a condition such as that suggested by the Rock Island is not necessary.

Trackage rights—As stated heretofore, Monon Railroad requests trackage rights over the Pennsylvania if the latter is authorized to participate on an equal basis with Santa Fe in the control of Western. To the extent that the development of the Peoria route draws traffic from the Chicago gateway, Monon contends that it may lose some of the

traffic it now handles through that gateway in common with other carriers similarly situated. Monon further contends that a connection with the Western at Effner would make it possible for Monon to recover such traffic and place it on an equality with its more powerful competitors in the solicitation of business as between the Chicago and Peoria routes. At the hearing a witness for the Monon [fol. 43] stated its position in the premises, but made no effort to describe with any particularity the traffic which might be lost, the carriers over whose lines it moves, its volume, or the areas of origin and destination.

Ordinarily we are without authority to compel one railroad to grant trackage rights over its line to another carrier. See *Baltimore & O. R. Co. Operation*, 261 I. C. C. 535, and *Alabama, T. & N. R. Corp., Construction*, 124 I. C. C. 114. We are of the opinion that the potential loss of traffic by the Monon via the Chicago gateway as a result of our approval of the Santa Fe-Pennsylvania application is too nebulous to warrant the imposition of a condition granting that carrier trackage rights extending its operations for approximately 35 miles into new territory without proof of public convenience and necessity. Accordingly, the request for such a condition is denied.

Prescribed conditions.—The Santa Fe and the Pennsylvania are committed to the maintenance of all existing routes and channels of trade via Western without discrimination. Their announced policy toward Western's other connections is expressed in specific conditions which they have agreed to accept as a part of any order approving their application. Those conditions are as follows:

1. That under the control of Santa Fe and Pennsylvania, Western shall maintain and keep open all routes and channels of trade via existing junctions and gateways unless and until otherwise authorized by us;

2. The present neutrality of handling traffic inbound and outbound and in overhead service by Western shall be continued so as to permit equal opportunity for service to and from all lines reaching the rails of that carrier without discrimination as to routing or movement of traffic, and

without discrimination in the arrangements of schedules or otherwise;

3. The present traffic and operating relationships existing between Western, on the one hand, and all lines connecting with its tracks, on the other, shall be continued insofar as such matters are within the control of the Santa Fe or the Pennsylvania;

4. Western shall accept, handle, and deliver all cars inbound and outbound and in overhead service, loaded and empty, without discrimination in promptness or frequency of service as between cars destined to or received from [fol. 44] competing carriers and irrespective of destination or route of movement;

5. Santa Fe and or Pennsylvania shall not do anything to restrain or curtail the right of industries located on Western to route traffic over any or all existing routes and gateways;

6. Santa Fe and Pennsylvania shall refrain from closing any existing route or channel of trade with any carrier party to this proceeding on account of their control of Western, unless and until otherwise authorized by us; and

7. Any party or any person having an interest in the subject matter may at any future time make application for such modification of the above-stated conditions, or any of them, as may be required in the public interest, and jurisdiction will be retained to reopen the proceeding on our own motion for the same purpose.

The foregoing conditions are broad enough to protect the interests of all lines connecting with Western, and are similar to the conditions imposed in *Detroit, T. & I. R. Co. Control, supra, Savannah & A. Ry. Co. Control*, 282 I. C. C. 39, and *Pacific Coast R. R. Co. Control*, 282 I. C. C. 699, in each of which the same arguments against the effectiveness of such conditions were advanced. The foregoing conditions will be included, by reference, in our order granting the authority herein sought by the Santa Fe and the Pennsylvania.

Purchase price—The Minneapolis contends that the purchase price of $135 per share offered by Santa Fe is neither just nor reasonable, because the consideration for a portion of that amount is in settlement of the dispute pending between the trustees and the Santa Fe as an outgrowth of the validity of the April 15, 1955, letter in which the trustees agreed to dispose of 26 per cent of the stock of Western each to the Santa Fe and the Pennsylvania. The Minneapolis states that its offer to purchase Western's stock at $135 a share is just and reasonable in view of the substantial economies, increased efficiency, improved service, and other benefits which would flow from Minneapolis' control of Western. The stock of Western, being closely held, is not listed on any exchange, but its market value was established on the basis of agreement between a willing seller and a willing buyer. The price proposed to be paid by the Santa Fe and the Pennsylvania is the same as that [fol. 45] offered by the railroads requesting inclusion. The reasonableness of the purchase price is also indicated by the excellent physical and financial condition of Western, its good earnings and operating record, the value of its properties as fixed by us for rate-making purposes, its progressive and able management, and its strategic location which adds to its value as a long-term investment. If $135 per share is the proper price for the Minneapolis to pay, it is fair and reasonable as to the Santa Fe and the Pennsylvania.

State representations—The States of Minnesota and South Dakota, along with their respective Public Service Commissions, intervened in support of the Minneapolis application. They fear that with Western under the control of the Santa Fe and the Pennsylvania, the Peoria route of the Minneapolis will deteriorate to the extent that its low density lines in Minnesota and South Dakota will be in danger of abandonment. On the other hand, the State of Illinois opposes the application of the Minneapolis because of the possibility that the portion of Western's line west of Peoria may be abandoned, and the further reason that such control would have a devastating effect upon the economy of the city of Peoria and the State of Illinois generally. Of course, there can be no abandonment of any

line of railroad without the issuance by us of a certificate of public convenience and necessity permitting such abandonment. So far as the instant record is concerned, no abandonments are presently contemplated.

Wabash control case—In *Wabash R. Co. Control*, 247 I. C. C. 365 and 252 I. C. C. 319, the Pennsylvania and the Pennsylvania Company were authorized to acquire control of the Wabash through ownership of its capital stock subject to conditions, among others, that the Pennsylvania maintain, or cause to be maintained, joint rates, joint routes, interchange points, and channels of trade through gateways of the Wabash then existing, until and unless otherwise authorized by us.

Both the Minneapolis and the Nickel Plate contend that, since the Wabash now has a substantial interchange with the Pennsylvania at Logansport, Ind., and that route will not be placed on a parity with Western's route via Effner, Pennsylvania's proposal to favor Western over Wabash will effectively alter the joint rates and joint routes in con- [fol. 46] travention of the conditions under which the Pennsylvania was permitted to acquire control of the Wabash. They state that the *Wabash Control case* must be reopened and reexamined to determine whether the joint control of Western by the Pennsylvania would be consistent with the public interest and the interest of the Wabash.

The Wabash has not raised the issue. With the imposition of the usual conditions as to the maintenance of existing through routes and channels of trade it supports the Santa Fe-Pennsylvania application. We are unable to find that the granting of that application with the conditions previously stated attached, will lead to violation of the conditions imposed in the *Wabash Control case* or prejudice their effectiveness. While the plan to place Effner on a parity with Chicago, as previously mentioned, will increase the flow of traffic through Effner, such increase will consist of traffic now moving via Pennsylvania through Chicago in which the Wabash does not at present participate. Furthermore, the Pennsylvania in the past has favored Western's route through Effner rather than

the Wabash route through Logansport and there will be no change in this policy.

Clayton Act antitrust violation—The Minneapolis contends that approval of the Santa Fe-Pennsylvania application for authority to acquire control of Western would be in violation of section 10 of the Clayton Act because of the existence of interlocking directors between the Pennsylvania and its subsidiaries, on the one hand, and the Wilmington Trust, a trustee of the McNear estate, on the other. Section 5(11) of the act provides that "the authority conferred by this section shall be exclusive and plenary" and we have on several occasions pointed out that approval of a transaction consistent with the public interest under section 5 renders inoperative any prohibition of Federal, State, or municipal legislation, including the Clayton Act. Furthermore, the issue before us does not involve a purchase by the Pennsylvania from the Wilmington Trust. The Santa Fe is the only purchaser of the stock from the trustees and had no commitments to sell any of it to any other railroad. Before offering to sell a portion of the stock to Pennsylvania several other joint control possibilities were considered and rejected. Under the circumstances, the contention of the Minneapolis in this respect is untenable.

[fol. 47] *Employees*—Counsel for railway labor organizations exacted commitments from all carriers involved herein to abide by the provisions of the Washington Job Protection Agreement of 1936, and our order herein will be conditioned upon compliance with such provisions. The employees unanimously favor the granting of the Santa Fe-Pennsylvania application.

Conclusion—We cannot decide these cases to the satisfaction of all participants. Our duty is to determine the pending matters on the basis of what is consistent with the public interest. It is universally conceded on the record that Western now is a well managed, independently operated railroad furnishing a valuable rail transportation service to the public. Most of the interested parties, including all the shipping witnesses, municipal authorities, and

commercial associations testifying on the subject, favored the continuation of Western in its present status, but the stockholders desire to sell, and without doubt they have that right, so the only question for determination is whether the sale of the stock to the carrier selected by them and the distribution to be made of it thereafter are consistent with the public interest. We have recognized that it is in the public interest for control of a carrier to pass from non-carrier interests, which no longer desire it, to carrier auspices. *Savannah & A. Ry. Co. Control, supra*, and the cases therein cited.

The Santa Fe and the Pennsylvania assert that they are the logical carriers to acquire control of Western, because they are its principal connections. Situated as it is between the Santa Fe at Lomax on the west and the Pennsylvania at Effner on the east, Western receives its long haul and provides a vital direct link essential to the type of through service which is becoming increasingly important not only to the shipping public but to the railroads as well. Fast, strong, and reliable through transportation service is necessary in order for the railroads adequately to compete with the other modes of modern transportation, and Western, as a direct east-west line, supplies the short-line connection for providing this through service with a minimum of delay.

Public interest demands that the present policies of Western in all respects be continued. Any reduction in the ownership interests of the Santa Fe and the Pennsylvania by [fol. 48] the inclusion of other carriers in the control of Western would be accompanied by an equivalent reduction in their economic incentive for the future development of Western and the territory served by it. The case of *Illinois-Missouri Terminal Railway Company et al. Purchase, Etc.*, Finance Docket No. 18752, 295 I. C. C., —, (not printed in full), decided April 2, 1956, relied upon so heavily by the carriers seeking to be included in these proceedings, is distinguishable in that the invitation to participate in the control of the Illinois-Missouri was extended to each and every railroad connecting with that carrier, and all the participants were in agreement as to the manner by which ownership was to be effected and operations were

to be conducted. Such universal agreement is not pres
in the instant applications. No greater protection co
be afforded to carriers interchanging traffic with West
than to have ownership divided equally between the larg
connecting carrier in the east and the largest one in
west. Under this built-in system of checks and balances
is inconceivable for the Santa Fe to permit impairment
service or discriminatory solicitation with respect to ea
ern connections, or the Pennsylvania with respect to we
ern ones. The contract of June 28, 1955, between the Sa
Fe and the Pennsylvania pertaining to the objectives fo
accomplished under their joint control, together with
conditions imposed with respect to the maintenance of
existing routes and channels of trade of Western with
discrimination, is adequate to protect the latter's other c
nections. Only 3 of Western's 16 rail connections oppo
the joint control of the Santa Fe and the Pennsylvan

With the backing of the Santa Fe and the Pennsylvan
there are excellent prospects for locating new industries
Western which will substantially increase the traffic ori
nating and terminating on its line. Western has large ac
ages of potential industrial property in the Peoria ar
and at other points along its line, and with the combin
efforts of the industrial development departments of t
Santa Fe and the Pennsylvania, such property develo
ment may be expected without undue delay.

Several nationally prominent traffic executives of lar
industrial concerns, which annually route a substantial v
ume of traffic via Western, testified in support of San
Fe and Pennsylvania joint ownership. They based the
[fol. 49] support upon the fact that the Santa Fe and t
Pennsylvania are presently rendering excellent servi
in conjunction with Western and that ownership by the
would constitute their best assurance of continued go
service via the combined Santa Fe-Western-Pennsylvan
route, as well as via each of the other connections
Western.

Virtually every one of the shippers and community w
nesses along the line stressed the importance of maintai
ing Western as a separate and independent carrier. Th
are anxious that Western's present management be

tained and favored the plan for local representation on the board of directors. They stressed the desirability of maintaining the existing plant and facilities in the Peoria area, and the desirability of retaining Western's headquarters at Peoria in order to continue the present easy access to management which is of inestimable value to shippers. Each of the city officials and representatives of chambers of commerce of the communities served by Western recognized the advantage of Santa Fe-Pennsylvania ownership as an economic stimulus to the industrial development of their communities. They were joined by business interests which recognized that such industrial development would result in expanding markets.

The Santa Fe and the Pennsylvania representatives on the board of Western will advise and assist Western on matters involving the technique of railroad management and the realization of economies in operation. Western also can expect to realize advantages in connection with its purchases, if it is controlled by two roads which purchase in such large volume as the Santa Fe and the Pennsylvania.

Under joint control by the Santa Fe and the Pennsylvania the supply of freight cars available to Western would be materially increased. The Santa Fe and the Pennsylvania would see to it that the car ownership obligations of Western were met in full, either by having Western increase its car ownership or by increasing their own ownership sufficiently to take care of Western.

Disposition of the applications.—We have before us two applications requesting authority to acquire control of the same carrier. The first filed in point of time reflects a transaction capable of being consummated upon our approval. The second would require further steps before the plan could be consummated. Under no circumstances could [fol. 50] it be consummated unless the first is denied. The Minneapolis has no enforceable contract for the purchase of Western's stock and there is no guarantee that, if the application of the Santa Fe and the Pennsylvania is denied, the trustees automatically would turn to the Minneapolis as the only remaining prospective purchaser. Furthermore, even if the Minneapolis could prevail upon the

trustees to sell their interest in Western, there still would remain a substantial minority of stock in the hands of other holders which the Minneapolis has no assurance that it could acquire. On the present record, it would not be in the public interest to have a minority block of Western stock outstanding in the hands of others.

The Minneapolis relies upon our decisions in *Board. M. & E. R. Co. Control*, 158 I. C. C. 219 and 170 I. C. C. 556, as authority for entertaining its application herein. That case involved an application by the Rock Island to acquire control of the Beaver, Meade, & Englewood Railroad Company through the purchase of capital stock and certain other securities. The Missouri-Kansas-Texas Railroad Company intervened in opposition to the Rock Island application and subsequently filed its own application for the same authority. The intervener had no contract with the stockholders or the owners of the securities, both stock and securities being involved in the sale, but offered to pay the same cash price therefor as offered by the Rock Island. After a joint hearing, as here, we authorized, as in the public interest, the Missouri-Kansas-Texas to acquire the control requested. In determining consistency with the public interest and the national transportation policy we are not shackled in a case like this by the first application filed, if there is presented for our consideration at the same time a different proposal which but for the situation created by the first application might easily be accomplished. The public interest is the prime consideration, and in making that determination we must have regard for all relevant factors.

Consistent with the foregoing, we have carefully considered the evidence and arguments presented relating to both the applications before us and conclude upon the basis of the whole record, and as reflected by this report, that the application of the Santa Fe and the Pennsylvania should be granted subject to the conditions previously al- [fol. 51] luded to herein. With our approval of that application, the possibility of the Minneapolis' acquiring the Western's stock is eliminated and its application becomes moot. Accordingly, the application of the Minneapolis will be dismissed.

We also have considered the request of certain connecting carriers that they be included in the transaction on an equal basis with the successful applicant or applicants and conclude that this would not be in the public interest. Such requests will be denied.

The transaction proposed by the Santa Fe and the Pennsylvania does not contemplate a guaranty or assumption of the payment of dividends or fixed charges, and there will be no increase in total fixed charges.

Findings—We find, subject to the conditions for the protection of railway employees and the maintenance of existing routes and channels of trade referred to herein, that acquisition by The Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Company, and through the latter by The Pennsylvania Railroad Company, of control of the Toledo, Peoria & Western Railroad Company, through ownership of capital stock, in equal amounts, as described herein, is a transaction within the scope of section 5(2) of the Interstate Commerce Act, as amended; that the terms and conditions proposed are just and reasonable; and that the transaction will be consistent with the public interest.

We further find that the application of The Minneapolis & St. Louis Railway Company for authority to acquire control of the Toledo, Peoria & Western Railroad Company, through ownership of capital stock, should be dismissed.

An appropriate order will be entered effective 35 days from the date of service hereof.

[fol. 52]

EXHIBIT B TO COMPLAINT

ORDER

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 31st day of May, A. D. 1957.

Finance Docket No. 18991
Toledo, Peoria & Western Railroad Company Control

Finance Docket No. 19086
Toledo, Peoria & Western Railroad Company Control

Investigation of the matters and things involved in these proceedings having been made, a hearing having been held, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That, subject to the conditions for the protection of railway employees and the maintenance of existing routes and channels of trade referred to in said report, acquisition by The Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Company, and through the latter by The Pennsylvania Railroad Company, of control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock, in equal amounts, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized:

It is further ordered, That the request of the Chicago, Rock Island and Pacific Railroad Company and The New York, Chicago and St. Louis Railroad Company, under section 5(2)(d) of the act, for authority to be included on an equal basis in the acquisition of control, through stock

ownership, of the Toledo, Peoria & Western Railroad Company be, and it is hereby, denied;

It is further ordered, That the application of The Minneapolis & St. Louis Railway Company for authority to acquire control of the Toledo, Peoria & Western Railroad Company, through ownership of capital stock, be, and it is hereby, dismissed;

And it is further ordered, That this order shall take effect and be in force 35 days from the date of service hereof.

By the Commission, division 4.

HAROLD D. McCOY,
Secretary.

(SEAL)

[fol. 53]

EXHIBIT C TO COMPLAINT

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 30th day of October, A. D. 1957.

Finance Docket No. 18991
Toledo, Peoria & Western Railroad Company Control

Finance Docket No. 19086
Toledo, Peoria & Western Railroad Company Control

It appearing, That by report and order in the above-entitled proceedings, dated May 31, 1957, the Commission, by division 4, authorized, subject to certain protective conditions, The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Company, and through the latter The Pennsylvania Railroad Company to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock, dismissed the ap-

plication of the Minneapolis & St. Louis Railway Company for authority to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock, and denied the request of the Chicago, Rock Island and Pacific Railroad Company and the New York, Chicago and St. Louis Railroad Company for authority to be included on an equal basis in the acquisition by the Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Company and through the latter The Pennsylvania Railroad Company of control of the Toledo, Peoria & Western Railroad Company;

It further appearing, That on and after July 24, 1957, the Minneapolis & St. Louis Railway Company, the State of South Dakota, the Chicago, Rock Island and Pacific Railroad Company, and the New York, Chicago and St. Louis Railroad Company filed petitions for reargument and reconsideration of said report and order;

It further appearing, That upon the filing of said petitions and pursuant to section 17(8) of the Interstate Commerce Act the aforesaid order was stayed pending disposition of the matter;

It further appearing, That on August 20 and 21, 1957, The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company, certain chamb[fol. 54]bers of commerce and communities, and certain municipalities and shippers along the lines of the Toledo, Peoria & Western Railroad Company, the City of East Peoria; and the City of Peoria, filed replies to the aforesaid petitions;

It further appearing, That on and after August 19, 1957, the Chicago, Rock Island and Pacific Railroad Company and the New York, Chicago & St. Louis Railroad Company, the Railway Labor Executives' Association, and the State of Illinois filed replies to the aforesaid petition of the Minneapolis & St. Louis Railway Company;

It further appearing, That on September 23, 1957, the State of Minnesota and Minnesota Railroad and Warehouse Commission filed a petition for leave to file a peti-

tion for reconsideration and concurrently therewith submitted to the Commission a petition for reconsideration;

And it further appearing, Upon consideration of the record herein, and the contentions set forth in said petitions for reargument and reconsideration (including the petition of the State of Minnesota and Minnesota Railroad and Warehouse Commission) and replies thereto, that there has been presented no error of fact or law with respect to the matters complained of by the petitioners, and that no showing has been made warranting reconsideration or further hearing;

It is ordered, That the petition filed by the State of Minnesota and Minnesota Railroad and Warehouse Commission for leave to file a petition for reconsideration be, and it is hereby granted; and that said petition for reconsideration submitted by the State of Minnesota and Minnesota Railroad and Warehouse Commission be, and it is hereby, accepted for filing;

It is further ordered, That the petitions for reargument and reconsideration be, and they are hereby, denied;

And it is further ordered, That said order dated May 31, 1957, be, and it is hereby, made effective 30 days from the date of service of this order.

By the Commission.

HAROLD D. McCOY,
Secretary.

(SEAL)

[fol. 55]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA
FOURTH DIVISION.

4-57 Civ. 123

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, a Minnesota Corporation, Plaintiff,

vs.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

THE STATE OF MINNESOTA and the MINNESOTA RAILROAD AND WAREHOUSE COMMISSION, Intervening Plaintiffs.

COMPLAINT IN INTERVENTION OF THE STATE OF MINNESOTA AND THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION—Filed December 27, 1957

1. This is a civil action to enjoin, annul, suspend and set aside the Order of Division 4 of the Interstate Commerce Commission issued on May 31, 1957, and the Order of the Interstate Commerce Commission issued on October 30, 1957, in the proceedings entitled "Finance Docket = 18991, Toledo, Peoria and Western Railroad Company Control" and "Finance Docket = 19086, Toledo, Peoria and Western Railroad Company Control".

2. Jurisdiction of this action is conferred upon this Court by the provisions of Title 28, United States Code, Sections 1336, 2284, and 2321-2325, inclusive, which authorizes suits to be brought in the District Courts of the United States against the United States of America to enjoin, annul, suspend and set aside orders of the Interstate Commerce Commission.

3. The State of Minnesota is one of the sovereign States of the United States and the Minnesota Railroad and

Warehouse Commission is one of the departments of government of that state. These petitioners have an interest [fol. 56] in matters before the Interstate Commerce Commission involving the adequacy of service by common carriers by railroads operating in interstate commerce within the State of Minnesota.

4. The plaintiff, the Minneapolis and St. Louis Railroad Company, is a Minnesota corporation engaged in interstate commerce as a common carrier by railroad, subject to the provisions of the Interstate Commerce Act. Plaintiff has its principal offices in the State of Minnesota and operates a railroad between Leola, South Dakota, Minneapolis, Minnesota and Peoria, Illinois. The plaintiff serves 57 communities in Minnesota and its operated mileage in the State of Minnesota amounts to 399 miles.

5. The petitioners were granted leave to intervene before the Interstate Commerce Commission pursuant to their petition for leave to intervene, dated January 30, 1956, supporting the application of the Minneapolis and St. Louis Railroad Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria and Western Railroad Company through ownership of its capital stock. The petitioners produced expert testimony in support of the application of the Minneapolis and St. Louis Railroad Company and the petitioners by brief and by argument supported the application of the Minneapolis and St. Louis Railroad Company before the presiding examiner and before Division 4 of the Interstate Commerce Commission.

6. The Orders of the Interstate Commerce Commission dated May 31, 1957, and October 30, 1957, would have serious economic effect on the Minneapolis and St. Louis Railroad Company which would likely have an adverse effect on the petitioners and, further, these orders are not in accordance with the public interest as required by the Interstate Commerce Act.

[fol. 57] Wherefore, the State of Minnesota and the Minnesota Railroad and Warehouse Commission pray:

1. That upon final hearing and determination of this action, the Court adjudge that said Orders of the Interstate Commerce Commission are unlawful and based upon erroneous construction of the Interstate Commerce Act and the National Transportation Policy, and that a decree be entered setting aside, annulling, suspending, and perpetually enjoining, the enforcement, operation and execution of said orders.

2. That the intervening plaintiffs have such other and further relief as may be determined just and equitable by the Court.

Harold J. Soderberg, Assistant Attorney General, Attorney for the Intervening Plaintiffs, 102 State Capitol, Saint Paul 1, Minnesota.

[File endorsement omitted]

[fol. 58]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

Civil Action No. 4-57 Civil 123

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Plaintiff,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

ANSWER OF THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION—Filed January 31, 1958

The United States of America and the Interstate Commerce Commission (hereinafter referred to as the Commission), defendants, for their answer to the complaint admit, deny, and aver as follows:

I.

Admit the allegations of paragraphs I, II, III, IV, V, and VI.

II.

Answering paragraph VII, the defendants admit that Minneapolis operates approximately 1,400 miles of railroad; that the lines of Minneapolis serve the Minneapolis and Peoria gateways and do not reach the gateways of Chicago, St. Louis or Kansas City; that Minneapolis is predominantly an east west railroad; that Minneapolis bypasses the Chicago area via Peoria; that on the basis of investment, Minneapolis ranked sixtieth in size among the 127 Class I railroads in the Nation in 1955; and that Minneapolis is largely dependent upon agriculture and related products. Defendants aver that they are without knowl- [fol. 59] edge or information sufficient to form a belief as to the truth of all other allegations of said paragraph VII.

III.

Admit the first sentence of paragraph VIII; admit that Pennsylvania Railroad serves the gateways of Chicago and St. Louis; admit the third sentence of paragraph VIII; and deny all other allegations of said paragraph VIII.

IV.

Admit the allegations of paragraph IX.

V.

Admit the allegations of paragraph X, except that the defendants aver that the ownership of Western by Pennsylvania Railroad and Chicago, Burlington & Quincy Railway Company was terminated in 1917 in which year Western went into receivership.

VI.

Admit that on June 10, 1954, and from time to time thereafter to and including May 26, 1955, Minneapolis sought to purchase the stock of Western from the trustees; that said efforts to purchase the stock of Western were begun prior to the initiation by Pennsylvania Railroad or Santa Fe of negotiations with said trustees to purchase

said stock of Western; and deny all other allegations of paragraph XI.

VII.

Deny the relevancy and materiality of the allegations of the first sentence of paragraph XII, but, if deemed relevant and material, admit that there is testimony in the record to the effect that a union of Minneapolis and Western has been discussed and considered prior to 1954 and that the present president of Pennsylvania Railroad had regarded such union favorably, and aver that they are without knowledge or information sufficient to form a belief as to the [fol. 60] truth of all other allegations of said first sentence of paragraph XII. Defendants deny all other allegations of paragraph XII.

VIII.

Deny the relevancy and materiality of the first two subparagraphs of paragraph XIII, but, if deemed relevant and material, admit that there is testimony in the record to the effect that in or about late 1954 or early 1955, the president of Pennsylvania Railroad received information to the effect that the president of Minneapolis was buying into the Monon Railroad with the view of effecting an eventual merger of Minneapolis, Monon and Western; admit that from early 1955 to and including May 26, 1955, one director of Pennsylvania Railroad was at the same time a director of Wilmington Trust Company; admit that three directors of affiliates or subsidiaries of Pennsylvania Railroad were at the same time directors of Wilmington Trust Company; admit that on April 15, 1955, Pennsylvania Railroad, through its wholly owned subsidiary Pennsylvania Company, reached by letter a certain understanding with Jos. W. Chinn, Jr., and J. Seliers Bancroft, who signed with the notation "For the Trustees U/W of George P. McNear, Jr.," regarding the purchase of 23,400 shares of stock or 26 percent of the total number of shares outstanding of Western; admit that Santa Fe, by letter of April 15, 1955, reached a similar understanding for the purchase by it of 23,400 shares or 26 percent of the total

number of shares outstanding of Western; aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegation that "In the negotiation and execution of these contracts Wilmington Trust Company represented the co-trustees."

Defendants deny the relevancy and materiality of, and any requirement to answer, the allegation and conclusion [fol. 61] of the first sentence of the third sub-paragraph of paragraph XIII, and in support of said denial aver that the Commission in its report of May 31, 1957, found that "the issue before us [the Commission] does not involve a purchase by the Pennsylvania from the Wilmington Trust. The Santa Fe is the only purchaser of the stock from the trustees . . ."

Admit that an agreement dated May 26, 1955, was made between Santa Fe and the co-trustees under the will of George P. McNear, Jr. for the sale of all of the stock held by the co-trustees to Santa Fe, subject to the approval of the Commission; that by agreement dated June 28, 1955, Santa Fe, subject to the Commission's approval, agreed to sell to Pennsylvania Company 50 percent of the stock of Western which Santa Fe would be able to purchase, including the co-trustees' stock.

On the basis of the record before the Commission in Finance Dockets 18991 and 19080 and its findings and report, defendants deny all other allegations of paragraph XIII.

IX.

Admit the first and fourth sentences of paragraph XIV; admit that by said application Santa Fe and Pennsylvania Railroad sought authority to acquire control of Western, each to own 50 percent of the capital stock of Western, through exercise of Santa Fe's agreements with the holders of Western's stock and Pennsylvania Company's agreement with Santa Fe; and deny all other allegations of said paragraph XIV. The defendants respectfully refer to the report of the Commission (Division 4) appended to the complaint as "Exhibit A" for a more complete description of the authority sought and the agreements involved.

X.

Admit the allegations of paragraphs XV and XVI.

[fol. 62]

XI.

Admit that on or about November 9, 1956, the proposed report of the Commission's examiner was served, recommending approval of the application of Santa Fe, Pennsylvania Railroad and Pennsylvania Company and dismissal of the application of Minneapolis, and deny all other allegations of paragraph XVII. The defendants respectfully refer to the proposed report for a full and complete statement of the examiner's recommendations with respect to the disposition of the application of Minneapolis.

XII.

Admit the allegations of paragraph XVIII.

XIII.

Admit that by report and order dated May 31, 1957, Division 4 of the Commission approved the application of Santa Fe, Pennsylvania Railroad and Pennsylvania Company and dismissed the application of Minneapolis, and deny all other allegations of paragraph XIX. The defendants respectfully refer to the report of the Commission (Division 4) appended to the complaint as Exhibit "A" for a full and complete statement of the reasons and conclusions of the Commission.

XIV.

Admit the allegations of paragraphs XX and XXI.

XV.

Deny each and every allegation in the first paragraph of paragraph XXII and in reply to the sub-paragraphs under paragraph XXII:

(a) Deny the allegations of sub-paragraph (a).

(b) Admit the allegations of the first sentence of sub-paragraph (b), but deny that this action of the Commis-

sion was unlawful for any of the reasons specified in the [fol. 63] first paragraph of paragraph XXII or for any other reason whatsoever. Deny the allegations of the second sentence of sub-paragraph (b).

(c) Admit the Commission made no finding of the character stated in the first sentence of sub-paragraph (c), but deny that this action or inaction was unlawful for the reasons specified in the first paragraph of paragraph XXII or for any other reason whatsoever. Deny the allegation of the second sentence of sub-paragraph (c).

(d) Deny that the basic criteria for determination of the public interest under Section 5(2) of the Interstate Commerce Act compel a grant of the application of Minneapolis and a denial of the application of Santa Fe, Pennsylvania Company and Pennsylvania Railroad. With respect to the second sentence of sub-paragraph (d), aver that the Commission did not depart from established criteria of the public interest.

(e) Deny the allegations of sub-paragraph (e).

(f) Admit that the Commission made no finding of the character indicated in the first sentence of sub-paragraph (f), but deny that this action or inaction by the Commission is unlawful for the reasons specified in the first paragraph of paragraph XXII or for any other reason whatsoever. Deny the allegations of the second sentence of sub-paragraph (f).

(g) Admit that the Commission made no finding of the character indicated in the first sentence of sub-paragraph (g), but deny that such action or inaction of the Commission is unlawful for the reasons specified in the first paragraph of paragraph XXII or for any other reason. Deny the allegations of the second sentence of sub-paragraph (g).

(h) Deny the allegations of sub-paragraph (h).

[fol. 64] (i) Deny the allegations of sub-paragraph (i), and respectfully refer to the report of the Commission for a full and complete statement of the Commission's findings.

(j) Deny the allegations of sub-paragraph (j).

(k) Deny the allegations of sub-paragraph (k), and respectfully refer to the report of the Commission for a full and complete statement of the Commission's findings.

(l) Deny the allegations of sub-paragraph (l), and aver that neither the conditions in the *Wabash Control* case nor any issue or matter pertinent thereto are material to this cause.

(m) Deny the allegations of sub-paragraph (m).

(n) Admit that the Commission found that Minneapolis proposal contemplates the disappearance of Western as an "independent and neutral connection for the other 15 carriers with which it (Western) presently works," and deny the allegations of the second and third sentences of sub-paragraph (n).

(o) Admit the Commission made a finding substantially of the character set forth in the first sentence of sub-paragraph (o), but deny that such action of the Commission is unlawful for any of the reasons set forth in the first paragraph of paragraph XXII or for any other reason, and deny all other allegations of sub-paragraph (o).

(p) Admit that the Commission made findings substantially of the character of the first two sentences of sub-paragraph (p), but deny that this action of the Commission is unlawful for any of the reasons set forth in the first paragraph of paragraph XXII or for any other reason, and deny all other allegations of sub-paragraph (p).

(q) Admit that the Commission made findings substantially of the character indicated in the first two sentences of sub-paragraph (q), but deny that such action of the [fol. 65] Commission is unlawful for any reasons set forth in the first paragraph of paragraph XXII or for any other reason, and deny all other allegations of sub-paragraph (q).

(r) Admit the Commission made a finding substantially of the character indicated in the first sentence of sub-

paragraph (r), but deny that such action of the Commission is unlawful for any reasons set forth in the first paragraph of paragraph XXII or for any other reason; deny that there is any unwarranted assumption on the Commission's part that plaintiff has impaired its main line interchange service; and deny all other allegations of sub-paragraph (r).

(s) Deny the allegations of sub-paragraph (s).

(t) Deny that the Commission erred in finding that the price to be paid by Santa Fe and thence by Pennsylvania Company to Santa Fe for Western's stock is fair and reasonable and deny all other allegations of sub-paragraph (t).

(u) On the basis of the record before the Commission in Finance Dockets 18991 and 19086 and its findings and report, deny that there is any violation of Section 10 of the Clayton Act or unlawful conspiracy in the transaction approved by the Commission and deny that a summary denial of the application of Santa Fe, Pennsylvania Company, and Pennsylvania Railroad was warranted for any reason whatsoever.

(v) Deny the allegations of sub-paragraph (v).

(w) Deny the allegations of sub-paragraph (w).

(x) Deny the allegations of sub-paragraph (x), and aver that the Commission accorded full consideration to all factors applicable and material to plaintiff's application.

XVI.

Admit that by order of October 30, 1957, the Commission denied the petition of Minneapolis for reconsideration and reargument, affirmed the order of May 31, 1957, and made [fol. 66] it effective as of December 4, 1957, and deny all other allegations of paragraph XXIII.

XVII.

Aver that inasmuch as the immediate relief has been granted by the restraining order of December 3, 1957, and the Commission's orders of December 13, 1957, postponing

the effective date of its orders, no further answer to paragraph XXIV is required.

XVIII.

Deny the allegations of paragraphs XXV and XXVI.

XIX.

For further answer to the allegations contained in the complaint, the defendants deny that the action of the Interstate Commerce Commission challenged herein is unlawful for the reasons specified in the complaint or for any other reason whatsoever. The defendants aver that the report and orders assailed in the complaint are fully supported and justified by the record, and are valid and lawful in all respects.

Wherefore, the United States and the Commission pray that the relief now sought in the complaint be denied and that the complaint be dismissed.

Victor R. Hansen, Assistant Attorney General; George E. MacKinnon, United States Attorney, 221 Federal Courts Building, St. Paul 2, Minnesota; James E. Kilday, P. James Underwood, Attorneys, Department of Justice, Washington 25, D. C., Attorneys for United States of America.

Robert W. Ginnane, General Counsel, B. Franklin Taylor, Jr., Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for Interstate Commerce Commission.

[File endorsement omitted]

[fol. 67]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION TO THE COMPLAINT IN INTERVENTION OF THE STATE OF MINNESOTA AND THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION—Filed February 17, 1958

The United States of America and the Interstate Commerce Commission, defendants, for their answer to the complaint in intervention admit, deny, and aver as follows:

I.

Admit the allegations of paragraphs 1, 2, 3, 4, and 5 of the complaint.

II.

Deny the allegations of paragraph 6 of the complaint.

III.

For further answer to the allegations contained in the complaint in intervention, the defendants deny that the action of the Interstate Commerce Commission challenged herein is unlawful for the reasons specified in the complaint or for any other reason whatsoever. The defendants aver that the report and orders assailed in the complaint are [fol. 68] fully supported and justified by the record, and valid and lawful in all respects.

Wherefore, the United States and the Interstate Commerce Commission pray that the relief sought in the complaint be denied and that the complaint be dismissed.

Victor R. Hansen, Assistant Attorney General; George E. MacKinnon, United States Attorney, 221 Federal Courts Building, St. Paul 2, Minne

sota; James E. Kilday, P. James Underwood, Attorneys, Department of Justice, Washington 25, D. C., Attorneys for United States of America.

Robert W. Ginnane, General Counsel, B. Franklin Taylor, Jr., Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for Interstate Commerce Commission.

[File endorsement omitted]

[fol. 69]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

ANSWER OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, PENNSYLVANIA COMPANY, AND THE PENNSYLVANIA RAILROAD COMPANY, INTERVENING DEFENDANTS
Filed February 3, 1958

Come Now The Atchison, Topeka and Santa Fe Railway Company, Pennsylvania Company and The Pennsylvania Railroad Company, intervening defendants, and file this their Answer to the Complaint of the Minneapolis & St. Louis Railway Company, Plaintiff in the above proceeding.

I.

Admitted.

II.

Admitted.

III.

Admitted.

IV.

Admitted.

V.

Admitted.

VI.

Admitted.

[fol. 70]

VII.

Admit the Plaintiff operates approximately 1,400 miles of railroad and that its lines serve the Minneapolis and Peoria gateways but do not directly reach Chicago, St. Louis or Kansas City. Deny the materiality of the allegations appearing in the second sub-paragraph of paragraph VII of the Complaint, but to the extent that said allegations may be deemed material to any issue here involved, intervening defendants respectfully refer to the record in this proceeding and to the report of the Interstate Commerce Commission, attached as Exhibit A to the Complaint.

VIII.

Admit the first sentence of paragraph VIII; admit that Pennsylvania Railroad serves the gateways of Chicago and St. Louis; admit the third sentence of paragraph VIII; and deny all other allegations of said paragraph VIII.

IX.

Admitted.

X.

Admit the allegations of paragraph X, except that intervening defendants aver that the ownership of Western by Pennsylvania Railroad and Chicago, Burlington & Quincy Railway Company was terminated in 1917 in which year Western went into receivership.

[fol. 71]

XI.

Admit that on June 10, 1954, and from time to time thereafter to and including May 26, 1955, Minneapolis sought to purchase the stock of Western from the trustees; that said efforts to purchase the stock of Western

were begun prior to the initiation by Pennsylvania Railroad or Santa Fe of negotiations with said trustees to purchase said stock of Western; and deny all other allegations of paragraph XI.

XII.

Deny the materiality of the allegations of the first sentence of paragraph XII, but to the extent that such allegations may be deemed material to any issue here involved, respectfully refer to the record in this proceeding and to the report of the Interstate Commerce Commission, attached as Exhibit A to the Complaint; and deny the allegations of the second sentence.

XIII.

Deny the allegations of the first sub-paragraph of paragraph XIII.

Admit that one director of Pennsylvania Railroad and three directors of affiliates or subsidiaries of Pennsylvania Railroad were also directors of Wilmington Trust Company; admit that on April 15, 1955, two letters, each addressed to Wilmington Trust Company and Guy A. Gladson as Trustees under the Will of George P. McNear, Jr., and relating to the purchase by Pennsylvania Company and Santa Fe, each respectively, of 23,400 shares or a total of 46,800 shares, representing 52 per cent of the outstanding stock of Western, were signed by representatives of the Pennsylvania Company and Santa Fe, respectively, and by Jos. W. Chinn, Jr. and J. Sellers Bancroft of the Wilmington Trust Company for the Trustees (copies [fol. 72] of said letters appear as Exhibits 7-f and 7-g to the Application in Docket No. 18991); and deny all other allegations of the second sub paragraph of paragraph XIII.

Deny the allegations of the third sub-paragraph of paragraph XIII.

Admit that by agreement dated May 26, 1955, the Trustees agreed to sell all of the stock held by them to Santa Fe, subject to the Commission's approval; admit that by agreement dated June 28, 1955, Santa Fe agreed, subject to the Commission's approval, to sell to Pennsylvania Com-

pany 50 per cent of the stock of Western which Santa Fe would be able to purchase, including the stock held by the Trustees; and deny all other allegations of the fourth subparagraph of paragraph XIII.

XIV.

Admit the first and fourth sentences of paragraph XIV; admit that by said Application, Santa Fe and Pennsylvania Railroad sought authority to acquire control of Western, each to own 50 per cent of the capital stock of Western, through exercise of Santa Fe's agreements with the holders of Western's stock and Pennsylvania Company's agreement with Santa Fe; and deny all other allegations of said paragraph XIV. Intervening defendants respectfully refer to the report of the Commission (Division 4) appended to the Complaint as Exhibit A for a more complete description of the authority sought and the agreements involved.

[fol. 73]

XV.

Admitted.

XVI.

Admitted.

XVII.

Admit that on or about November 9, 1956, the proposed report of the Commission's examiner was served, recommending approval of the Application of Santa Fe, Pennsylvania Railroad and Pennsylvania Company, and dismissal of the Application of Minneapolis; and deny all other allegations of paragraph XVII. Intervening defendants respectfully refer to the proposed report for a full and complete statement of the examiner's recommendations with respect to the disposition of the Application of Minneapolis.

XVIII.

Admitted.

XIX.

Admit that by report and order dated May 31, 1957, Division 4 of the Commission approved the Application of Santa Fe, Pennsylvania Railroad and Pennsylvania Company, and dismissed the application of Minneapolis; and deny all other allegations of paragraph XIX. Intervening defendants respectfully refer to the report of the Commission (Division 4) appended to the Complaint as Exhibit A, for a full and complete statement of the reasons and conclusions of the Commission.

[fol. 74]

XX.

Admitted.

XXI.

Admitted, except to aver that Minneapolis' petition for reconsideration and request for oral argument was not affirmed without additional findings or conclusions on the part of the Commission. To the contrary, the Commission by its order of October 30, 1957, expressly found and concluded that, upon consideration of the record and the contentions set forth in the petitions for reargument and reconsideration and the replies thereto, that "there has been presented no error of fact or law with respect to the matters complained of by the petitioners, and that no showing has been made warranting reconsideration or further hearing" (p. 2 of Exhibit C attached to the Complaint).

XXII.

The allegations of paragraph XXII are denied. To the contrary, intervening defendants aver that there was no denial on the part of the Commission to Minneapolis of due process of law to its prejudice and damage, or otherwise; that the Commission's report in said dockets was made with full comparative consideration of the competing Applications; that the actions of the Commission in said dockets were not arbitrary or capricious and did not involve any abuses of discretion; were in full accord with legal standards; were not in excess of statutory jurisdiction; not against the weight of the evidence and lacking support

by substantial evidence; and were not in violation of the [fol. 75] Interstate Commerce Act, the National Transportation Policy, the Administrative Procedure Act, the Sherman Act and the Clayton Act, or any of them, in any respects whatsoever, including particularly the respects enumerated in sub-paragraphs (a) to (x) of paragraph XXII.

Specifically in reply to said sub-paragraphs:

(a) Deny that the Commission failed to accord Minneapolis a comparative consideration of its Application with that of Santa Fe-PRR-Pennsylvania Company. To the contrary, Plaintiff's Application was accorded a comparative hearing and extended consideration as more fully appears from the evidence before the Commission and its findings and conclusions, all as more fully set out in its report of May 31, 1957.

(b) Admit the allegations of the first sentence of sub-paragraph (b), but deny that this action of the Commission was unlawful for any of the reasons specified in the first paragraph of paragraph XXII or for any other reason whatsoever. Deny the allegations of the second sentence of sub-paragraph (b).

(c) Admit the Commission made no finding of the character stated in the first sentence of sub-paragraph (c), but deny that this action or inaction was unlawful for the reasons specified in the first paragraph of paragraph XXII or for any other reason whatsoever. Deny the allegation of the second sentence of sub-paragraph (c).

(d) Deny that the basic criteria for determination of the public interest under Section 5(2) of the Interstate Commerce Act compel a grant of the Application of Minneapolis and a denial of the application of Santa Fe, Pennsylvania [fol. 76] Company and Pennsylvania Railroad. With respect to the second sentence of sub-paragraph (d), aver that the Commission did not depart from established criteria of the public interest.

(e) Deny the allegations of sub-paragraph (e).

(f) Admit that the Commission made no finding of the character indicated in the first sentence of sub-paragraph (f), but deny that this action or inaction by the Commission is unlawful for the reasons specified in the first paragraph of paragraph XXII or for any other reason whatsoever. Deny the allegations of the second sentence of sub-paragraph (f).

(g) Admit that the Commission made no finding of the character indicated in the first sentence of sub-paragraph (g), but deny that such action or inaction of the Commission is unlawful for the reasons specified in the first paragraph of paragraph XXII or for any other reason. Deny the allegations of the second sentence of sub-paragraph (g).

(h) Deny the allegations of sub-paragraph (h).

(i) Deny the allegations of sub-paragraph (i), and respectfully refer to the report of the Commission for a full and complete statement of the Commission's findings.

(j) Deny the allegations of sub-paragraph (j).

(k) Deny the allegations of sub-paragraph (k), and respectfully refer to the report of the Commission for a full and complete statement of the Commission's findings.

(l) Deny the allegations of sub-paragraph (l), and aver that neither the conditions in the *Wabash Control* case nor any issue or matter pertinent thereto are material to this cause.

(m) Deny the allegations of sub-paragraph (m).

[fol. 77] (n) Admit that the Commission found that Minneapolis' proposal contemplates the disappearance of Western as an "independent and neutral connection for the other 15 carriers with which it (Western) presently works," and deny the allegations of the second and third sentences of sub-paragraph (n).

(o) Admit the Commission made a finding substantially of the character set forth in the first sentence of sub-paragraph (o), but deny that such action of the Commission is

unlawful for any of the reasons set forth in the first paragraph of paragraph XXII or for any other reason, and deny all other allegations of sub-paragraph (o).

(p) Admit that the Commission made findings substantially of the character of the first two sentences of sub-paragraph (p), but deny that this action of the Commission is unlawful for any of the reasons set forth in the first paragraph of paragraph XXII or for any other reason, and deny all other allegations of sub-paragraph (p).

(q) Admit that the Commission made findings substantially of the character indicated in the first two sentences of sub-paragraph (q), but deny that such action of the Commission is unlawful for any reasons set forth in the first paragraph of paragraph XXII or for any other reason, and deny all other allegations of sub-paragraph (q).

(r) Admit the Commission made a finding substantially of the character indicated in the first sentence of sub-paragraph (r), but deny that such action of the Commission is unlawful for any reasons set forth in the first paragraph of paragraph XXII or for any other reason; deny that there is any unwarranted assumption on the Commission's part that Plaintiff has impaired its main line [fol. 78] interchange service; and deny all other allegations of sub-paragraph (r).

(s) Deny the allegations of sub-paragraph (s).

(t) Deny that the Commission erred in finding that the price to be paid by Santa Fe and thence by Pennsylvania Company to Santa Fe for Western's stock is fair and reasonable and deny all other allegations of sub-paragraph (t).

(u) Deny that there is any violation of Section 11 of the Clayton Act or unlawful conspiracy in the transaction approved by the Commission and deny that a summary denial of the Application of Santa Fe, Pennsylvania Company and Pennsylvania Railroad was warranted for any reason whatsoever.

(v) Deny the allegations of sub-paragraph (v).

(w) Deny the allegations of sub-paragraph (w).

(x) Deny the allegations of sub paragraph (x), and aver that the Commission accorded full consideration to all factors applicable and material to Plaintiff's Application.

XXIII.

Admit that by its order of October 30, 1957, the Commission denied Minneapolis' petition for reconsideration and oral argument, affirmed the order of Division 4 dated May 31, 1957, and made it effective as of December 4, 1957; and deny all other allegations of paragraph XXIII. To the contrary, intervening defendants allege that the Commission's said action was lawful in all respects, was taken only after careful consideration of the extensive detailed evidence adduced by Minneapolis in support of its claims, was fully in accord with the substantial public interest involved and in keeping with all considerations properly [fol. 79] applicable to the precedent being established on the record before it. Specifically, the Commission found upon consideration of the record, and the contentions set forth in the petitions for reargument and reconsideration and the replies thereto, that there had been presented "no error of fact or law with respect to the matters complained of by the petitioners, and that no showing" had been made "warranting reconsideration or further hearing."

XXIV.

The effectiveness of the Commission's order having been stayed, no further answer to the allegations of this paragraph are required.

XXV.

Deny the allegations of paragraph XXV.

XXVI.

Deny the allegations of paragraph XXVI.

XXVII.

As a further answer to each and all of the paragraphs, sub-paragraphs and prayers of the Complaint, intervening

defendants allege that no error, legal or factual, appears in respect to the Commission's findings, conclusions and orders in Dockets 18991 and 19086 and that said findings, conclusions and orders are supported by substantial evidence of record and in respect to all issues involved in said two dockets, all parties of record were fully heard, including an extended hearing for the receipt of evidence; [fol. 80] the filing of initial briefs before the Examiner; the issuance of the Examiner's Proposed Report; the filing of Exceptions thereto with briefs and reply briefs; the holding of oral argument; the May 31, 1957 Report of Division 4; the filing of Petitions for Reconsideration; briefs in support thereof; briefs in reply to such petitions; and Defendant's final order of October 30, 1957.

Wherefore, The Atchison, Topeka and Santa Fe Railway Company, Pennsylvania Company, and The Pennsylvania Railroad Company, intervening defendants, pray that the relief sought in Plaintiff's Complaint be denied and that the Complaint be dismissed.

Respectfully submitted,

Edwin A. Lucas, Starr Thomas.

R. S. Outlaw, Starr Thomas and Carl E. Bagge, 80 East Jackson Boulevard, Chicago 4, Illinois, Attorneys for The Atchison, Topeka and Santa Fe Ry. Co.

Edwin A. Lucas and Robert H. Bierma, 1138 Transportation Center, Six Penn Center Plaza, Philadelphia 4, Pennsylvania, Attorneys for The Pennsylvania Railroad Company and Pennsylvania Company.

Richards, Janes, Montgomery & Cobb, 1430 Rand Tower, Minneapolis 2, Minnesota.

[File endorsement omitted]

[fol. 81] Certificate of Service (omitted in printing).

[fol. 82]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

ANSWER OF NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, INTERVENER—Filed December 27, 1957

Comes now The New York, Chicago and St. Louis Railroad Company, intervener herein, and for its answer to the complaint filed herein by The Minneapolis & St. Louis Railway Company (hereinafter called Minneapolis):

I.

Admits the allegations in paragraphs I-X inclusive, of the complaint.

II.

Admits that Minneapolis sought to purchase the stock of Toledo, Peoria & Western Railroad Company (hereinafter called Western); but cannot for lack of information and belief, admit or deny the other allegations in paragraph XI of the complaint.

III.

Admits that a union of Minneapolis and Western had been under consideration and discussion and that Pennsylvania Railroad considered such union favorably, but denies all other allegations in paragraph XII of the complaint.

[fol. 83]

IV.

Admits a change of attitude of the Pennsylvania Railroad, that various contracts were made for purchase of Western stock by Pennsylvania Company, Pennsylvania Railroad, and The Atchison, Topeka and Santa Fe Railway Company (hereinafter called Santa Fe), that there were interlocking relationships between Pennsylvania Rail-

road and Wilmington Trust Company, but for lack of information and belief cannot admit or deny the other allegations in paragraph XIII of the complaint. Avers that the Interstate Commerce Commission erred as a matter of law in failing to undertake an investigation to determine all the facts whether Section 10 of the Clayton Anti trust Act (15 U.S.C. §20) had been violated before said Commission determined the proceedings for control of the Western. Had such investigation been undertaken, this intervener would have had sufficient information to affirm or deny these allegations in paragraph XIII of the complaint.

V.

Admits the allegations in paragraph XIV of the complaint, but alleges that the effort of Pennsylvania and Santa Fe to prevent Minneapolis from acquiring control of Western was only one of the purposes of Pennsylvania and Santa Fe, their major object being to divert traffic to their own lines of railroad.

VI.

Admits the allegations of paragraphs XV-XXI, inclusive, of the complaint, but further avers that it, too, intervened in the proceeding before the Commission requesting an equal share of ownership with any applicant authorized to acquire control of Western. It further avers that it too presented evidence, filed a brief, detailed exceptions, and a petition for reargument and reconsideration, which petition was denied by order of October 30, 1957.

[fol. 84] VII.

Admits the allegations in the opening paragraph of paragraph XXII of the complaint, except that it is without information to affirm or deny a violation of the Sherman Act. As for the subparagraphs of paragraph XXII of the complaint it avers:

(a) it denies the allegations of subparagraph (a).

(b) it admits that the finding in favor of Pennsylvania Santa Fe is unsupported by substantial evidence and is

against the weight of the evidence, but denies all other allegations of subparagraph (b).

(c) it admits that findings in favor of Pennsylvania Santa Fe are without substantial supporting evidence of record and will seriously endanger the future ability of Minneapolis to render service, but denies the other allegations of subparagraph (c).

(d) it denies the allegations of subparagraph (d) that various criteria compel a grant of Minneapolis' application but admits that appropriate criteria under the Interstate Commerce Act and other laws require denial of the Pennsylvania-Santa Fe application for exclusive control of Western.

(e) It admits the allegations of subparagraph (e).

(f) It admits the allegations of subparagraph (f) without admitting that control of Western by Minneapolis would not lessen competition. Further it is without information and belief as to the violation of the Sherman Act.

(g) it admits the allegations of subparagraph (g).

(h) it admits the allegations of subparagraph (h).

(i) it admits the allegations of subparagraph (i).

(j) it admits the allegations of subparagraph (j).

(k) it is without information to affirm or deny a violation of Section 10 of the Clayton Act, but admits that [fol. 85] Commission's action was arbitrary in failing to undertake an investigation to determine all the facts in this respect. It admits that the Commission lacks power and jurisdiction to approve or immunize a transaction in violation of Section 10 of the Clayton Act because such a transaction is unlawful from its inception.

(l) it admits the allegations of subparagraph (l) and avers that the Interstate Commerce Commission erred in authorizing Pennsylvania control of Western so long as Pennsylvania controlled the Wabash Railroad Company

(m) it admits the allegations of subparagraph (m) but asserts in addition that the Commission failed to make essential basic findings as to the competitive situation in the East and as to the effect of increase of the size of the Pennsylvania System and the effect of lessening of competition.

(n) it denies the allegations of subparagraph (n) except as to the finding made by Division 4.

(o) it denies the allegations of subparagraph (o) except as to the finding made by the Commission.

(p) it denies the allegations that there is no substantial evidence to support the finding that other carriers would be adversely affected by the Minneapolis proposal, but admits all other allegations of subparagraph (p).

(q) it admits the allegations of subparagraph (q) that both Western and Minneapolis provide excellent service routes.

(r) it admits the allegations of subparagraph (r).

(s) it admits that Commission approval of the Pennsylvania-Santa Fe application is contrary to the public interest but denies the other allegations of said subparagraph (s).

(t) it denies the allegations of subparagraph (t) on the ground that the added revenues to be gained by diversion of traffic from other carriers and the elimination of competition by the Western supports the amount of the purchase price. It avers that payment of a proportionate (about 8%) share of such purchase price by this intervener is justified to protect its revenues.

(u) it is without information to affirm or deny the allegations of subparagraph (u) because it believes there is insufficient evidence in the record to determine whether Section 10 of the Clayton Act has been violated.

(v) it admits the allegations of subparagraph (v) of the complaint.

(w) it denies the allegations of subparagraph (w) with the explanation that until the Commission holds an investi-

gation to ascertain facts whether Section 10 of the Clayton Act had been violated the Commission cannot determine whether Pennsylvania and Santa Fe are equally barred from having their proposal approved because of failure to present a valid existing written contract.

(x) it denies the allegations of subparagraph (x).

VIII.

Admits the allegations of paragraph XXIII of the complaint.

IX.

Admits the allegations of paragraph XXIV of the complaint, and asserts that immediate relief has been granted pursuant to the restraining order of December 3, 1957 and the Commission's order of December 13, 1957 postponing the effective date of its orders.

X.

On information and belief admits the allegations of paragraph XXV of the complaint.

XI.

Admits the allegations of paragraph XXVI of the complaint.

Wherefore, intervener, The New York, Chicago and St. Louis Railroad Company concurs in the prayer of Minneapolis that a proper Court be constituted and convened, that a decree be entered permanently suspending, enjoining [fol. 87] setting aside, and annulling the aforesaid orders of the Interstate Commerce Commission, that costs be awarded this intervener, and that this intervener be granted such other and further relief as may be just and equitable.

Sullivan, Stringer, Donnelly and Sharood, By Philip Stringer, Attorneys for The New York, Chicago and St. Louis Railroad Company, E 905 First National Bank Building, Saint Paul 1, Minnesota.

Of Counsel, Thomas O. Brokor, P. O. Box 6119, 2010 Terminal Tower, Cleveland 1, Ohio.

[File endorsement omitted]

[fol. 88]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

ANSWER OF STATE OF SOUTH DAKOTA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA—Filed December 10, 1957

The State of South Dakota and the Public Utilities Commission of the State of South Dakota, having been permitted to intervene as a party litigant in this action, will show to the Court that the orders of the Interstate Commerce Commission dated May 31, 1957 and October 30, 1957 in Finance Dockets Nos. 18991 and 19086, Toledo, Peoria and Western Railroad Company Control, are unlawful and invalid for the reasons, or any of them, as alleged in the plaintiff's complaint; and that the relief requested by plaintiff in said complaint should be granted.

Respectfully submitted,

Phil Saunders, Attorney General for South Dakota, State Capitol, Pierre, South Dakota.

Herman L. Bode, Counsel for South Dakota Public Utilities Commission, State Capitol, Pierre, South Dakota.

[File endorsement omitted]

[fol. 89]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

DEFENSE OF THE CITY OF PEORIA FOR WHICH INTERVENTION IS SOUGHT—Filed January 23, 1958

The City of Peoria, having been permitted to intervene as a party litigant in this action, will show to the Court that the Orders of the Interstate Commerce Commission,

dated May 31, 1957 and October 30, 1957, in Finance Docket Nos. 18991 and 19086, Toledo, Peoria & Western Railroad Company Control, are not unlawful or invalid for the reasons, or any of them, alleged in the Complaint of The Minneapolis & St. Louis Railway Company, the Complaint in Intervention of the State of Minnesota and the Minnesota Railroad and Warehouse Commission, the Answer of the State of South Dakota and the Public Utilities Commission of the State of South Dakota, and the Answer of the New York, Chicago & St. Louis Railroad Company; and that the Complaint should accordingly be dismissed.

Respectfully submitted,

Max J. Lipkin, Corporation Counsel, City of Peoria, City Hall, Peoria, Illinois.

[File endorsement omitted]

[fol. 90]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

DEFENSE OF THE CITY OF EAST PEORIA FOR WHICH INTERVENTION IS SOUGHT—Filed January 23, 1958

The City of East Peoria, having been permitted to intervene as a party litigant in this action, will show to the Court that the Orders of the Interstate Commerce Commission, dated May 31, 1957 and October 30, 1957, in Finance Docket Nos. 18991 and 19086, Toledo, Peoria & Western Railroad Company Control, are not unlawful or invalid for the reasons, or any of them, alleged in the Complaint of The Minneapolis & St. Louis Railway Company, the Complaint in Intervention of the State of Minnesota and the Minnesota Railroad and Warehouse Commission, the Answer of the State of South Dakota and the Public Utilities Commission of the State of South Dakota, and the Answer of the New York, Chicago & St. Louis Railroad Company; and that the Complaint should accordingly be dismissed.

Respectfully submitted,

Fred V. Stiers, City Attorney, City Hall, East Peoria, Illinois.

[File endorsement omitted]

[fol. 91]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

DEFENSE OF THE PEORIA ASSOCIATION OF COMMERCE FOR WHICH INTERVENTION IS SOUGHT—Filed January 30, 1958

The Peoria Association of Commerce, having been permitted to intervene as a party litigant in this action, will show to the Court that the Orders of the Interstate Commerce Commission, dated May 31, 1957 and October 30, 1957, in Finance Docket Nos. 18991 and 19086, Toledo, Peoria & Western Railroad Company Control, are not unlawful or invalid for the reasons, or any of them, alleged in the Complaint of The Minneapolis & St. Louis Railway Company, the Complaint of Intervention of the State of Minnesota and the Minnesota Railroad and Warehouse Commission, the Answer of the State of South Dakota and the Public Utilities Commission of the State of South Dakota, and the Answer of the New York, Chicago & St. Louis Railroad Company; and that the Complaint should accordingly be dismissed.

Respectfully submitted,

Verle W. Safford, Attorney for the Peoria Association of Commerce, First National Bank Building, Peoria, Illinois.

[File endorsement omitted]

[fol. 92]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

STATEMENT OF DEFENSE OF THE STATE OF ILLINOIS—
Filed January 30, 1958

I.

That the State of Illinois is one of the sovereign states of the United States and has the right to participate and intervene in proceedings before this Court and before the Interstate Commerce Commission, involving the adequacy of service by common carriers by railroad operating in the State of Illinois, whether in interstate or intrastate commerce.

II.

That the State of Illinois intervened and participated in the proceedings before the Interstate Commerce Commission in Interstate Commerce Commission Finance Docket No. 19086, Toledo, Peoria & Western Railroad Company Control.

III.

That the State of Illinois opposed the application of The Minneapolis & St. Louis Railway Company for acquisition of control of the Toledo, Peoria & Western Railroad Company on the ground that ownership by the Minneapolis & St. Louis would adversely affect the interests of the State of Illinois and be inimical to the continued separate operation of the Toledo, Peoria & Western, particularly in respect to its continued operation west of Peoria, Illinois.

[fol. 93]

IV.

That the Orders of the Interstate Commerce Commission, dated May 31, 1957 and October 30, 1957, which are under attack in this proceeding and against which a temporary restraining order was entered by this Court on

December 3, 1957 are supported by proper findings of fact upon substantial evidence and are in all respects proper Orders of the Commission which upon hearing in this matter should be sustained by this Court.

Wherefore, the State of Illinois prays that, upon final hearing and determination of this action, the Court adjudge that said Orders of the Interstate Commerce Commission are in all respects lawful and valid and that the complaint herein accordingly be dismissed.

Latham Castle, Attorney General of the State of Illinois, and Harry R. Begley, Special Assistant Attorney General, 160 N. LaSalle Street, Chicago (1), Illinois.

[File endorsement omitted]

[fol. 95]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

INTERVENERS' ANSWER — Filed February 24, 1958

Comes now City of Bushnell, Illinois; Bushnell Chamber of Commerce, Bushnell, Illinois; City of Canton, Illinois; Canton Chamber of Commerce, Canton, Illinois; City of LaHarpe, Illinois; LaHarpe Golden Rule Club, LaHarpe, Illinois; Village of Lomax, Illinois; City of Keokuk, Iowa; Keokuk Chamber of Commerce, Keokuk, Iowa; Keokuk Bridge Commission, Keokuk, Iowa; The Hubinger Company, Keokuk, Iowa; City of Warsaw, Illinois; Warsaw Chamber of Commerce, Warsaw, Illinois; City of Forrest, Illinois; City of Fairbury, Illinois; City of Gridley, Illinois; City of Gilman, Illinois; City of Sheldon, Illinois; City of Watseka, Illinois; City of Eureka, Illinois; Village of Secor, Illinois; City of Chenoa, Illinois; and the City of Washington, Illinois, heretofore allowed by this Court to intervene as defendants herein and for answer to the Complaint of the plaintiff herein, states:

First Defense

1. These intervening defendants admit paragraphs I, II, III, IV, V, X, XV, XVI, XVIII, XX and XXIV of plaintiff's complaint.

[fol. 96] 2. These intervening defendants do not have sufficient information to form a belief and, therefore, deny paragraphs VI, VII, VIII, IX, XI, XII and XXVI of the plaintiff's complaint.

3. These intervening defendants do not have sufficient information to form a belief and, therefore, deny literary paragraphs 1, 2 and 4 of paragraph XIII of plaintiff's complaint, and specifically deny the third literary paragraph of paragraph XIII of plaintiff's complaint.

4. These intervening defendants admit that on July 8, 1955, or thereabouts the Pennsylvania Railroad Company and the Santa Fe filed with the Interstate Commerce Commission an application under Section 5(2) of the Interstate Commerce Act in Finance Docket No. 18991, by which they sought authority to control Western through exercise of their contracts to purchase its stock. It is further admitted that Minneapolis was authorized by order of the Commission dated August 2, 1955, to intervene in Finance Docket No. 18991 and to become a party in opposition to the Pennsylvania-Santa Fe application, but these intervening defendants deny each and every other allegation contained in said paragraph XIV of plaintiff's complaint.

5. These intervening defendants admit that on or about November 10, 1956, an Examiner of the Interstate Commerce Commission served a proposed report recommending the granting of the Pennsylvania-Santa Fe application and the dismissal of that of Minneapolis as alleged in paragraph XVII of plaintiff's complaint, but these defendants deny that the only reason given for the dismissal of the application of Minneapolis was as alleged in said paragraph XVII.

6. These intervening defendants admit that the report and order of May 31, 1957, of Division 4 of the Interstate

[fol. 97] Commerce Commission approved the application of the Pennsylvania-Santa Fe and overruled the objection of Minneapolis thereto and dismissed Minneapolis' application, but deny that the only question for determination was stated by the said Division 4 to be whether the sale of the Western stock to Pennsylvania-Santa Fe was grounded entirely on the asserted "independent" operation of Western through Pennsylvania-Santa Fe control, all as set out in paragraph XIX of plaintiff's complaint.

7. These intervening defendants admit that by order dated October 30, 1957, attached to the plaintiff's complaint as Exhibit C, the Interstate Commerce Commission overruled all of Minneapolis' objections to Pennsylvania-Santa Fe's application and denied Minneapolis' petition for reconsideration and request for oral argument, but deny that the Commission affirmed without additional findings or conclusions the Order of Division 4 dated May 31, 1957, approving the application of Pennsylvania-Santa Fe and dismissing the application of Minneapolis, in that the Commission by its Order of October 30, 1957, expressly found and concluded that upon consideration of the record and the contentions set forth in the petitions for reargument and reconsideration and replies thereto, that "there has been presented no error of fact or law with respect to the matters complained of by the petitioners, and that no showing has been made warranting reconsideration or further hearing." (As appears on page 2 of Exhibit C attached to the plaintiff's complaint.), as alleged in paragraph XXI of plaintiff's complaint.

8. These intervening defendants admit that the Interstate Commerce Commission made certain findings concerning the application of Santa Fe-Pennsylvania in Finance Docket No. 18991, the Minneapolis' intervention [fol. 98] therein and the Minneapolis' application No. 19086, substantially as set out and alleged in sub-paragraphs (b), (e), (f), (g), (n), (o), (p), (q) and (r) of paragraph XXII of the plaintiff's complaint, but deny each and every other allegation contained in said paragraph XXII of the plaintiff's complaint, and allege affirmatively that the findings and order of the Commission were supported by the over

whelming weight of the evidence and were within the jurisdiction of the Interstate Commerce Commission, were made in compliance with the Interstate Commerce Act, the National Transportation Policy and any and all other applicable, constitutional, statutory or common law requirements.

9. These intervening defendants admit that the Interstate Commerce Commission by Order of October 30, 1957, denied Minneapolis' petition for reconsideration and oral argument and affirmed the Order of Division 4 dated May 31, 1957, and made it effective as of December 4, 1957, all as alleged in paragraph XXIII of plaintiff's complaint, but these intervening defendants specifically deny that there were errors in fact and in law upon which the report of Division 4 dated May 31, 1957, were grounded and further deny that there was extensive detailed evidence of record supporting Minneapolis' claims, or that there was substantial public interest in favor of the Minneapolis' application as alleged in said paragraph XXIII.

10. These intervening defendants deny in its entirety paragraph XXV of the plaintiff's complaint.

Second Defense

These intervening defendants in further defense to the complaint of plaintiff herein, state affirmatively that they [fol. 99] are communities, associations, corporations, firms and individuals located along the lines of the Toledo, Peoria & Western Railway Company and as such have an interest in the controversy of this action and the question that was before the Commission as alleged in plaintiff's complaint. These intervening defendants, with the exception of Washington, Illinois, intervened in the actions before the Interstate Commerce Commission as described in the plaintiff's complaint, and appeared for and on behalf of the application of the Santa Fe and Pennsylvania in Finance Docket No. 18991 and appeared in opposition to the application of Minneapolis in Finance Docket No. 19086. Except for the intervention of the states of Minnesota and South Dakota in the hearings before the Interstate Commerce

Commission, all of the public witnesses intervened on behalf of the Santa Fe-Pennsylvania application and in opposition to the Minneapolis' application, and the long and extensive testimony and evidence by the public interveners established abundant evidence that the public interest would best be served by the granting of the Santa Fe-Pennsylvania application and the Commission was entirely justified therefor in the action taken.

Third Defense

These intervening defendants in further defense to the complaint of the plaintiff herein state affirmatively that the transcript of the evidence taken in Finance Docket Nos. 18991 and 19086, which hearing extended over a two-week period of time, the extensive briefs that were filed by the parties therein and the report of the Examiner and the decision of Division 4 of the Commission and the entire [fol. 100] Commission adequately and conclusively establish the fact that the National Transportation Policy and the Interstate Commerce Act required the action taken by the Commission. Each and every finding of the Commission in favor of the Santa Fe-Pennsylvania application was supported by the overwhelming weight of the evidence. Every argument propounded or supported by Minneapolis was fully and adequately answered by the Commission's ruling and were not supported by adequate, competent evidence introduced by Minneapolis.

Wherefore, these intervening defendants having answered the complaint of the plaintiff herein fully, adequately and in its entirety, pray that the complaint of the plaintiff herein be dismissed in its entirety at the cost of the plaintiff, and for such other and further relief as may be equitable in the premises.

Respectfully submitted,

Robert H. Walker, W. Logan Huiskamp, J. A. Concannon, Attorneys for: City of Bushnell, Illinois; Bushnell Chamber of Commerce, Bushnell, Illinois;

City of Canton, Illinois; Canton Chamber of Commerce, Canton, Illinois; City of LaHarpe, Illinois; LaHarpe Golden Rule Club, LaHarpe, Illinois; Village of Lomax, Illinois; City of Keokuk, Iowa; [fol. 101] Keokuk Chamber of Commerce, Keokuk, Iowa; Keokuk Bridge Commission, Keokuk, Iowa; The Hubinger Company, Keokuk, Iowa; City of Warsaw, Illinois; Warsaw Chamber of Commerce, Warsaw, Illinois; City of Forrest, Illinois; City of Fairbury, Illinois; City of Gridley, Illinois; City of Gilman, Illinois; City of Sheldon, Illinois; City of Watseka, Illinois; City of Eureka, Illinois; Village of Secor, Illinois; City of Chenoa, Illinois; Intervening Defendants.

Boyd, Walker, Hoiskamp & Concannon, 111½ North Fifth Street, Keokuk, Iowa, Of Counsel.

Franklin D. Gray, and Cant, Taylor, Haverstock, Beardsley & Gray, Attorneys at Law, 220 Roanoke Building, Minneapolis 2, Minnesota; Agents for service as required by Rule 20 of the Civil Rules for the United States District Court for the District of Minnesota.

[File endorsement omitted]

[fol. 102]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

4-57-Civ-123

THE MINNEAPOLIS & ST. LOUIS RY. CO., Plaintiff,

and

NEW YORK, CHICAGO & ST. LOUIS RAILROAD CO., STATE OF SOUTH DAKOTA, and PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA and STATE OF MINNESOTA, and MINNESOTA RAILROAD & WAREHOUSE COMMISSION, Intervening Plaintiffs,

vs.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, Defendants,

and

THE ATCHISON, TOPEKA & SANTA FE RY. CO., THE PENNSYLVANIA RAILROAD CO. and PENNSYLVANIA COMPANY, THE CITY OF PEORIA, THE CITY OF EAST PEORIA and the PEORIA ASSOC. OF COMMERCE, THE STATE OF ILLINOIS, THE SHIPPERS ALONG THE LINES OF THE TOLEDO, PEORIA & WESTERN RAILROAD CO., City of Bushnell, Illinois, Bushnell Chamber of Commerce; City of Canton, Illinois; Canton Chamber of Commerce; City of LeHarpe, Illinois; LeHarpe Golden Rule Club; Village of Lomax, Illinois; City of Keokuk, Iowa; Keokuk Chamber of Commerce; Keokuk Bridge Commission; the Hubinger Company, Keokuk; City of Warsaw, Illinois; Warsaw Chamber of Commerce; City of Forrest, Illinois; City of Fairbury, Illinois; City of Gridley, Illinois; City of Gilman, Illinois; City of Sheldon, Illinois; City of Watseka, Illinois; City of Eureka, Illinois; Village of Secor, Illinois; City of Washington, Illinois; City of Chenoa, Illinois, Intervening Defendants.

Richard Musenbrock and William J. Powell, Minneapolis, Minn., for plaintiff. Dorsey, Owen, Barker, Scott & Barber, Minneapolis, Minn., of counsel.

[fol. 103] Philip Stringer, St. Paul, Minn., and Thomas O. Broker, Cleveland, Ohio, for intervening plaintiff New York, Chicago & St. Louis Railroad Company.

Phil Saunders, Attorney General and Herman L. Bode, Assistant Attorney General, Pierre, South Dakota, for intervening plaintiff State of South Dakota, and Public Utilities Commission of the State of South Dakota.

Miles Lord, Attorney General and Harold J. Soderberg, Assistant Attorney General, St. Paul, Minn., for intervening plaintiffs State of Minnesota and Minnesota Railroad & Warehouse Commission.

George E. MacKinnon, U. S. District Attorney, St. Paul, Minn., Victor R. Hansen, Assistant Attorney General, Washington, D. C., James E. Kilday and P. James Underwood, Attorneys, Department of Justice, Washington, D. C. for defendant United States.

Robert W. Ginnane, General Counsel, Washington, D. C. and B. Franklin Taylor, Jr., Assistant General Counsel, Washington, D. C., for defendant Interstate Commerce Commission.

R. S. Outlaw, Starr Thomas, Carl E. Bagge, Chicago, Illinois, for intervening defendant Atchison, Topeka & Santa Fe Railway Company.

Edwin A. Lucas, and Robert H. Bierma, Philadelphia, Pa., for intervening defendants Pennsylvania Railroad Company and Pennsylvania Co. Richards, Jones, Montgomery & Cobb, Minneapolis, Minn. of counsel.

Max J. Lipkin, Peoria, Illinois, for intervening defendant City of Peoria. Fred V. Stiers, East Peoria, Illinois, for intervening defendant City of East Peoria. Verle W. Safford, Peoria, Illinois, for intervening defendant Peoria Association of Commerce.

Latham Castle, Attorney General, Chicago, Illinois for intervening defendant State of Illinois. Harry R. Bagley, Special assistant Attorney General, of counsel.

Robert H. Walker, Keokuk, Iowa, for intervening defendants Communities and Shippers along the lines of the Toledo, Peoria & Western Railroad Company. Boyd, Walker, Huiskamp & Concannon, Keokuk, Iowa, and Cant, Taylor, Haverstock, Beardsley & Gray, Minneapolis, Minn., of counsel.

Before Sanborn, Circuit Judge, and Nordbye and Devitt, District Judges.

MEMORANDUM DECISION—September 16, 1958.

Per Curiam.

This is an appeal by the Minneapolis & St. Louis Ry. Co. (Minneapolis) from an order of the Interstate Commerce Commission approving the acquisition of control jointly by the Pennsylvania Company and through the latter, the Pennsylvania Railroad Company (Pennsylvania) and the Atchison, Topeka & Santa Fe Railway Company (Santa Fe) of the Toledo, Peoria & Western Railroad Company (Western) under Section 5(2) of the Interstate [fol. 104] Commerce Commission Act (49 U. S. C. A., Sec. 5(2)). Subsequently, the intervening parties were joined.

The report and decision of the Commission's Division 4, dated May 31, 1957, is recorded in 295 I. C. C. 523. The full Commission denied reconsideration and reargument on October 30, 1957. By these orders the Commission granted the application of the Pennsylvania and Santa Fe, subject to the conditions set out in the footnote*, to acquire

* "1. That under the control of the Santa Fe and the Pennsylvania, the Western shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise authorized by us;

"2. The present neutrality of handling traffic inbound and outbound and in overhead service by the Western shall be continued so as to permit equal opportunity for service to and from all lines reaching the rails of that carrier, without discrimination as to routing or movement of traffic, and without discrimination in the arrangements of schedules or otherwise;

"3. The present traffic and operating relationships existing between the Western, on the one hand, and all lines connecting with

joint control of the Western, dismissed the application of the Minneapolis & St. Louis Railway Company (Minneapolis) to acquire control of Western through stock ownership, and denied the petitions of New York, Chicago & St. Louis Railroad Company (Nickel Plate) and the Chicago, Rock Island and Pacific Railroad Company (Rock Island) for participation in the stock ownership and control of Western.

Western is approximately 240 miles long. It extends across the northern part of Illinois from Effner on the east through Peoria to Lomax, Illinois, and Keokuk, Iowa, on the west. It connects with the Pennsylvania at Effner, with the Santa Fe at Lomax, with the Rock Island and [fol. 105] the Chicago, Burlington & Quincy (Burlington) at Keokuk, with the Minneapolis and Nickel Plate at Peoria. All told, Western has connections for interchange of traffic with 16 railroads. More than two-thirds of its total revenues are derived from overhead or bridge traffic, traffic that is received from one railroad to be delivered to another. Little of its revenue is produced by purely local traffic.

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its tracks on the other; shall be continued insofar as such matters are within the control of the Santa Fe or the Pennsylvania;

"4. The Western shall accept, handle, and deliver all cars inbound and outbound and in overhead service, loaded and empty, without discrimination in promptness or frequency of service as between cars destined to or received from competing carriers and irrespective of destination or route of movement;

"5. The Santa Fe and or the Pennsylvania shall not do anything to restrain or curtail the right of industries located on the Western to route traffic over any or all existing routes and gateways;

"6. The Santa Fe and Pennsylvania shall refrain from closing any existing route or channel of trade with any carrier party to this proceeding on account of their control of the Western, unless and until otherwise authorized by us; and

"7. Any party or any person having an interest in the subject matter may at any future time make application for such modification of the above-stated conditions, or any of them, as may be required in the public interest, and jurisdiction will be retained to reopen the proceedings on our own motion for the same purpose."

Western has outstanding 90,000 shares of capital stock, 73,800 of which are held by the trustees of the estate of George P. McNear, Guy A. Gladson and Wilmington Trust Company. McNear had acquired the property in 1927, after the unsuccessful operation of it by Pennsylvania and Burlington had ended in receivership. Under his ownership and operation the road became highly successful and a valuable property. Western occupied a strategic position by passing, as it did, the congested terminals of Chicago and St. Louis. It seems that much of its success came after the construction of a Western connection with the Santa Fe at Lomax. For the year ended June 30, 1955, approximately 70% of the cars of interchange traffic and of Western gross revenues were attributable to the Pennsylvania and the Santa Fe. The Burlington and the New York Central Railroad Company ranked third and fourth in the volume of interchange, and Rock Island, Nickel Plate, and Minneapolis followed, in that order.

The trustees of the McNear Estate proposed to dispose of the capital stock of Western for $135 a share. Santa Fe agreed to pay that price after Minneapolis had offered $133. Santa Fe allowed Pennsylvania to have half of the stock, subject, of course, to approval by the I. C. C. It is apparent that Santa Fe and Pennsylvania did not favor acquisition of Western by Minneapolis or participation in ownership and control by Nickel Plate and Rock Island.

Minneapolis, supported by the Minnesota and South Dakota plaintiffs, contends, in effect, that, under the evi- [fol. 106] dence and the applicable law, the Commission could not approve the acquisition of the control of Western by the Pennsylvania and the Santa Fe, and should have approved the application of Minneapolis, which would have resulted in a consolidation with increased efficiency and economy in management.

Minneapolis argues that the orders in suit are invalid for the following reasons: (1) Pennsylvania had violated Section 10 of the Clayton Act, since it and the Wilmington Trust Company, co-trustee of the McNear estate, had directors in common; (2) the acquisition violates Section 1 of the Sherman Act and Section 7 of the Clayton Act; (3) the Commission failed to accord Minneapolis a true

comparative hearing; and (4) the findings of the Commission lack adequate evidentiary support.

The Nickel Plate, which, with the Rock Island, had intervened in the proceedings before the Commission, requested equal participation and ownership of Western with whichever carrier or carriers might be authorized to acquire stock control. Rock Island did not intervene herein. Nickel Plate argues that the Commission failed to make findings on material issues relating to the effect that control by Pennsylvania and Santa Fe would have on competitors and on the general competitive situation in the industry, and that if control of Western is awarded to any carrier to the exclusion of Nickel Plate, the neutrality of Western will be destroyed, to its detriment and that of Nickel Plate.

The applications for the control of Western were filed under 49 U. S. C. A. Section 5(2), which, so far as pertinent, provides:

> "(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—
>
> "(i) * * * for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock * * *
>
> "(b) * * * If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) [fol. 107] and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions and with the modifications, so found to be just and reasonable: * * *"

Section 5(11) of Title 49 U. S. C. A. contains this provision:

> "* * * any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are

hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. * * *"

From these statutes, it would appear that, notwithstanding the antitrust laws and all other legal restraints or obstacles, the Interstate Commerce Commission may, if it determines that it is consistent with the public interest and with the transportation policy of the United States, authorize a carrier or carriers to acquire control of another carrier by purchase of its capital stock. Since Congress has empowered the Commission, and not the courts, to determine whether the acquisition of control of one carrier by another or by others is consistent with the public interest, the determination of the Commission may not be set aside unless it can be said that there is no rational basis for it. *Canadian Pacific Railway Co.* v. *United States*, 158 F. Supp. 248, 251, 252 and cases cited.

That this Court would or might have arrived at a different conclusion, had it had the duty and responsibility of deciding the controversy between the applicants, is of no consequence.*

It must be remembered that, within the limits of the jurisdiction conferred upon it, the power of a court or an administrative agency to decide questions is not confined [fol. 108] to deciding them correctly. *Thompson* v. *Terminal Shares, Inc.*, 8 Cir., 89 F. 2d 652, 655; *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 8 Cir., 113 F. 2d 698, 701.

* It will be to no purpose to discuss the contentions of Minneapolis that Pennsylvania was primarily motivated in acquiring an interest in Western by a desire to thwart the plans of Minneapolis. The Commission had no authority to direct the trustees to deal with Minneapolis rather than with the other interested purchasers.

"A controversy like this always calls for fresh reminder that courts must not substitute their notions of expedience and fairness for those which have guided the agencies to whom the formulation and execution of policy have been entrusted." *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573, 580-581, 60 S. Ct. 1021, 84 L.Ed. 1368; *Pittsburgh Plate Glass* v. *National Labor Relations Board*, *supra*, 113 F. 2d at 701.

Considering now the contentions of the parties, Minneapolis lays principal stress on the argument that the Pennsylvania and the Wilmington Trust Company, co-trustee of the McNear estate, violated Section 10 of the Clayton Act since each of them had directors in common.** Its position is that while the exemption provision, Section 5(11), quoted above, may be applicable to Section 7 of the Clayton Act, it is not applicable to Section 10.

However, a reading of Section 5(11) would indicate that the authority vested in the Commission is not only broad, but it is explicitly made "exclusive and plenary." The Commission having found that the acquisition of the Santa Fe and Pennsylvania is in the public interest, it would seem to follow that any antitrust restrictions or prohibitions would become inoperative. In passing, it may be pointed out that here the Wilmington Trust Company is functioning in a fiduciary capacity as Trustee in the interest of the beneficiaries of the trust. We do not have a situation where interlocking directors may be enriched by reason of dealings in their securities and thus should be required to sell securities only to a bidder whose "bid is most favorable to the common carrier." Section 10 should be quoted. It reads, in part:

"No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles

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** It should be pointed out that it is the Pennsylvania Company, the wholly-owned subsidiary of Pennsylvania Railroad, which seeks to acquire 50% of Western stock. The Pennsylvania Company is not engaged in railroad operations nor does it operate carrier property. Section 10 refers only to a "common carrier engaged in commerce". While this distinction may not be of controlling importance, it should be mentioned.

[fol. 109] of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission." 15 U. S. C. A. P. 20.

A mere reading of this section would indicate that the common directorate which existed between the Wilmington Trust Company and the Pennsylvania Company was not the kind intended by the Congress to be covered by the prohibition. It does not appear to cover the sale of stock held by a trust company to a common carrier. This section apparently was designed to prevent a railroad company from buying securities without receiving competitive bids from prospective sellers. There is no language in Section 10 which pertains to any competitive bidding by the railroad company. In any event, Section 10 is a part of the antitrust laws. See 15 U. S. C. A. P. 12. And the immunity granted by Section 5(11) is applicable thereto.

Finally, it should be added that the United States Supreme Court has made it clear that the Interstate Commerce Commission is vested with authority to relieve proposed acquisitions of one railroad by another from the operations of the antitrust laws. For it to do so is consistent with the conditions set out by the Congress in the National Transportation Policy of 1940. In *McLean Trucking Co. v. United States*, 321 U. S. 67, 64 S. Ct. 370, 88 L. Ed. 544, the Court said at pp. 84-85:

"* * * there can be little doubt that the Commission is not to measure proposals for all-rail or all-motor consolidations by the standards of the anti-trust laws. Congress authorized such consolidations because it recognized that in some circumstances they were ap- [fol. 110] propriate for effectuation of the national transportation policy. It was informed that this policy would be furthered by 'encouraging the organization of stronger units' in the motor carrier industry. And in authorizing those consolidations it did not impair the general policies of the anti-trust laws as a measure of their permissibility."

And on p. 87:

"In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the overall transportation policy. Resolving these considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. Congress left that task to the Commission 'to the end that the wisdom and experience of that Commission may be used not only in connection with this form of transportation, but in its coordination of all other forms.' 79 Cong. Rec. 12207. 'The wisdom and experience of that commission,' not of the courts, must determine whether the proposed consolidation is 'consistent with the public interest.' (Citing cases). If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported by evidence, it is not our function to upset its order."

While this language was used with reference to consolidation in the motor truck industry, it is applicable here.

However, Minneapolis stresses the alleged stifling com-

petition by the so-called oligopolistic control by two major railroads of a strategic bridge line whose independence heretofore assured Minneapolis access to its most important gateway. It reasons that the mere recital in the findings of the Commission as to the extensive mileage, large revenues, and manifest prosperity of these two great railroad systems, compels the conclusion that the acquisition of Western would violate Section 1 of the Sherman Act and Section 7 of the Clayton Act. Minneapolis contends, therefore, that the Commission must weigh the violation of the anti-trust laws against all other relevant factors and base its conclusion on adequate findings.

At the outset, it may be observed that, merely because these two large railroad systems have acquired a 240-mile [fol. 114] railroad under joint control, does not in and of itself justify a finding that there will be an oligopolistic control which stifles competition. It is not the function of the Commission to determine whether the acquisition of Western by these two railroads will violate the anti-trust Laws. The Commission has not attempted to do so and can make no definitive decision as to whether or not the contemplated transaction will result in a restraint of trade or a monopoly which is forbidden by law. *McLean Trucking Company* v. *United States*, *supra*, 321 U. S. at 79.

Suffice it to say that the Commission did give due consideration to the effect of the acquisition on competing carriers and the possible curtailment of competition, and weighed such factors as against the broad question of public interest. We recognize that the Commission's expertise is not infallible, but where there is no question as to the Commission's having given consideration to the effect of curtailing competition in the light of the National Transportation Act, and where its conclusions are not without substantial foundation, we cannot substitute our judgment for that of this administrative agency. Whether dire competitive consequences will occur, as predicted by Minneapolis and Nickel Plate by reason of the acquisition approved by the Commission, is a matter to which its attention was directed. It concluded that any adverse compet-

tive results were far outweighed by the safe, adequate and efficient services which would inure to the public as a result of such acquisition.

Minneapolis next urges that its application was not given a true comparative consideration by the Commission. The Commission pointed out that the proceedings before it concerned two applications for control. The two applications were consolidated and submitted on a single record and disposed of in one decision. Apparently the lack of contract by Minneapolis with the trustees did not deprive it of a full and complete hearing before the Commission. As noted above, the Commission considered the advantages and disadvantages of integration of Western with [fol. 112] Minneapolis, and with respect thereto it considered and weighed the reasons why the Santa Fe and Pennsylvania proposal was more consistent with public interest. We cannot say that the Commission acted arbitrarily, or that it did not evaluate the two competing proposals in light of the public interest. The advantages to Minneapolis in adding Western to its railway system seem apparent. No doubt Minneapolis would be materially strengthened by its proposed integration with Western. But obviously the advantages to Minneapolis was only one of the considerations and factors which the Commission had to weigh and evaluate.

The plan which Minneapolis proposes is to abolish Western as an independent carrier, and that plan is strongly opposed, not only by the carriers and other defendants who have intervened herein, but also by many communities and industries in Illinois and Iowa, as well as the employees of Western. The removal of the offices of Western and its key personnel to Minneapolis is strongly protested. The large savings which allegedly were to follow upon an integration of Minneapolis and Western, as asserted by Minneapolis, was weighed and considered by the Commission. Likewise, the alleged economic harm which would ensue to other carriers under Minneapolis' plan to establish coordinated schedules between it and the many other lines which intersect with Western was considered by the Commission. Whether upon integration there would be su

a diversion of traffic to Minneapolis which would be harmful to other carriers is a matter that the Court should not attempt to determine. Such questions are peculiarly for the Commission to decide, and we cannot say that the evidence as to such harm is not substantial. It may be noted that, of the $1,770,945 reduction in combined operating expense of Minneapolis and Western if integration took place, $1,327,062 would result from the elimination of some 256 positions now occupied by employees of Western. Whether such economies outweigh the alleged detriment to Western's employees, to its local industries and communi- [fol. 113] ties, and to other carriers, is also a matter which is clearly within the sound judgment of the Commission.

Nickel Plate's principal contention is that the Commission failed to make adequate findings on the general competitive situation, primarily with reference to the eastern territory of the United States. Nickel Plate states that the Commission's failure to analyze the effect on competition when railroads the size of Pennsylvania and Santa Fe take over Western and fail to make specific findings in that regard, is fatal to the validity of its order. However, the Commission was fully cognizant of the competitive situation in the light of the proposed acquisition, but it concluded that the other carriers' interchanging traffic with Western would not be injured. It specifically emphasized the protection which would be afforded carriers exchanging traffic with Western in view of the checks and balances ingrained in a system where the ownership is divided equally between the largest connecting carrier in the East and the largest in the West. If the Commission is sound in its prediction that the connecting and immediate competing carriers of Western will not be injured by the acquisition and that competition generally will not be unduly curtailed, it would not seem necessary for the Commission to discuss the question of any alleged monopolistic threat to the eastern railroads or as to the nation as a whole. None of the so-called eastern railroads have intervened here. Moreover, it may be pointed out that Western is not the only strategic bridge line from the Middlewest to the eastern carriers. There

are other carriers that bisect the same east and west area and are in direct competition with Western. Such factors were undoubtedly given due consideration by the Commission. We cannot say that the Commission's conclusion that the patent self-interest of these two large railroads, with the restrictions imposed upon them in the ownership of Western's operations and an independent railroad tends to insure an operation which will be consistent with the public interest, is erroneous.

[fol. 114] The Commission specifically found that "Public interest demands that the present policies of Western in all respects be continued." It concluded that this result would be attained if the two carriers which had contributed the greatest volume of traffic with Western, one from the East and one from the West, should be accorded joint ownership. As stated, it appears that some 70% of Western's interline traffic is exchanged with these two railroads. This constitutes about two-thirds of Western's total traffic. Nickel Plate has not substantiated its position that the Commission acted arbitrarily in denying it the right to participate in the ownership of Western's stock. The Commission concluded that "Any reduction in the ownership interest of the Santa Fe and the Pennsylvania by the inclusion of other carriers in the control of Western would be accompanied by an equivalent reduction in their economic incentive for future development of Western and the territory served by it." That this deduction is a sound appraisal of the situation cannot be characterized as unsupported by the evidence. It is entirely reasonable to expect that the two carriers, which are largely responsible for the excellent condition of Western today, will, by sheer self-interest continue with the same incentive in the future.

The Commission might have granted the application of Minneapolis for sole control and ownership, which was strenuously opposed by all those carriers who wanted Western to remain independent and neutral. The Commission might have authorized the Rock Island and the Nickel Plate to join the Pennsylvania and the Santa Fe in joint ownership and control of Western. The Commission concluded that the application of Pennsylvania and

Santa Fe was consistent with the public interest and should be granted. That, we think, under the evidence and the Law, it had power to do; and, even if that conclusion was wrong, it cannot be said to be arbitrary or capricious, and is therefore binding upon this Court.

[fol. 115] We have fully considered all of the other arguments and contentions of the parties and conclude that they are, likewise, without merit. The Commission's Order is based on adequate findings supported by substantial evidence in the record before it.

The petitions are dismissed and the temporary restraining order is discharged. A stay of 30 days is granted.

Dated: September 16, 1958.

John B. Sanborn, United States Circuit Judge;
Gunnar H. Nordbye, United States District Judge;
Edward J. Devitt, United States District Judge.

[File endorsement omitted]

[fol. 116] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

No. 4-57 Civ. 123

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, a Minnesota corporation, Plaintiff,

and

NEW YORK, CHICAGO & ST. LOUIS RAILROAD CO., STATE OF SOUTH DAKOTA, and PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA, and STATE OF MINNESOTA; and MINNESOTA RAILROAD & WAREHOUSE COMMISSION, Intervening Plaintiffs,

vs.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, Defendants,

and

THE ATCHISON, TOPEKA & SANTA FE RY. CO., THE PENNSYLVANIA RAILROAD CO. and PENNSYLVANIA COMPANY, THE CITY OF PEORIA, THE CITY OF EAST PEORIA and the PEORIA ASSOC. OF COMMERCE, THE STATE OF ILLINOIS, CITY OF BUSHNELL, ILLINOIS; BUSHNELL CHAMBER OF COMMERCE; CITY OF CANTON, ILLINOIS; CANTON CHAMBER OF COMMERCE; CITY OF LAHARPE, ILLINOIS; LAHARPE GOLDEN RULE CLUB; VILLAGE OF LOMAX, ILLINOIS, CITY OF KEOKUK, IOWA; KEOKUK CHAMBER OF COMMERCE; KEOKUK BRIDGE COMMISSION; THE HUBINGER COMPANY, KEOKUK; CITY OF WARSAW, ILLINOIS; WARSAW CHAMBER OF COMMERCE; CITY OF FORREST, ILLINOIS; CITY OF FAIRBURY, ILLINOIS; CITY OF GRIDLEY, ILLINOIS; CITY OF GILMAN, ILLINOIS; CITY OF SHELDON, ILLINOIS; CITY OF WATSEKA, ILLINOIS; CITY OF EUREKA, ILLINOIS; VILLAGE OF SECOR, ILLINOIS; CITY OF WASHINGTON, ILLINOIS; CITY OF CHENOA, ILLINOIS, Intervening Defendants.

NOTICE OF APPEAL BY THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY TO THE SUPREME COURT OF THE UNITED STATES —Filed October 2, 1958

[fol. 117]

I.

Notice is hereby given that The Minneapolis and St. Louis Railway Company, a Minnesota corporation, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the order dismissing the plaintiff's complaint entered in this action on the 16th day of September, 1958.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II.

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The Complaint of the plaintiff herein (including Exhibits A, B & C attached thereto);

2. The Complaint in intervention of the State of Minnesota and Minnesota Railroad and Warehouse Commission;

3. The Answer of United States of America and Interstate Commerce Commission;

4. The Answer of United States of America and Interstate Commerce Commission to the Complaint in Intervention of the State of Minnesota and Minnesota Railroad and Warehouse Commission;

5. The Answer of The Atchison, Topeka & Santa Fe Railway Company, The Pennsylvania Railroad Company and the Pennsylvania Company;

6. The Answer of New York, Chicago & St. Louis Railroad Co.;

7. The Answer of the State of South Dakota and Public Utilities Commission of the State of South Dakota;

8. The Defenses of the City of Peoria, the City of East Peoria, and Peoria Association of Commerce;

9. The Answer of the City of Bushnell, et al.;

10. The complete record of all proceedings before the Interstate Commerce Commission in Finance Docket No. 18991 and Finance Docket No. 19086, pre- [fol. 118] viously certified to the United States District Court by the Secretary of the Interstate Commerce Commission in thirteen packets;

11. Decision and Final Order of the United States District Court, District of Minnesota, Fourth Division, dated September 16, 1958;

12. Notice of Appeal to the Supreme Court of the United States by the Plaintiff.

III.

The following questions are presented by this appeal:

1. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission approving and authorizing acquisition by The Atchison, Topeka & Santa Fe Railway Company and the Pennsylvania Company, and through the latter, by The Pennsylvania Railroad Company, of control, through ownership of capital stock, of the Toledo, Peoria & Western Railroad Company, and dismissing the application of The Minneapolis & St. Louis Railway Company for authority to acquire control, through ownership of capital stock, of the Toledo, Peoria & Western Railroad Company, for the reasons that:

(a) The Interstate Commerce Commission failed to make any findings with respect to a number of material issues;

(b) A number of findings made by the Interstate Commerce Commission are unsupported by substantial evidence; and

(c) A number of the findings made by the Interstate Commerce Commission are contrary to the evi-

dence and are contrary to the sworn testimony of officers of the successful applicants.

2. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission, for the reason [fol. 119] that the Interstate Commerce Commission arbitrarily, capriciously, and unlawfully failed to give The Minneapolis & St. Louis Railway Company a true comparative hearing, by virtue of the following actions:

(a) The Interstate Commerce Commission ignored the standards of the National Transportation Policy;

(b) The Interstate Commerce Commission erroneously assumed, as an improper standard, without a finding thereon supported by substantial evidence, that continued operation of the Toledo, Peoria & Western Railroad Company by and as a separate company was required and outweighed all the specific standards set out in the National Transportation Policy and in section 5 of the Interstate Commerce Act, as amended; and such erroneous assumption necessarily eliminated full consideration on the merits of the competing application of The Minneapolis & St. Louis Railway Company;

(c) The Interstate Commerce Commission ignored relevant questions of economy, efficient service, the contrasting motives and objectives of the competing applicants, the contrasting interests of the competing applicants in the Peoria Gateway, and the strengthening of individual carriers;

(d) The Interstate Commerce Commission applied different standards with respect to the results which would follow from the grant of either of the competing applications.

3. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders

of the Interstate Commerce Commission, for the reason that the Interstate Commerce Commission lacked power to condone a violation of section 10 of the Clayton Act occurring prior to the proceedings before the Commis- [fol. 120] sion, and thus acted erroneously and in excess of its statutory jurisdiction and authority, and for the further reason that the Interstate Commerce Commission failed to make any findings with respect to the fact of such violation.

4. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission, for the reason that the Interstate Commerce Commission purported to sanction a violation of section 1 of the Sherman Act and section 7 of the Clayton Act without giving any consideration to the relevant factors and without articulating or even mentioning considerations which could justify relief from the operation of the antitrust laws under section 5(11) of the Interstate Commerce Act, as amended, and thus acted erroneously and in excess of its statutory jurisdiction and authority.

5. Whether the 3-judge District Court erred in holding that the power of the Interstate Commerce Commission to decide questions within the limits of its jurisdiction included the power to decide such questions incorrectly, without regard to the distinction between questions of law, questions of fact, and mixed questions of law and fact, and without regard to the Interstate Commerce Commission's failure to grant procedural due process to The Minneapolis & St. Louis Railway Company.

Max Swiren, 135 South LaSalle Street, Chicago 3, Illinois; Richard Musenbrock, 111 East Franklin Avenue, Minneapolis 4, Minnesota; Dorsey, Owen, Scott, Barber & Marquart, By James E. Dorsey, and John G. Dorsey, 1300 First National Soo Line Building, Minneapolis 2, Minnesota, Attorneys for Plaintiff.

[fol. 121] Affidavit of Service (omitted in printing).

[fol. 123] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

[Title omitted]

NOTICE OF APPEAL BY THE STATE OF MINNESOTA AND THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION TO THE SUPREME COURT OF THE UNITED STATES—Filed November 12, 1958

[fol. 124] I.

Notice is hereby given that the State of Minnesota and the Minnesota Railroad and Warehouse Commission, Intervening plaintiffs herein, hereby appeal to the Supreme Court of the United States from the order dismissing the plaintiff's complaint entered in this action on the 16th day of September, 1958.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II.

The clerk will please include this notice of appeal in the transcript of the record in this cause which he will prepare for transmission to the Clerk of the Supreme Court of the United States.

III.

As stated in the plaintiff's notice of appeal, the following questions are presented by this appeal

1. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission approving and authorizing acquisition by The Atchison, Topeka & Santa Fe Railway Company and the Pennsylvania Company, and through the latter, by The Pennsylvania Railroad Company, of control, through ownership of capital stock, of the Toledo, Peoria & Western Railroad Company, and dismissing the application of The Minneapolis & St. Louis Railway Company for au-

thority to acquire control, through ownership of capital stock, of the Toledo, Peoria & Western Railroad Company, for the reasons that:

(a) The Interstate Commerce Commission failed to make any findings with respect to a number of material issues;

(b) A number of findings made by the Interstate Commerce Commission are unsupported by substantial evidence; and

[fol. 125] (c) A number of the findings made by the Interstate Commerce Commission are contrary to the evidence and are contrary to the sworn testimony of officers of the successful applicants.

2. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission, for the reason that the Interstate Commerce Commission arbitrarily, capriciously, and unlawfully failed to give The Minneapolis & St. Louis Railway Company a true comparative hearing, by virtue of the following actions:

(a) The Interstate Commerce Commission ignored the standards of the National Transportation Policy;

(b) The Interstate Commerce Commission erroneously assumed, as an improper standard, without a finding thereon supported by substantial evidence, that continued operation of the Toledo, Peoria & Western Railroad Company by and as a separate company was required and outweighed all the specific standards set out in the National Transportation Policy and in section 5 of the Interstate Commerce Act, as amended; and such erroneous assumption necessarily eliminated full consideration on the merits of the competing application of The Minneapolis & St. Louis Railway Company;

(c) The Interstate Commerce Commission ignored relevant questions of economy, efficient service, the contrasting motives and objectives of the competing applicants, the contrasting interests of the competing applicants in the Peoria Gateway, and the strengthening of individual carriers;

(d) The Interstate Commerce Commission applied different standards with respect to the results which would follow from the grant of either of the competing applications.

[fol. 126] 3. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission, for the reason that the Interstate Commerce Commission lacked power to condone a violation of section 10 of the Clayton Act occurring prior to the proceedings before the Commission, and thus acted erroneously and in excess of its statutory jurisdiction and authority, and for the further reason that the Interstate Commerce Commission failed to make any findings with respect to the fact of such violation.

4. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission, for the reason that the Interstate Commerce Commission purported to sanction a violation of section 1 of the Sherman Act and section 7 of the Clayton Act without giving any consideration to the relevant factors and without articulating or even mentioning considerations which could justify relief from the operation of the antitrust laws under section 5 (11) of the Interstate Commerce Act, as amended, and thus acted erroneously and in excess of its statutory jurisdiction and authority.

5. Whether the 3-judge District Court erred in holding that the power of the Interstate Commerce Commission to decide questions within the limits of its jurisdiction included the power to decide such questions incorrectly, without regard to the distinction

between questions of law, questions of fact, and mixed questions of law and fact, and without regard to the [fol. 127] Interstate Commerce Commission's failure to grant procedural due process to The Minneapolis & St. Louis Railway Company.

Harold J. Soderberg, Assistant Attorney General, Attorney for the Intervening Plaintiffs, 102 State Capitol, Saint Paul 1, Minnesota.

[fol. 128] Affidavit of Service (omitted in printing).

[fol. 130] [File endorsement omitted]

In United States District Court, District of Minnesota, Fourth Division.

[Title omitted]

[fol. 131]

Notice of Appeal by the State of South Dakota and Public Utilities Commission of the State of South Dakota to the Supreme Court of the United States—Filed November 13, 1958

I.

Notice is hereby given that the State of South Dakota and the Public Utilities Commission of the State of South Dakota, intervening plaintiffs, hereby appeal to the Supreme Court of the United States from the order dismissing the plaintiff's complaint entered in this action on the 16th day of September, 1958.

This appeal is taken pursuant to 28 U.S.C., Section 1253.

II.

The following questions are presented by this appeal:

1. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission approving and authorizing acquisition by The Atchison, Topeka & Santa Fe Railway Company and the Pennsylvania Company, and through the latter, by The Pennsylvania Railroad Company, of control, through ownership of capital stock, of the Toledo, Peoria &

Western Railroad Company, and dismissing the application of The Minneapolis & St. Louis Railway Company for authority to acquire control, through ownership of capital stock, of the Toledo, Peoria & Western Railroad Company, for the reasons that:

(a) The Interstate Commerce Commission failed to make any findings with respect to a number of material issues;

(b) A number of findings made by the Interstate Commerce Commission are unsupported by substantial evidence; and

(c) A number of the findings made by the Interstate Commerce Commission are contrary to the evidence and are contrary to the sworn testimony of officers of the successful applicants.

2. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission, for the reason that the [fol. 132] Interstate Commerce Commission arbitrarily, capriciously, and unlawfully failed to give The Minneapolis & St. Louis Railway Company a true comparative hearing, by virtue of the following actions:

(a) The Interstate Commerce Commission ignored the standards of the National Transportation Policy;

(b) The Interstate Commerce Commission erroneously assumed, as an improper standard, without a finding thereon supported by substantial evidence, that continued operation of the Toledo, Peoria & Western Railroad Company by and as a separate company was required and outweighed all the specific standards set out in the National Transportation Policy and in Section 5 of the Interstate Commerce Act, as amended; and such erroneous assumption necessarily eliminated full consideration on the merits of the competing application of The Minneapolis & St. Louis Railway Company;

(c) The Interstate Commerce Commission ignored relevant questions of economy, efficient service, the con-

trasting motives and objectives of the competing applicants, the contrasting interests of the competing applicants in the Peoria Gateway, and the strengthening of individual carriers;

(d) The Interstate Commerce Commission applied different standards with respect to the results which would follow from the grant of either of the competing applications.

3. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission, for the reason that the Interstate Commerce Commission lacked power to condone a violation of Section 10 of the Clayton Act occurring prior to the proceedings before the Commission, and thus acted erroneously and in excess of its statutory jurisdiction and authority, and for the further reason that the Interstate Commerce Commission failed to make any findings with respect to the fact of such violation.

[fol. 433] 4. Whether the 3-judge District Court erred in failing to enjoin, suspend, set aside and annul the orders of the Interstate Commerce Commission, for the reason that the Interstate Commerce Commission purported to sanction a violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act without giving any consideration to the relevant factors and without articulating or even mentioning considerations which could justify relief from the operation of the antitrust laws under Section 5 (11) of the Interstate Commerce Act, as amended, and thus acted erroneously and in excess of its statutory jurisdiction and authority.

5. Whether the 3-judge District Court erred in holding that the power of the Interstate Commerce Commission to decide questions within the limits of its jurisdiction included the power to decide such questions incorrectly, without regard to the distinction between questions of law, questions of fact, and mixed questions of law and fact, and without regard to the Interstate Commerce Commission's

failure to grant procedural due process to The Minneapolis & St. Louis Railway Company.

Phil Saunders, Attorney General, State of South Dakota, Capitol Building, Pierre, South Dakota; Herman L. Bode, Assistant Attorney General and Counsel for the Public Utilities Commission of the State of South Dakota, State Capitol Building, Pierre, South Dakota.

[fol. 134] Proof of Service (omitted in printing).

[fol. 135] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 136] Secretary's Certificate to foregoing transcript (omitted in printing).

[fol. 139]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY and PENNSYLVANIA COMPANY for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.

APPLICATION—Filed July 8, 1955

[fol. 141] *To the Interstate Commerce Commission, Washington, D. C.:*

GENERAL STATEMENT.

This is an application under Section 5(2) of the Interstate Commerce Act for authorization and approval of the acquisition of control of the Toledo, Peoria & Western

Railroad Company* by The Atchison, Topeka and Santa Fe Railway Company* and The Pennsylvania Railroad Company* through purchase of its capital stock by Santa Fe and by Pennsylvania Company, a wholly-owned subsidiary of Pennsylvania Railroad.

Santa Fe has entered into agreements with the holders of 89,296 shares of TP&W stock for purchase of their stock at $135 per share (Exhibits 7, 7-a, 7-b and 7-c). This represents 99.2 per cent of the total of 90,000 shares of [fol. 142] TP&W stock outstanding and Santa Fe expects to complete an agreement for the purchase of the remaining 704 shares at $135 per share in the near future.

By an agreement dated as of June 28, 1955, between Santa Fe, Pennsylvania Railroad and Pennsylvania Company, Santa Fe has agreed to sell to Pennsylvania Company at $135 per share, 45,000 shares of the capital stock of TP&W or such lesser number of shares as will make Santa Fe and Pennsylvania Company each the owner of 50 per cent of the stock of TP&W acquired from all sources (Exhibit 7-d). The agreement also provides for the future operation of TP&W as a separate and independent carrier, soliciting traffic in its own interests and with a majority of its board of directors composed of prominent citizens not connected with applicants; for the maintenance and improvement of its properties, including line and equipment, in keeping with the requirements of a railroad of its character and importance; and for the maintenance of all existing routes and channels of trade via TP&W without discrimination between connecting lines of railroad.

Under the proposed transaction, Santa Fe and Pennsylvania Company will each become the owner of 45,000 shares or 50 per cent of the total outstanding capital stock of TP&W, thus vesting joint control of TP&W in applicants, one-half thereof in Santa Fe and the other half in Pennsylvania Railroad through ownership of the stock by its wholly-owned subsidiary, Pennsylvania Company. The total purchase price for the stock, at $135 per share, will

* The three companies mentioned above are herein sometimes respectively called "TP&W", "Santa Fe", and "Pennsylvania Railroad".

be $12,150,000, representing an expenditure of $6,073,000 each by Santa Fe and Pennsylvania Company.

If Santa Fe is unable to arrange for purchase of the 704 shares of TP&W stock not now covered by purchase agreements, the proposed transaction will involve the acquisition of a total of 89,296 shares, 44,648 each by Santa Fe and [fol. 143] Pennsylvania Company, for a total purchase price of $12,054,960 divided equally between them. The acquisition of this stock, representing 99.2 per cent of the total stock outstanding, would vest control of TP&W jointly in Santa Fe and in Pennsylvania Railroad as the sole owner of Pennsylvania Company.

The transaction proposed will be consistent with and promote the public interest in all respects, as is more fully set forth in a subsequent section hereof (see p. 133).

[fol. 144]

I. Contents of Application.

(a) Identification of applicant, or of each applicant, if there are two or more applicants.

1. The full and correct names of applicants and their business addresses are:

The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago 4, Cook County, Illinois.

The Pennsylvania Railroad Company, 1617 Pennsylvania Boulevard, Philadelphia 4, Philadelphia County, Pennsylvania.

Pennsylvania Company, 43 Haverford Station Road, Haverford, Montgomery County, Pennsylvania.

2. Applicants are corporations.

3. Santa Fe and Pennsylvania Railroad are carriers by railroad, subject to Part I of the Interstate Commerce Act; Pennsylvania Company is considered a carrier subject to certain provisions of Part I of the Interstate Commerce Act pursuant to an order in *Wabash Railroad Company Control*, 252 I.C.C. 319 (1942).

4. The properties owned or controlled by Santa Fe are situated in the States of Illinois, Iowa, Missouri, Kansas, Nebraska, Colorado, Oklahoma, Texas, Louisiana, New Mexico, Arizona and California.

The properties owned or controlled by Pennsylvania Railroad are situated in the States of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia and also in the District of Columbia.

Pennsylvania Company exercises control over carriers through ownership of their capital stock but does not operate carrier property.

[fol. 145] 5. The names, titles and business addresses of the officers to whom correspondence with respect to this application should be addressed are:

Starr Thomas, General Attorney and Commerce Counsel, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago 4, Illinois;

Edwin A. Lucas, General Solicitor, The Pennsylvania Railroad Company, 1617 Pennsylvania Boulevard, Philadelphia 4, Pennsylvania.

6. Santa Fe and Pennsylvania Railroad have been continuously engaged in interstate commerce as common carriers by railroad since prior to the enactment of the Transportation Act of 1920. Pennsylvania Company is not a carrier except as stated above.

(b) Information respecting applicant, or each applicant, if there are two or more applicants.

1. (1) Santa Fe was incorporated under the laws of Kansas, December 12, 1895.

Pennsylvania Railroad was incorporated under an act of the Commonwealth of Pennsylvania approved April 13, 1846.

Pennsylvania Company was incorporated under an act of the Commonwealth of Pennsylvania, approved April 7, 1870.

1. (2) The names and business addresses of the Directors of the applicants are:

SANTA FE

Name	*Business Address*
N. Loyall McLaren	444 California St., San Francisco, Calif.
Norman Chandler	202 W. First St., Los Angeles, Calif.
Streeter B. Flynn	First National Building, Oklahoma City, Okla.
Charles J. Whipple	2201 Howard St., Evanston, Illinois
[fol. 146]	
J. Luther Cleveland	140 Broadway, New York, New York
B. L. Hupp	1308 Commerce Building, Kansas City, Missouri
John L. McCaffrey	180 N. Michigan Ave., Chicago, Illinois
George F. Getz, Jr.	400 N. Michigan Ave., Chicago, Illinois
Richard W. Robbins	Pratt, Kansas
Edward L. Ryerson	38 S. Dearborn St., Chicago, Illinois
W. Laird Dean	501 Kansas Avenue, Topeka, Kansas
Fred G. Gurley	80 E. Jackson Boulevard, Chicago, Ill.
Thomas S. Lamont	23 Wall Street, New York, New York
Aubrey H. Mellinger	212 W. Washington St., Chicago, Ill.

PENNSYLVANIA RAILROAD and PENNSYLVANIA COMPANY

Name	*Business Address*
M. W. Clement	Suburban Station Building, Philadelphia 4, Pa.
Richard K. Mellon	T. Mellon & Sons, 525 Wm. Penn Place, Pittsburgh 22, Pa.
Robert T. McCracken	1421 Chestnut St., Philadelphia 2, Pa.
C. Jared Ingersoll	1107 Girard Trust Bldg., Philadelphia 2, Pa.
Leonard T. Beale	3 Penn Center Plaza, Philadelphia 2, Pa.

Name	*Business Address*
James E. Gowen	Girard Trust Corn Exchange Bank, Philadelphia 2, Pa.
Philip R. Clarke	City National Bank & Trust Co., 208 S. LaSalle St., Chicago, Illinois
Isaac W. Roberts	12 South 12th Street, Philadelphia 7, Pa.
Harry B. Higgins	Pittsburgh Plate Glass Co., Gateway Center Building No. 1, 420 Ft. Duquesne Blvd., Pittsburgh 22, Pa.
John A. Diemand	Insurance Company of North America, 1600 Arch St., Philadelphia 1, Pa.
John B. Hollister	603 Dixie Terminal Bldg., Cincinnati, Ohio
Lammot du Pont Copeland	E. I. du Pont de Nemours & Co., du Pont Building, Wilmington, Del.
Donald Danforth	Ralston Purina Company, Checkerboard Square, St. Louis 2, Mo.
James M. Symes	Suburban Station Building, Philadelphia 4, Pa.
Walter S. Franklin	Suburban Station Building, Philadelphia 4, Pa.
Fred Carpi	Suburban Station Building, Philadelphia 4, Pa.
David C. Bevan	Suburban Station Building, Philadelphia 4, Pa.
J. P. Newell	Suburban Station Building, Philadelphia 4, Pa.

[fol. 147] 1. (3) The names, titles and business addresses of the officers of the applicants are:

SANTA FE

Name	*Title*	*Business Address*
Fred G. Gurley	President and Chairman of the Executive Committee	80 E. Jackson Blvd., Chicago, Illinois.
R. G. Rydin	Vice President	80 E. Jackson Blvd., Chicago, Illinois.
E. S. Marsh	Vice President—Finance	80 E. Jackson Blvd., Chicago, Illinois.
C. R. Tucker	Vice President—Operations	80 E. Jackson Blvd., Chicago, Illinois.
J. C. Gibson	Vice President and General Counsel	80 E. Jackson Blvd., Chicago, Illinois.
G. E. Duffy	Vice President—Traffic	80 E. Jackson Blvd., Chicago, Illinois.
R. S. Outlaw	General Solicitor	80 E. Jackson Blvd., Chicago, Illinois.
C. A. Menninger	Secretary and Treasurer	920 Jackson Street, Topeka, Kansas.
R. M. Hogin	Assistant Secretary	120 Broadway, New York, New York.
W. L. Camp	Assistant Secretary and Transfer Agent	80 East Jackson Blvd., Chicago, Illinois.
R. B. Joseph	Assistant Secretary	80 E. Jackson Blvd., Chicago, Illinois.
W. G. Hunt	General Auditor	80 East Jackson Blvd., Chicago, Illinois.
G. E. Wasko	Transfer Agent	120 Broadway, New York, New York.

PENNSYLVANIA RAILROAD

Name	*Title*	*Business Address*
J. M. Symes	President	Suburban Station Building, Philadelphia 4, Pa.
J. P. Newell	Vice-President in charge of Operations	Suburban Station Building, Philadelphia 4, Pa.
Fred Carpi	Vice-President in charge of Traffic	Suburban Station Building, Philadelphia 4, Pa.
David C. Bevan	Vice-President in charge of Finance	Suburban Station Building, Philadelphia 4, Pa.
W. W. Patchell	Vice-President	Suburban Station Building, Philadelphia 4, Pa.
J. B. Jones	Vice-President in charge of Real Estate and Taxation	Suburban Station Building, Philadelphia 4, Pa.
[fol. 148]		
J. C. White	Vice-President in charge of Purchases, Stores and Insurance	Suburban Station Building, Philadelphia 4, Pa.
Ralph C. Champlin	Vice-President in charge of Public Relations	Suburban Station Building, Philadelphia 4, Pa.
A. J. Greenough	Vice-President, Eastern Region	Pennsylvania Station, Philadelphia, Pa.
J. A. Appleton	Vice-President, Central Region	Pennsylvania Station, Pittsburgh, Pa.
H. H. Pevler	Vice-President, Western Region	Union Station, Chicago, Ill.
J. L. Cranwell	Vice-President, New York	Pennsylvania Station, New York, New York

Name	*Title*	*Business Address*
Bayard H. Roberts	Secretary	Suburban Station Building, Philadelphia 4, Pa.
P. D. Fox	Assistant Vice-President in charge of Finance	Suburban Station Building, Philadelphia 4, Pa.
W. R. Gerstnecker	Treasurer	Suburban Station Building, Philadelphia 4, Pa.
H. J. Ward	Comptroller	Suburban Station Building, Philadelphia 4, Pa.
John B. Prizer	General Counsel	Suburban Station Building, Philadelphia 4, Pa.

PENNSYLVANIA COMPANY

Name	*Title*	*Business Address*
J. M. Symes	President	43 Haverford Station Road, Haverford, Pa.
David C. Bevan	Vice-President	43 Haverford Station Road, Haverford, Pa.
J. R. Newell	Vice-President	43 Haverford Station Road, Haverford, Pa.
Fred Carpi	Vice-President	43 Haverford Station Road, Haverford, Pa.
Bayard H. Roberts	Secretary	43 Haverford Station Road, Haverford, Pa.
W. R. Gerstnecker	Treasurer	43 Haverford Station Road, Haverford, Pa.
H. J. Ward	Comptroller	43 Haverford Station Road, Haverford, Pa.
John B. Prizer	General Counsel	43 Haverford Station Road, Haverford, Pa.

[fol. 149] 1. (4) The names and business addresses of the ten principal stockholders of Santa Fe as of March 11, 1955 and their respective holdings are:

	Preferred	*Comm*
The Equitable Life Assurance Society of the United States 393 Seventh Avenue New York, New York	147,200	24,3
Trustees of the Massachusetts Investors Trust under a Declaration of Trust dated March 21, 1924 200 Berkeley Street Boston, Massachusetts		120,0
Mac & Co. c/o Mellon National Bank and Trust Company P. O. Box 926 Pittsburgh, Pennsylvania	54,776	39,8
Sigler & Co. c/o The Hanover Bank 70 Broadway New York, New York	68,722	37,8
King & Co. c/o City Bank Farmers Trust Co. 22 William Street New York, New York	42,304	59,3
Atwell & Co. c/o United States Trust Company of New York 45 Wall Street New York 5, New York	29,553	31,3
New York Life Insurance Co. 51 Madison Street New York, New York	38,400	17,4
Metropolitan Life Insurance Co. One Madison Street New York, New York	50,000	
The Prudential Insurance Company of America 763 Broad Street Newark, New Jersey	49,000	
Shaw & Co. c/o J. P. Morgan & Co., Inc. 23 Wall Street New York 5, New York	15,170	32,3

[fol. 150] The names and business addresses of the ten principal stockholders of Pennsylvania Railroad as of May 11, 1955 and their respective holdings are:

Merrill Lynch, Pierce, Fenner & Beane 70 Pine Street, New York, N. Y.	905,111
Societe de Banque Suisse Basle, Switzerland	335,914
Credit Suisse Zurich, Switzerland	292,751
Bache & Co. 36 Wall St., New York, N. Y.	216,192
Francis I. duPont & Co. 1 Wall St., New York, N. Y.	148,112
Harris, Upham & Co. 120 Broadway, New York, N. Y.	141,301
Union Pacific R. R. Co. 120 Broadway, New York, N. Y.	115,200
E. F. Hutton & Co. 61 Broadway, New York, N. Y.	104,391
Swiss Bank Corporation Basle, Switzerland	97,363
W. E. Hutton & Co. 14 Wall St., New York, N. Y.	94,745

The entire outstanding capital stock of Pennsylvania Company, consisting of 2,492,500 shares, is owned by Pennsylvania Railroad.

2. Not applicable.

3. Not applicable.

4. Not applicable.

5. Not applicable.

6. Santa Fe has been continuously engaged in interstate commerce as a carrier by railroad since approximately the date it was organized in 1895.

Pennsylvania Railroad has been continuously engaged in interstate commerce during the entire period of its corporate existence since 1846.

The activities of Pennsylvania Company are confined primarily to the ownership of securities of carriers subject

[fol. 151] to the Interstate Commerce Act. It has not operated a railroad since January 1, 1918.

7. Neither the Santa Fe nor Pennsylvania Railroad is owned or controlled by any other corporation or corporations. Pennsylvania Company is controlled by Pennsylvania Railroad through ownership of all of its capital stock other than certain qualifying shares.

8. and 9. The Santa Fe Trail Transportation Company, a motor carrier subject to Part II of the Interstate Commerce Act, whose stock is owned by Santa Fe, owns approximately 32 per cent of the stock of, but does not control, Transcontinental Bus System, Inc., which is also a motor carrier. The measure of control or ownership exercised by Santa Fe over other corporations subject to the Interstate Commerce Act, or over the properties thereof, and also the relationship of Santa Fe to any system or group of corporations, is shown in the following schedules of Santa Fe's 1954 Annual Report to the Commission: 1043, 217, 218, 295 and 383.

The measure of control or ownership exercised by Pennsylvania Railroad and Pennsylvania Company over other carrier corporations subject to the Interstate Commerce Act, or over the properties thereof, is shown in their respective annual reports to the Commission for the year ending December 31, 1954 under Schedules 104, 217, 218 and 220 and to which reference is hereby made. Pennsylvania Railroad is the Parent company in the Pennsylvania Railroad System. The relationship of Pennsylvania Railroad to other members of the Pennsylvania Railroad System, or other groups of corporations, is shown in its annual report to the Commission for the year ending December 31, 1954, to which reference is hereby made.

Pennsylvania Company is a part of the Pennsylvania Railroad system. The relationship of Pennsylvania Company to other members of the Pennsylvania Railroad sys- [fol. 152] tem or other groups of corporations, is shown in its annual report to the Commission for the year ending December 31, 1954 to which reference is hereby made.

10. There are no intercorporate relationships not disclosed in response to prior instructions.

11. Not applicable to Santa Fe.

Pennsylvania Railroad and Pennsylvania Company have identical directors as shown above in item (b)1.(2). The respective officers of both applicants are shown above in item (b)1.(3). However, no authorizations are outstanding in connection with such positions in common since Pennsylvania Company is not subject to Section 20a(12) of the Interstate Commerce Act.

12. As of March 11, 1955, Santa Fe had outstanding 2,483,456 shares of $50 par value preferred stock and 4,854,120 shares of $50 par value common stock. The total number of holders of record on such date of common stock was 39,663 and of the preferred stock, 18,535 or a total of 58,198 stockholders. Each share of stock entitles the owner to one vote and voting rights are attached to no securities other than stock. The total voting power of the Santa Fe's common and preferred stock was 7,337,576 shares.

As of May 11, 1955, the outstanding stock of Pennsylvania Railroad consisted of 13,167,754 shares of common stock with par value of $50 a share. Each share is entitled to one vote at all corporate meetings or elections. No other security holders are entitled to vote. The number of shareholders of record as of May 11, 1955, was 146,711.

As of May 11, 1955, the outstanding capital stock of Pennsylvania Company consisted of 2,492,500 shares of common stock of the par value of $50 a share. Each share is entitled to one vote at all corporate meetings or elections. No other security holders are entitled to vote. The [fol. 153] number of shareholders of record total 23. Of said number, 22 hold stock for qualifying purposes, the remaining shares being in the ownership of The Pennsylvania Railroad Company.

(c) Information respecting the nature of the transaction proposed and the terms and conditions thereof.

1. The proposed transaction for which approval is sought is the joint acquisition of control of TP&W by Santa Fe and Pennsylvania Railroad through purchase of its capital stock in equal amounts by Santa Fe and by

Pennsylvania Company, a wholly-owned subsidiary of Pennsylvania Railroad.

2. The proposed acquisition of control is to be effected by purchase of the stock of TP&W pursuant to certain agreements entered into or being entered into by Santa Fe and the holders thereof and pursuant to an agreement between Santa Fe, Pennsylvania Railroad and Pennsylvania Company which provides for the sale of a part of said TP&W stock by Santa Fe to Pennsylvania Company to the end that each of the two companies shall own 50 per cent of the total amount of stock acquired from all sources.

Santa Fe has entered into agreements for the purchase of 89,296 shares of TP&W stock at $135 per share as follows:

73,800 shares from the Trustees under the Will of George P. McNear, Jr. by agreement dated as of May 26, 1955 (Exhibit 7).

13,142 shares from The Hanover Bank by agreement dated as of June 1, 1955 (Exhibit 7-a).

792 shares, 198 shares each, from Clara McNear Leppo, Miriam McNear Korbel, E. Denman McNear and Louise McNear Naffziger by agreement dated June 2, 1955 (Exhibit 7-b).

[fol. 154] 1,562 shares, 1,035 shares from J. Russel Coulter and 527 shares from the Executors of the Estate of Clinton M. McNear by agreement dated as of June 2, 1955 (Exhibit 7-c).

The 89,296 shares of TP&W stock covered by the aforesaid agreements represent 99.2 per cent of the total of 90,000 shares outstanding and Santa Fe expects to complete an agreement for purchase of the remaining 704 shares in the near future.

The agreement between Santa Fe, Pennsylvania Railroad and Pennsylvania Company, dated as of June 28, 1955 (Exhibit 7-d), provides for the sale by Santa Fe to Pennsylvania Company at $135 per share of 45,000 shares of the capital stock of TP&W or such lesser number of shares as will make Santa Fe and Pennsylvania Company each the owner of 50 per cent of the stock of TP&W acquired from all sources. The agree-

ment also provides for the future operation of TP&W as a separate and independent carrier, soliciting traffic in its own interests and with a majority of its board of directors composed of prominent citizens not connected with applicants; for the maintenance and improvement of its properties, including line and equipment, in keeping with the requirements of a railroad of its character and importance; and for the maintenance of all existing routes and channels of trade without discrimination between connecting lines of railroad.

Each of the agreements described above provides for consummation of the purchase of the stock within a reasonable time after approval by the Commission. The purchase price is to be paid upon delivery of the stock at time of settlement in cash or by certified, cashier's or treasurer's check.

3. There is no financial or other relationship, direct or [fol. 155] indirect, not disclosed in response to prior instructions, existing at the present time between applicants and other parties to the proposed transaction to which this application relates.

4. The route and termini of TP&W are as follows:

From the eastern terminus of Effner at the Illinois-Indiana state line via Peoria, Illinois to the western termini of Lomax, Illinois and Keokuk, Iowa, with a branch from Hamilton, Illinois to Warsaw, Illinois.

The principal points of interchange are with Pennsylvania Railroad at Effner, with Santa Fe at Lomax and with several railroads at Peoria. Other points of interchange are as follows: Keokuk, Iowa; and Sheldon, Webster, Watseka, Gilman, Forrest, Fairbury, Honegger, Chenoa, El Paso, Eureka, Washington, Farmdale, Canton, Cuba, Bushnell, Ferris, Elvaston and Hamilton, all in Illinois.

The mileage of TP&W consists of 234.4 miles of main line and 5 miles of branch line.

5. All the property of TP&W is involved in the proposed acquisition of control.

6. The value of the property of TP&W involved in the proposed transaction, as found by the Commission, and the

net cost of additions and betterments made after valuation date to and including December 31, 1954, are:

Owned and used—Final value (19a 6-30-17)		$ 7,006,050
Owned and not used—Final value (19a 6-30-17)		238,134
Less working capital (19a 6-30-17)	Cr	122,800
Net owned—carrier—6-30-17		7,121,384
Additions and betterments		5,708,109
Total carrier owned		12,829,493
Non-carrier (19a 6-30-17)		16,500
Non-carrier Net additions and betterments		749,974
Total owned—carrier and non-carrier		13,595,967

7. Santa Fe and Pennsylvania Railroad, in compliance with the Commission's Order in Docket No. 15100, adopted [fol. 156] depreciation accounting on road property effective January 1, 1943, and have accrued depreciation on such property since that date.

Contrary to the general practice of railroad companies, TP&W began accruing depreciation on depreciable road property on January 1, 1931 and its accruals up to December 31, 1942 amounted to $702,950. Since January 1, 1943, depreciation on road property has been accrued in accordance with the Commission's regulations. Compared, therefore, to most Class I Railroads, the road depreciation accruals on the balance sheet of TP&W are overstated.

Depreciation rates by classes of property are shown in detail for road and equipment in Schedule 211B of Santa Fe, Pennsylvania Railroad and TP&W Annual Reports filed with the Commission for the year 1954.

8. The stock of TP&W, which Santa Fe and Pennsylvania Company propose to acquire, is not listed on any exchange but its market value has been established at $135 per share by the amounts bid for the stock when recently offered for sale.

9. No obligation or liability with respect to any securities is to be assumed in connection with the proposed transaction.

10. The proposed transaction is not a consolidation or merger.

[fol. 157] (d) Facts and circumstances relied upon to show that the proposed transaction is within the scope of section 5(2)(a) of the Interstate Commerce Act, will be consistent with the public interest, and will otherwise be within the requirements of section 5, particularly:

1. In respect of the proposed transaction applicants state:

(1) The Trustees under the Will of George P. McNear, Jr., owners of 82 per cent of the total outstanding capital stock of TP&W, desire to sell their controlling interest in the company in order to diversify the holdings of the trust estate. Under these circumstances, the acquisition of such control by Santa Fe and Pennsylvania Railroad will definitely promote the public interest. The Commission has recognized that it is in the public interest for control to pass from non-carrier interests, which no longer desire it, to carrier auspices.

Santa Fe and Pennsylvania Railroad are the logical roads to acquire control of TP&W. They are its principal connections. Situated as it is, between Santa Fe and Pennsylvania Railroad, TP&W provides a vital link, essential to the type of through service which is becoming increasingly important not only to the shipping public but to the railroads as well. The tremendous recent expansion of the West and Southwest, the greater portion of which is served by Santa Fe with its own rails, together with the industrial East, a large portion of which is served by Pennsylvania Railroad with its own rails, has placed a premium on fast, strong and reliable through transportation service. TP&W, as a directly east and west line, supplies the short-line connection for providing this through service with a minimum of delay.

By acquiring control of TP&W, Santa Fe and Pennsylvania Railroad will not only strengthen their own freight [fol. 158] service, but will also materially increase the ability of TP&W to serve its own public and its other rail-

road connections. The successful operation of TP&W under the ownership of George P. McNear, Jr. and its development as an important bridge line began with the establishment of the interchange connection with Santa Fe at Lomax, Illinois in 1927. Since that time the through traffic interchanged with Santa Fe at Lomax and Pennsylvania Railroad at Effner has contributed substantially to the prosperity of TP&W. By interchanging with these two roads, TP&W receives a maximum haul. The revenue it receives from traffic interchanged at Lomax and Effner with Santa Fe and Pennsylvania Railroad is substantially greater than its entire revenue from other sources. Control by Santa Fe and Pennsylvania Railroad will assure continuance of this profitable and desirable interchange service. The support of these two strong railroad systems will also increase the stability of TP&W and thus encourage location of new industries along its lines.

(2) The financial consideration involved in the proposed transaction is supported by the good earnings and dividends record of TP&W, by the value of its properties and by the excellent prospects for future growth and development under joint control by Santa Fe and Pennsylvania Railroad. This should insure revenues amply sufficient to meet fixed charges and provide satisfactory net earnings available for dividends. Applicants consider that the purchase of TP&W stock will prove to be a sound and profitable investment. An additional advantage of joint control by applicants will be the retention of future dividend payments within the railroad industry.

(3) The proposed transaction will result in a continuation and improvement of the present transportation service to the public which has been the factor primarily re- [fol. 159] sponsible in building up the traffic volume and earnings of the TP&W, particularly as a bridge route.

(4) No increase in total fixed charges will result from the proposed transaction.

(5) As the proposed transaction will insure continuation of the present independent management and operation of TP&W, it is obviously in the interest of the employees of that carrier.

(6) No guarantee or assumption of payment of dividends or fixed charges is contemplated in the transaction.

2. As the proposed transaction involves railroads, applicants further state:

(1) The public interest will not be adversely affected by not including other railroads in the territory involved in the proposed transaction. The strengthening of TP&W, which will result from the acquisition of control by Santa Fe and Pennsylvania Railroad, will enable it to improve its connecting service with all railroads. Applicants propose to continue the present independent management and operation of TP&W and consummation of the proposed transaction will bring about no change in the TP&W as a route open to all roads on an equal basis. Existing interchange points will be kept open and maintained. Existing through routes and other traffic arrangements will be continued in effect.

(2) Since the present independent management and operation of TP&W will be continued, there is no occasion to impose terms and conditions under Section 5(2)(f) of the Interstate Commerce Act.

(3) Not applicable, as the proposed transaction does not involve a carrier by water subject to Part III of the Interstate Commerce Act.

[fol. 160]

II. Exhibits.

(a) The following exhibits are attached hereto and made a part hereof, or, having been filed in other proceedings, are made a part hereof by reference:

A. A copy of the charter or articles of incorporation of each of the applicants, with all amendments thereof to date, certified by the proper public officer, was filed in Finance Docket applications as follows:

Santa Fe, F. D. 17385;
Pennsylvania Railroad, F. D. 1217;
Pennsylvania Company, F. D. 13235.

Copy of the by-laws of each applicant, with amendments to date, attested by a proper corporate officer, was filed in Finance Docket applications as follows:

Santa Fe, F. D. 18555;
Pennsylvania Railroad, F. D. 18345;
Pennsylvania Company, F. D. 18752.

B. Authenticated copies of the annual reports of Santa Fe, Pennsylvania Railroad, and Pennsylvania Company for the years 1953 and 1954 are attached to the original copy of this application, marked Exhibit B.

(b) The following exhibits are filed with the original application, and with each copy, as a part thereof, except as otherwise stated:

1. Authenticated copies of resolutions of the Board of Directors and the Executive Committee of the Board of Directors of Santa Fe, Pennsylvania Railroad, and Pennsylvania Company are attached hereto and marked Exhibits 1, 1-a, 1-b, 1-c, and 1-d.

2. Resolutions of the Board of Directors of each applicant designating by name and for that purpose the [fol. 161] executive officer by whom this application is signed and verified on its behalf are contained in Exhibits 1-b, 1-c, and 1-d.

3. Not applicable.

4. Not applicable.

5. Opinions of counsel for Santa Fe, Pennsylvania Railroad and Pennsylvania Company indicating that the proposed transaction meets the requirements of law are attached hereto and marked Exhibits 5, 5-a, and 5-b.

6. A map indicating the routes of each applicant and of the TP&W, also showing the carriers connecting with the TP&W, is attached hereto marked as Exhibit 6. There are also transmitted three extra copies of this map for the use of the Commission.

7. Copies of the following contracts which have been entered into pertaining to this transaction are attached hereto:

EXHIBIT 7.

Stock purchase agreement between Santa Fe and the Trustees under the Will of George P. McNear, Jr. See also Exhibit 7-f.

EXHIBIT 7-a.

Stock purchase agreement between Santa Fe and The Hanover Bank.

EXHIBIT 7-b.

Stock purchase agreement between Santa Fe and Clara McNear Leppo, Mirjam McNear Korbel, E. Denman McNear, and Louise McNear Naffziger. See also Exhibit 7-c.

EXHIBIT 7-c.

Stock purchase agreement between Santa Fe and J. Russel Coulter and William McDowell Frederick and Commercial National Bank of Peoria, Executors of the Estate of Clinton M. McNear. See also Exhibit 7-c.

[fol. 162] EXHIBIT 7-d.

Agreement between Santa Fe, Pennsylvania Railroad, and Pennsylvania Company for sale of TP&W stock to Pennsylvania Company. See also Exhibit 7-g.

EXHIBIT 7-e.

Option Agreement between TP&W and individual shareholders, referred to in Exhibits 7-b and 7-c.

EXHIBIT 7-f.

Letter of April 15, 1955, signed by Santa Fe and Jos. W. Chinn and J. Sellers Bancroft for the Trustees under the Will of George P. McNear, Jr. and referred to in Exhibit 7.

EXHIBIT 7-g.

Letter of April 15, 1955 signed by Pennsylvania Company and Jos. W. Chinn and J. Sellers Bancroft for the Trustees under the Will of George P. McNear, Jr. and referred to in Exhibit 7-d.

8. The following general balance sheet statements are attached hereto:

Santa Fe, Exhibit 8;
Pennsylvania Railroad, Exhibit 8-a;
Pennsylvania Company, Exhibit 8-b;
TP&W, Exhibit 8-c.

9. The following income and earned surplus statements are attached hereto:

Santa Fe, Exhibit 9;
Pennsylvania Railroad, Exhibit 9-a;
Pennsylvania Company, Exhibit 9-b;
TP&W, Exhibit 9-c.

10. Not applicable.

11. Not applicable.

12. Not applicable.

[fol. 163] Wherefore, applicants respectfully pray for an order approving this application and authorizing the transaction herein described, pursuant to Section 5(2) of the Interstate Commerce Act.

Respectfully submitted,

The Atchison, Topeka and Santa Fe Railway Company,

By s/ E. S. Marsh,
Its Vice President—Finance.

The Pennsylvania Railroad Company,

By s/ David C. Bevan,
Its Vice President in charge of Finance.

Pennsylvania Company,

By s/ David C. Bevan,
Its Vice President.

JOHN B. PRIZER,

EDWIN A. LUCAS,
1740 Suburban Station Building,
Philadelphia 4, Pennsylvania,
Attorneys for The Pennsylvania Railroad Company and Pennsylvania Company.

J. C. GIBSON,

R. S. OUTLAW,

SAM'L THOMAS,
80 East Jackson Boulevard,
Chicago 4, Illinois,
Attorneys for The Atchison, Topeka and Santa Fe Railway Company.

Dated July 7, 1955.

[fol. 164] *Data sworn to by E. S. Marsh and David C. Beane; jurats omitted in printing.*

[fol. 167]

EXHIBIT I TO APPLICATION.

THIS IS TO CERTIFY that at a regular meeting of the Board of Directors of The Atchison, Topeka and Santa Fe Railway Company held in the City of New York, State of New York, on the 26th day of May, 1955, at which meeting there were present twelve Directors, being more than a quorum, the following action was unanimously taken, as appears from the records of said meeting.

RESOLVED, that the resolution adopted by this Board April 26, 1955, authorizing purchase by this Company of 23,400 shares of the capital stock of the Toledo, Peoria & Western Railroad Company is hereby rescinded and that the President is hereby authorized to expend not to exceed Nine Million Nine Hundred Sixty-three Thousand Dollars ($9,963,000.00) for the purchase of 73,800 shares of such

stock from Wilmington Trust Company of Wilmington, Delaware, and Guy A. Gladson of Miami, Florida, Co Trustees under the Will of George P. McNear, Jr., provided, however, that nothing contained in this resolution shall in any way impair the validity of any action taken under said resolution of April 26, 1955;

FURTHER RESOLVED, that this Board hereby authorizes the President or any Vice President to execute a contract or contracts providing for the purchase of such stock of the Toledo, Peoria & Western Railroad Company in such form as the President, with the advice of counsel, shall deem advisable;

FURTHER RESOLVED, that this Board hereby authorizes and approves the making and filing by this Company either severally or jointly with another railroad or railroads of such application or applications as are required by any provisions of the Interstate Commerce Act for the lawful accomplishment of the transaction provided for by said contract or contracts;

[fol. 168] FURTHER RESOLVED, that F. G. Gurley, President, R. G. Rydin, Vice President, J. C. Gibson, Vice President and General Counsel, E. S. Marsh, Vice President-Finance, or R. S. Outlaw, General Solicitor, is hereby authorized and designated to verify and file with the Interstate Commerce Commission such application or applications and to supply such statements or information as shall be appropriate or required in connection therewith.

A TRUE COPY.

ATTEST:

(SEAL)

R. M. HOGIN
Assistant Secretary, The Atchison, Topeka and Santa Fe Railway Company.

[fol. 169]

EXHIBIT 1-A TO APPLICATION.

THIS IS TO CERTIFY that at a meeting of the Executive Committee of the Board of Directors of The Atchison, Topeka and Santa Fe Railway Company held in the City of Chicago, State of Illinois, on the 1st day of June, 1955, at which meeting there were present six Members of the Committee, being more than a quorum, the following action was unanimously taken, as appears from the records of said meeting:

The President stated that pursuant to the Resolution adopted by the Board of Directors on May 26, 1955, this Company had entered into an agreement with the Trustees under the Will of George P. McNear, Jr., to purchase, subject to the approval of the Interstate Commerce Commission, 73,800 shares or 82 per cent of the outstanding capital stock of the Toledo, Peoria & Western Railroad Company for a total purchase price of $9,963,000 and recommended that this Company purchase from the individual and corporate holders thereof the remainder of the capital stock of the said Railroad amounting to 16,200 shares at a purchase price of $135 per share, or a total purchase price of $2,187,000, subject to the approval of the Interstate Commerce Commission.

On motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED, That subject to the approval of the Interstate Commerce Commission, this Committee hereby authorizes and approves the purchase by this Company of 16,200 shares of the capital stock of the Toledo, Peoria & Western Railroad Company from the individual and corporate holders thereof at a price of not more than $135 per share, or a total purchase price of $2,187,000, and the execution on behalf of this Company by the President or any Vice President of contracts providing for such purchase in such [fol. 170] form as the President with the advice of counsel shall deem advisable;

FURTHER RESOLVED, That the authority granted by the Board of Directors in its Resolutions adopted May 26,

1955, for the filing, verification, and prosecution of an application or applications under the Interstate Commerce Act for approval of the purchase of 73,800 shares of the capital stock of the Toledo, Peoria & Western Railroad Company, be and the same is hereby expanded to include all such steps as may be necessary to secure approval under the Interstate Commerce Act of the additional purchase of the 16,200 shares of such stock herein authorized.

A TRUE COPY.

ATTEST:

W. L. CAMP
Assistant Secretary, The Atchison, Topeka and Santa Fe Railway Company.

(SEAL)

[fol. 171]

EXHIBIT I-B TO APPLICATION.

THIS IS TO CERTIFY that at a regular meeting of the Board of Directors of The Atchison, Topeka and Santa Fe Railway Company held in the City of Chicago, State of Illinois, on the 28th day of June, 1955, at which meeting there were present twelve Directors, being more than a quorum, the following action was unanimously taken, as appears from the records of said meeting.

[fol. 172] RESOLVED, That subject to the approval of the Interstate Commerce Commission, this Board hereby authorizes and approves the sale to Pennsylvania Company by this Company at $135 per share, of such number of shares of the capital stock of the Toledo, Peoria & Western Railroad Company as will make each of the two Companies the owner of 50 per cent of the total amount of such stock available for purchase;

FURTHER RESOLVED, That in connection with the sale of such stock, this Board hereby authorizes and approves the execution on behalf of this Company by the President or any Vice President of a contract providing for such sale in such form as the President with the advice of counsel shall deem advisable;

FURTHER RESOLVED, That the authority granted by the Board of Directors in its Resolution adopted May 26, 1955, and the authority granted by the Executive Committee of the Board of Directors in its Resolution adopted June 1, 1955, for the filing, verification, and prosecution of an application or applications under the Interstate Commerce Act for approval of the purchase of 90,000 shares of the capital stock of the Toledo, Peoria & Western Railroad Company, be and the same is hereby expanded to authorize the making, filing and prosecution by this Company of a joint application with the Pennsylvania Company and The Pennsylvania Railroad Company for the approval of the transactions provided for in said contract and in the contracts entered into pursuant to the Resolutions dated May 26 and June 1, 1955, under any provisions of the Interstate Commerce Act which require such authorization for the lawful accomplishment thereof;

FURTHER RESOLVED, That E. G. Gurley, President, R. G. Rydin, Vice President, J. C. Gibson, Vice President and General Counsel, E. S. Marsh, Vice President-Finance, or R. S. Outlaw, General Solicitor, is hereby authorized and
[fol. 173] designated to verify and file with the Interstate Commerce Commission such application or applications and to supply such statements or information as shall be appropriate or required in connection therewith.

A TRUE COPY.

ATTEST:

R. M. HOGIN
Assistant Secretary, The Atchison, Topeka and Santa Fe Railway Company.

(SEAL)

[fol. 174]

EXHIBIT I-C TO APPLICATION.

THE PENNSYLVANIA RAILROAD COMPANY
Office of the Secretary
General Office, Philadelphia

I HEREBY CERTIFY that the following is a true and correct copy, from the minutes, of action taken at a meeting of the

Board of Directors of The Pennsylvania Railroad Company, held at the General Office of the Company, in the City of Philadelphia, on June 22, 1955:

RESOLVED that the Board approves and authorizes the acquisition by this Company of such control of Toledo, Peoria & Western Railroad Company, or of the properties of said company, as may result from the purchase by Pennsylvania Company of shares of stock of Toledo, Peoria & Western Railroad Company; and J. M. Symes, President, David C. Bevan, Vice-President, P. D. Fox, Assistant Vice-President in charge of Finance, or W. R. Gerstnecker, Treasurer, is authorized to sign, verify and file on behalf of this Company such applications or petitions to the Interstate Commerce Commission as may be required in connection with such transaction.

RESOLVED that the proper officers of the Company are severally authorized to execute, deliver, file, record and approve, or to cause to be executed, delivered, filed, recorded and approved, under the corporate seal of the Company, or otherwise, any and all agreements, contracts, certificates, documents and papers, and to do all such acts and things, as may be necessary or appropriate to effectuate and carry out the acquisition by Pennsylvania Company of stock of Toledo, Peoria & Western Railroad Company.

ATTEST:

/s/ BAYARD H. ROBERTS
BAYARD H. ROBERTS
Secretary

(SEAL)

[fol. 175]

EXHIBIT 1-D TO APPLICATION.

PENNSYLVANIA COMPANY
Office of the Secretary

I HEREBY CERTIFY that the following is a true and correct copy, from the minutes of action taken at a meeting of the Board of Directors of the above-named Company, held June 22, 1955:

RESOLVED that the Board approves and authorizes the purchase from The Atchison, Topeka and Santa Fe Rail

way Company of 45,000 shares of stock of Toledo, Peoria & Western Railroad Company, or 50% of such lesser number of shares as The Atchison, Topeka and Santa Fe Railway Company may acquire, at a price of not more than $135. per share, or an aggregate purchase price of not exceeding $6,075,000. (plus any taxes and expenses), and the President, any Vice-President, or the Treasurer, is authorized to execute and deliver a contract providing for such purchase, subject to any required approval of the Interstate Commerce Commission, said contract to be in such form and to contain such terms and provisions as may be approved by the officer executing the same, such execution by said officer to be conclusive evidence of his approval thereof.

RESOLVED that J. M. Symes, President, David C. Bevan, Vice-President, or W. R. Gerstnecker, Treasurer, is hereby authorized to sign, verify and file such applications or petitions to the Interstate Commerce Commission as may be required in connection with the purchase of shares of stock of Toledo, Peoria & Western Railroad Company, including an application or petition for joint control of said railroad company, or of its properties.

RESOLVED that the proper officers of the Company are severally authorized to execute, deliver, file, record and approve, or to cause to be executed, delivered, filed, re-
[fol. 176] corded and approved, under the corporate seal of the Company, or otherwise, any and all certificates, instruments, documents and papers, including supplements to or amendments of the above-authorized stock purchase contract, and to do all such acts and things as may be necessary or appropriate to effectuate the foregoing transaction, including taking such action as may be required by orders of the Interstate Commerce Commission.

ATTEST:

/s/ BAYARD H. ROBERTS
BAYARD H. ROBERTS
Secretary.

(SEAL)

[fol. 177]

EXHIBIT 2:

See Exhibits 1-b, 1-c and 1-d.

EXHIBIT 3:

Not Applicable.

EXHIBIT 4:

Not Applicable..

[fol. 178]

EXHIBIT 5 TO APPLICATION.

To the Interstate Commerce Commission, Washington, D. C.

I am General Attorney and Commerce Counsel of The Atchison, Topeka and Santa Fe Railway Company and am familiar with the foregoing application. In my opinion the transactions therein described so far as said Railway Company is concerned meet the requirements of law and will be legally authorized and valid if approved by the Commission, and are within the charter powers of said Railway Company.

/s/ STARR THOMAS
STARR THOMAS
General Attorney and Commerce Counsel.

[fol. 179]

EXHIBITS 5-A AND 5-B TO APPLICATION.

The Interstate Commerce Commission
Washington 25, D. C.

GENTLEMEN:

As counsel for both The Pennsylvania Railroad Company and Pennsylvania Company, I have examined the Application which is being filed with your Commission for approval and authorization of joint control of the Toledo,

Peoria and Western Railroad Company by The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company through purchase of its capital stock by The Atchison Topeka and Santa Fe Railway Company and Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company.

It is my opinion that the transaction as described in said Application is within the corporate powers of The Pennsylvania Railroad Company and Pennsylvania Company; meets the requirements of the law and will be legally authorized and valid, if approved by the Interstate Commerce Commission.

Respectfully,

/s/ EDWIS A. LUCAS
EDWIS A. LUCAS
Counsel for Applicants, The Pennsylvania Railroad Company and Pennsylvania Company.

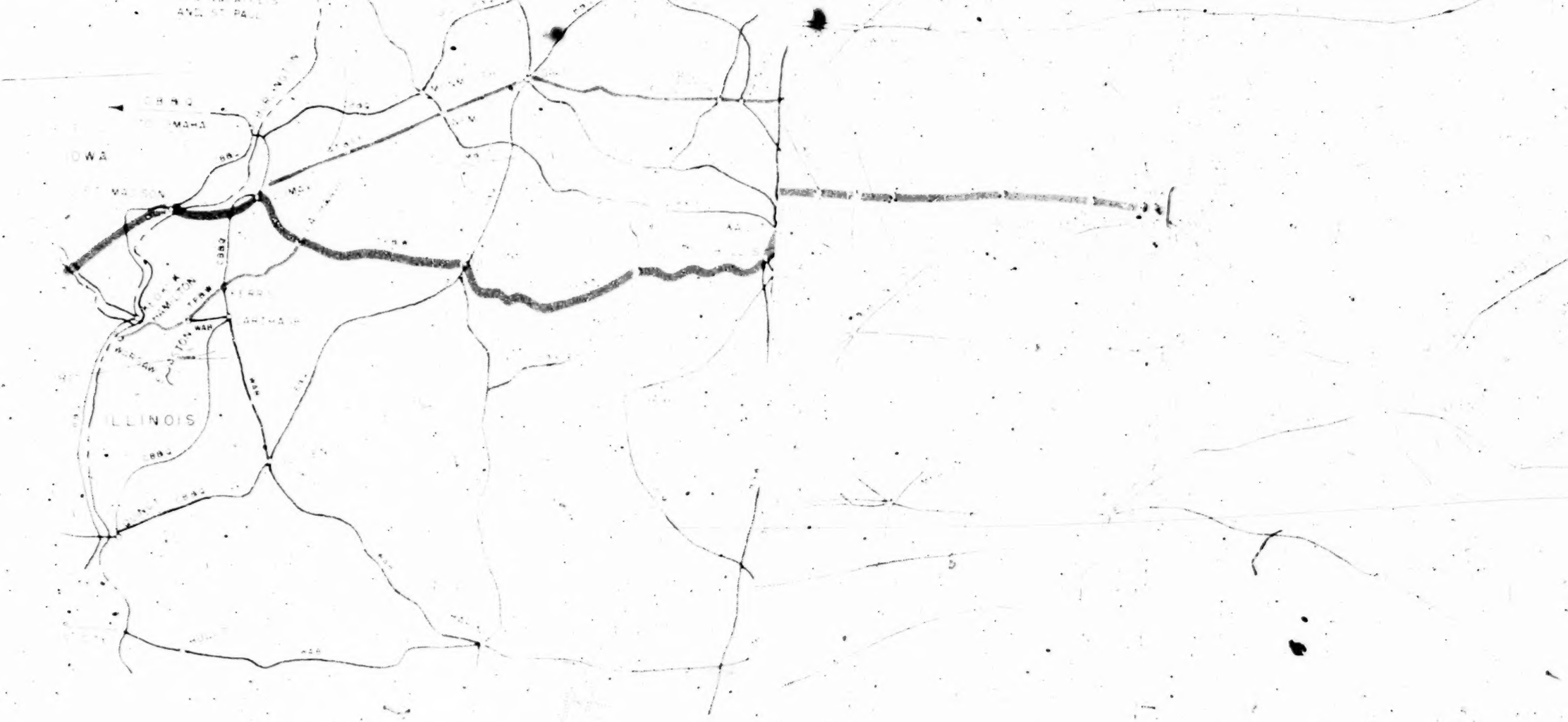
[fol. 180]

EXHIBIT 6 TO APPLICATION.

(See Opposite) ☞







TOLEDO, PEORIA & WESTERN RR
ATCHISON, TOPEKA & SANTA FE RY
PENNSYLVANIA RR
CHICAGO & EASTERN ILLINOIS RR
CHICAGO & ILLINOIS MIDLAND RY
CHICAGO & NORTH WESTERN RY
CHICAGO, BURLINGTON & QUINCY RR
CHICAGO, MILWAUKEE, ST PAUL & PACIFIC RR
CHICAGO, ROCK ISLAND & PACIFIC RR

[fol. 181]

EXHIBIT 7 TO APPLICATION.

This Agreement dated as of May 26, 1955, between The Wilmington Trust Company (hereinafter sometimes called the "Trust Company"), a corporation organized under the laws of the State of Delaware, and Guy A. Gladson, an individual, residing in Miami, Florida, Trustees under the Will of George P. McNear, Jr., (hereinafter together called "Trustees"), parties of the first part, and The Atchison, Topeka and Santa Fe Railway Company, a corporation organized under the laws of the State of Kansas (hereinafter called "Santa Fe"), party of the second part,

WITNESSETH:

That on April 15, 1955, Trustees and the Santa Fe exchanged copies of a letter which contemplated the sale of 23,400 shares of the capital stock of the Toledo, Peoria and Western Railroad Company (hereinafter called "T. P. & W.") at a price of $100 per share to Santa Fe for an aggregate purchase price of $2,340,000. A dispute between the parties has subsequently arisen with respect to the legally binding effect of said letter of April 15, 1955. It is the desire of the parties to settle the aforementioned dispute, and to carry out the sale of stock contemplated by said letter in the light and within the intent of such settlement. In addition, Santa Fe wishes to purchase and Trustees desire to sell the remainder of the capital stock of the T. P. & W. now held by Trustees, namely, 50,400 additional shares.

AGREEMENT.

NOW, THEREFORE, for and in consideration of the premises and of the mutual undertakings and obligations herein contained and expressed, the parties agree as follows:

SECTION 1. Pursuant to the objectives of the letter of April 15, 1955, Trustees agree to sell and Santa Fe agrees to buy 23,400 shares of the capital stock of the T. P. & W. at a price of $100 per share, for an aggregate purchase [fol. 182] price of $2,340,000; and in settlement of the dispute regarding the legally binding effect of said letter of

April 15, 1955, Santa Fe agrees to pay to Trustees for said 23,400 shares the additional sum of $35 per share, or an aggregate additional amount of $819,000.

SECTION 2. Trustees agree to sell and Santa Fe agrees to buy an additional 50,400 shares of capital stock of the T. P. & W. (being all of the remaining shares of the T. P. & W. held by Trustees) at a price of $135 per share, for an aggregate purchase price of $6,804,000. It is understood, however, that a question may exist as to the ability of Trustees to sell to Santa Fe 23,400 of said 50,400 shares, but Trustees shall sell and deliver and Santa Fe shall buy and receive said 23,400 shares if, in the opinion of counsel for Santa Fe, Trustees are able to deliver good title to such shares and if, in the opinion of counsel for Trustees, Trustees will not incur liability to others by reason of such sale and delivery.

SECTION 3. The purchase of the stock of T. P. & W. provided in this agreement is subject to the approval of the Interstate Commerce Commission; and Santa Fe agrees that it will promptly file and diligently prosecute an application or applications to the Interstate Commerce Commission for authority to carry out the transaction herein proposed. Trustees will, in all reasonable ways, cooperate with Santa Fe in the prosecution of such application and the assembly of data pertinent to its presentation and consideration. Settlement hereunder shall take place not more than a reasonable time, which shall not exceed sixty days after the order of the Interstate Commerce Commission granting its approval has become effective.

In the event approval of the purchase of the stock of T. P. & W. by Santa Fe shall be denied by the Interstate Commerce Commission and the order of the Commission shall become final, and any proceedings instituted in court [fol. 183] to set aside such an order shall have been finally terminated without said order having been set aside, then this agreement shall cease and determine.

SECTION 4. Trustees represent and warrant to Santa Fe that:

(a) The shares of stock of T. P. & W. delivered to Santa Fe will be free and clear of all liens, encumbrances, trusts or obligations of any kind or nature.

(b) No approval of the sale of said shares of stock is required to be obtained by them, or either of them, from any court, heirs, or other person under the terms of the Will of George P. McNear, Jr., or otherwise.

SECTION 5. Trustees agree that, between the date hereof and the date of settlement, if it is within their power or control, they will not cause or permit T. P. & W., without first obtaining the consent of Santa Fe, to increase the amount of capital stock outstanding of the T. P. & W., impair its capital, waste its assets, declare dividends in excess of earnings of the year in which said dividends are declared and earnings of the year immediately preceding said year available for dividends and not theretofore distributed, make any unusual expenditures, or incur voluntarily any unusual debts or obligations, in an amount sufficient in either case to affect substantially and adversely the value of the stock to be sold pursuant to the terms hereof; except that between the date hereof and the date of settlement or the date December 31, 1957, whichever of the latter two dates is the earlier, no declarations or payments of dividends may be made in any year totaling more than 50 per cent of the net earnings of the T. P. & W. for such year available for dividends; it being understood that in any event quarterly dividends may be declared on the basis of estimated earnings, and to the extent such estimated earnings prove incorrect, appropriate adjustment shall be made in a subsequent dividend or dividends.

[fol. 184] SECTION 6. Settlement hereunder shall be made at the office of the Trust Company in Wilmington, Delaware, or at such other place as Trustees may designate. All transfer taxes with respect to the sale of the stock are to be paid by Trustees. Stock certificates are to be delivered at settlement with all endorsements or assignments necessary for transfer of the stock. Payment of the sums provided for in Sections 1 and 2 hereof shall be made by Santa

Fe upon such delivery in cash, or by certified check, or cashier's or treasurer's check to the order of Trustees. If settlement for the stock is made on a payment date for the payment of a quarterly dividend, such dividend shall be paid, endorsed or assigned to Trustees by Santa Fe. If settlement for the stock is made on a date other than a payment date for the payment of a quarterly dividend, the next succeeding quarterly dividend on such shares of stock (and also any extra dividend which may be paid during such quarter-yearly period) shall be apportioned to the date of settlement, and Santa Fe shall pay to Trustees their pro-rata portion thereof promptly after the receipt of such dividend. The sum payable to Trustees by Santa Fe shall be computed by dividing by ninety the dividend paid on the shares of stock on the quarterly dividend payment date next following settlement hereunder (and also any extra dividend which may be paid during such quarter-yearly period), and then multiplying the quotient of such division by the number of days which shall have elapsed from (but not including) the dividend payment date preceding settlement to (and including) the date of settlement for such stock. To the extent that dividends herein referred to have not been paid at time of settlement, the provisions of this section shall survive the settlement.

SECTION 7. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

[fol. 185] IN WITNESS WHEREOF, Trustees and Santa Fe have signed and sealed this Agreement, or caused it to be signed and sealed, in triplicate, as of the date first hereinabove written.

WILMINGTON TRUST COMPANY, as Trustee
under the Will of George P. McNear, Jr.

By: JOS. W. CHINN, JR.
Vice President

ATTEST:

A. C. KNIGHT,
Ass't Sec.

(SEAL)

GUY A. GLADSON (SEAL)
Guy A. Gladson, as Trustee under the Will of George P. McNear, Jr.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

By: R. G. RYDIN
Its Vice President.

ATTEST:

W. L. CAMP,
Assistant Secretary.

(SEAL)

[fol. 186]

EXHIBIT 7-A TO APPLICATION.

This Agreement dated as of June 1, 1955, between The Hanover Bank (hereinafter called the "Bank"), a corporation organized under the laws of the State of New York, party of the first part, and The Atchison, Topeka and Santa Fe Railway Company, a corporation organized under the laws of the State of Kansas (hereinafter called "Santa Fe"), party of the second part,

WITNESSETH:

That pursuant to the oral agreement entered into between the parties on May 27, 1955, and in consideration of the mutual obligations herein contained, the Bank and Santa Fe agree as follows:

SECTION 1. The Bank agrees to sell and Santa Fe agrees to buy 13,142 shares of capital stock of the Toledo, Peoria & Western Railroad Company (hereinafter called "TP&W"), being all of the shares of the TP&W held by the Bank, at a price of $135 per share, for an aggregate purchase price of $1,774,170.

SECTION 2. The purchase of the stock of TP&W provided in this Agreement is subject to the approval of the Interstate Commerce Commission; and Santa Fe agrees that it will promptly file and diligently prosecute an application or applications to the Interstate Commerce Commission for authority to carry out the transaction herein proposed. The Bank will, in all reasonable ways, cooperate with Santa Fe in the prosecution of such application and the assembly of data pertinent to its presentation and consideration. Settlement hereunder shall take place not more than a reasonable time, which shall not exceed sixty days, after the order of the Interstate Commerce Commission granting its approval has become effective.

In the event approval of the purchase of the stock of TP&W, by Santa Fe shall be denied by the Interstate Commerce Commission and the order of the Commission [fol. 187] shall become final, and any proceedings instituted in court to set aside such an order shall have been finally terminated without said order having been set aside, then this agreement shall cease and determine.

SECTION 3. The Bank represents and warrants to Santa Fe that the shares of stock of TP&W delivered to Santa Fe will be free and clear of all liens, encumbrances, trusts or obligations of any kind or nature.

SECTION 4. Settlement hereunder shall be made at the office of the Bank in New York City, New York, or at such other place as the Bank may designate. All transfer taxes with respect to the sale of the stock are to be paid by the Bank. Stock certificates are to be delivered at settlement with all endorsements or assignments necessary for transfer of the stock. Payment shall be made by Santa Fe upon such delivery in cash, or by certified check, or cashier's or treasurer's check to the order of the Bank. If settlement for the stock is made on a payment date for the payment of a quarterly dividend, such dividend shall be paid, endorsed or assigned to the Bank by Santa Fe. If settlement for the stock is made on a date other than a payment date for the payment of a quarterly dividend, the next succeeding quarterly dividend on such shares of stock (and also any extra dividend which may be paid during such quarter-yearly period) shall be apportioned

to the date of settlement, and Santa Fe shall pay to the Bank its pro-rata portion thereof promptly after the receipt of such dividend. The sum payable to the Bank by Santa Fe shall be computed by dividing by ninety the dividend paid on the shares of stock on the quarterly dividend payment date next following settlement hereunder (and also any extra dividend which may be paid during such quarter yearly period), and then multiplying the quotient of such division by the number of days which shall have elapsed [fol. 188] from (but not including) the dividend payment date preceding settlement to (and including) the date of settlement for such stock. To the extent that dividends herein referred to have not been paid at time of settlement, the provisions of this section shall survive the settlement.

SECTION 5. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the Bank and Santa Fe have signed and sealed this Agreement, or caused it to be signed and sealed, in duplicate, as of the date first hereinabove written.

THE HANOVER BANK,

By: J. K. OLYPHANT, JR.
Vice-Chairman.

ATTEST:

R. F. THOMES
Secretary.

(SEAL)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

By: E. S. MARSH
Its Vice President—Finance.

ATTEST:

R. B. JOSEPH
(SEAL) *Assistant Secretary.*

[fol. 189]

EXHIBIT 7-B TO APPLICATION.

This Agreement made and entered into as of June 2, 1955, between Clara McNear Leppo, Miriam McNear Korbel, E. Denman McNear, and Louise McNear Naffziger (hereinafter sometimes referred to individually as "Shareholder" and collectively as "Shareholders"), parties of the first part, and Toledo, Peoria & Western Railroad Company, a corporation organized under the laws of the State of Delaware (hereinafter called "TP&W"), party of the second part, and The Atchison, Topeka and Santa Fe Railway Company, a corporation organized under the laws of the State of Kansas (hereinafter called "Santa Fe"), party of the third part,

WITNESSETH:

RECITALS.

Santa Fe wishes to purchase and Shareholders desire to sell all of the capital stock of the TP&W held by Shareholders at a price of $135 per share. By an option agreement dated as of February 15, 1954, between the TP&W and certain individuals, including Shareholders, the Shareholders and the other parties agreed not to sell or otherwise dispose of any portion of the capital stock held by them without first offering to sell such stock to the TP&W. The TP&W does not desire to exercise its rights to purchase such stock under the contract from the individuals who were parties to the agreement or their representatives at $135 per share, and for a consideration of $100 payable by Santa Fe, TP&W is willing to release the Shareholders and such other individuals or their representatives from their obligations under the said option agreement to the extent necessary to permit the sale of such stock to Santa Fe at $135 per share.

[fol. 190]

AGREEMENT.

NOW, THEREFORE, for and in consideration of the premises and of the mutual undertakings and obligations herein contained and expressed, the parties agree as follows:

SECTION 1. Clara McNear Leppo agrees to sell and the Santa Fe agrees to buy 198 shares of the capital stock of the TP&W (being all of said stock held by her) at a price of $135 per share, or an aggregate purchase price of $26,730.

SECTION 2. Miriam McNear Korbel agrees to sell and the Santa Fe agrees to buy 198 shares of the capital stock of the TP&W (being all of said stock held by her) at a price of $135 per share, or an aggregate purchase price of $26,730.

SECTION 3. E. Denman McNear agrees to sell and the Santa Fe agrees to buy 198 shares of the capital stock of the TP&W (being all of said stock held by him) at a price of $135 per share, or an aggregate purchase price of $26,730.

SECTION 4. Louise McNear Naffziger agrees to sell and the Santa Fe agrees to buy 198 shares of the capital stock of the TP&W (being all of said stock held by her) at a price of $135 per share, or an aggregate purchase price of $26,730.

SECTION 5. The purchase of the stock of the TP&W provided in Sections 1 through 4 of this Agreement is subject to the approval of the Interstate Commerce Commission; and Santa Fe agrees that it will promptly file and diligently prosecute an application or applications to the Interstate Commerce Commission for authority to carry out the transactions herein proposed. Each Shareholder will, in all reasonable ways, cooperate with Santa Fe in the prosecution of such application and the assembly of data pertinent to its presentation and consideration. [fol. 191] Settlement hereunder shall take place not more than a reasonable time, which shall not exceed sixty days, after the order of the Interstate Commerce Commission granting its approval has become effective.

In the event approval of the purchase of the stock of TP&W by Santa Fe shall be denied by the Interstate Commerce Commission and the order of the Commission shall become final, and any proceedings instituted in court to set aside such an order shall have been finally terminated without said order having been set aside, then this Agreement shall cease and determine.

SECTION 6. Each Shareholder individually represents and warrants to Santa Fe that the shares of stock of TP&W delivered by him to Santa Fe will be free and clear of all liens, encumbrances, trusts or obligations of any kind or nature.

SECTION 7. Settlement hereunder shall be made at the general offices of Santa Fe at Chicago, Illinois. Each Shareholder shall pay all transfer taxes with respect to the sale of his stock. Stock certificates are to be delivered at settlement with all endorsements or assignments necessary for transfer of the stock. Payment shall be made by Santa Fe upon such delivery in cash, or by certified check, or cashier's or treasurer's check to the order of each Shareholder. If settlement for the stock is made on a payment date for the payment of a quarterly dividend, such dividend shall be paid, endorsed or assigned to each Shareholder by Santa Fe. If settlement for the stock is made on a date other than a payment date for the payment of a quarterly dividend, the next succeeding quarterly dividend on such shares of stock (and also any extra dividend which may be paid during such quarter-yearly period) shall be apportioned to the date of settlement, and Santa Fe shall pay to each Shareholder his pro-rata portion thereof promptly after the receipt of [fol. 192] such dividend. The sum payable to each Shareholder by Santa Fe shall be computed by dividing by ninety the dividend paid on the shares of stock on the quarterly dividend payment date next following settlement hereunder (and also any extra dividend which may be paid during such quarter-yearly period), and then multiplying the quotient of such division by the number of days which shall have elapsed from (but not including) the date of dividend payment preceding settlement to (and including) the date of settlement for such stock. To the extent that dividends herein referred to have not been paid at the time of settlement, the provisions of this Section shall survive the settlement.

SECTION 8. For and in consideration of the sum of $100 hereinbefore referred to, the receipt of which from Santa Fe is hereby acknowledged, TP&W agrees to release and relinquish any and all rights accruing to it under

the terms of the option agreement dated as of February 15, 1954, insofar as is necessary to permit Shareholder and the other parties to such agreement to sell and transfer their TP&W stock to Santa Fe at a price of $135 per share, but said option agreement shall in all other respects remain in full force and effect until such sale and transfer have been consummated.

SECTION 9. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns.

SECTION 10. The masculine pronoun in this Agreement shall be deemed to include the feminine where appropriate.

IN WITNESS WHEREFORE, Shareholders, TP&W, and Santa Fe have signed and sealed this Agreement, or caused it to [fol. 193] be signed and sealed, in six copies, each of which shall constitute an original, as of the date first hereinabove written.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

By: E. S. MARSH
Its Vice-President, Finance

ATTEST:

W. L. CAMP
Assistant Secretary.

(SEAL)

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY,

By: J. RUSSEL COULTER
President

ATTEST:

C. PATTISON
Secretary.

(SEAL)

CLARA MCNEAR LEPPO
MIRIAM MCNEAR KORBEL
E. DENMAN MCNEAR
LOUISE MCNEAR NAFFZIGER

[fol. 194]

EXHIBIT 7-C TO APPLICATION.

This Agreement made and entered into as of June 2, 1955, between J. Russel Coulter, and William McDowell Frederick, an individual, and Commercial National Bank of Peoria, a national banking association, Executors of the Estate of Clinton M. McNear (hereinafter sometimes referred to individually as "Shareholder" and collectively as "Shareholders"), parties of the first part, and Toledo, Peoria & Western Railroad Company, a corporation organized under the laws of the State of Delaware (hereinafter called "TP&W"), party of the second part, and The Atchison, Topeka and Santa Fe Railway Company, a corporation organized under the laws of the State of Kansas (hereinafter called "Santa Fe"), party of the third part, WITNESSETH:

RECITAL.

Santa Fe wishes to purchase and Shareholders desire to sell all of the capital stock of the TP&W held by Shareholders at a price of $135 per share. By an option agreement dated as of February 15, 1954, between the TP&W and certain individuals, including Shareholders, the Shareholders and the other parties agreed not to sell or otherwise dispose of any portion of the capital stock held by them without first offering to sell such stock to the TP&W. The TP&W does not desire to exercise its rights to purchase such stock under the contract from the individuals who were parties to the agreement or their representatives at $135 per share, and for a consideration of $100 payable by Santa Fe, TP&W is willing to release the Shareholders and such other individuals or their representatives from their obligations under the said option agreement to the extent necessary to permit the sale of such stock to Santa Fe at $135 per share.

[fol. 195]

AGREEMENT.

NOW, THEREFORE, for and in consideration of the premises and of the mutual undertakings and obligations herein contained and expressed, the parties agree as follows:

SECTION 1. J. Russel Coulter agrees to sell and the Santa Fe agrees to buy 1,035 shares of the capital stock of the TP&W (being all of said stock held by him) at a price of $135 per share, or an aggregate purchase price of $139,725.

SECTION 2. William McDowell Frederick, an individual, and Commercial National Bank of Peoria, a national banking association, as Executors of the Estate of Clinton M. McNear, agree to sell and the Santa Fe agrees to buy 527 shares of the capital stock of the TP&W (being all of said stock held by them) at a price of $135 per share, or an aggregate purchase price of $71,145.

SECTION 3. The purchase of the stock of the TP&W provided in Sections 1 and 2 of this Agreement is subject to the approval of the Interstate Commerce Commission; and Santa Fe agrees that it will promptly file and diligently prosecute an application or applications to the Interstate Commerce Commission for authority to carry out the transactions herein proposed. Each Shareholder will, in all reasonable ways, cooperate with Santa Fe in the prosecution of such application and the assembly of data pertinent to its presentation and consideration. Settlement hereunder shall take place not more than a reasonable time, which shall not exceed sixty days, after the order of the Interstate Commerce Commission granting its approval has become effective.

In the event approval of the purchase of the stock of TP&W by Santa Fe shall be denied by the Interstate Commerce Commission and the order of the Commission shall become final, and any proceedings instituted in court [fol. 196] to set aside such an order shall have been finally terminated without said order having been set aside, then this Agreement shall cease and determine.

SECTION 4. Each Shareholder individually represents and warrants to Santa Fe that the shares of stock of TP&W delivered by him to Santa Fe will be free and clear of all liens, encumbrances, trusts or obligations of any kind or nature.

SECTION 5. Settlement hereunder shall be made at the general offices of Santa Fe at Chicago, Illinois. Each

Shareholder shall pay all transfer taxes with respect to the sale of his stock. Stock certificates are to be delivered at settlement with all endorsements or assignments necessary for transfer of the stock. Payment shall be made by Santa Fe upon such delivery in cash, or by certified check, or cashier's or treasurer's check to the order of each Shareholder. If settlement for the stock is made on a payment date for the payment of a quarterly dividend, such dividend shall be paid, endorsed or assigned to each Shareholder by Santa Fe. If settlement for the stock is made on a date other than a payment date for the payment of a quarterly dividend, the next succeeding quarterly dividend on such shares of stock (and also any extra dividend which may be paid during such quarter-yearly period) shall be apportioned to the date of settlement, and Santa Fe shall pay to each Shareholder his pro-rata portion thereof promptly after the receipt of such dividend. The sum payable to each Shareholder by Santa Fe shall be computed by dividing by ninety the dividend paid on the shares of stock on the quarterly dividend payment date next following settlement hereunder (and also any extra dividend which may be paid during such quarter-yearly period), and then multiplying the quotient of such division by the number of days which shall have elapsed from (but not including) the dividend payment date preceding set- [fol. 197] tlement to (and including) the date of settlement for such stock. To the extent that dividends herein referred to have not been paid at time of settlement, the provisions of this Section shall survive the settlement.

SECTION 6. For and in consideration of the sum of $100 hereinbefore referred to, the receipt of which from Santa Fe is hereby acknowledged, TP&W agrees to release and relinquish any and all rights accruing to it under the terms of the option agreement, dated as of February 15, 1954, insofar as is necessary to permit Shareholder and the other parties to such agreement to sell and transfer their TP&W stock to Santa Fe at a price of $135 per share, but said option agreement shall in all other respects remain in full force and effect until such sale and transfer have been consummated.

SECTION 7. This Agreement shall be binding upon a
inure to the benefit of the parties hereto, their heirs, su
cessors and assigns.

IN WITNESS WHEREOF, Shareholders, TP&W, and San
Fe have signed and sealed this Agreement, or caused it
be signed and sealed, in five copies, each of which sha
constitute an original, as of the date first hereinabo
written.

THE ATCHISON, TOPEKA AND SANTA F
RAILWAY COMPANY,

By: E. S. MARSH
Its Vice-President—Financ

ATTEST:

W. L. CAMP
Assistant Secretary

(SEAL)

[fol. 198]

TOLEDO, PEORIA & WESTERN RAILROAD
COMPANY,

By: J. RUSSEL COULTER

ATTEST:

C. PATTISON

(SEAL)

J. RUSSEL COULTER

WILLIAM McDOWELL FREDERICK
as Executor of the Estate of
Clinton M. McNear.

COMMERCIAL NATIONAL BANK OF
PEORIA,
as Executor of the Estate of
Clinton M. McNear.

By: CHAS. W. ELIASON, JR.,
Vice President.

ATTEST:

M. H. GLASFORD,
Ass't. Cashier.

(SEAL)

[fol. 199]

EXHIBIT 7-D TO APPLICATION.

This agreement dated as of June 28, 1955, between The Atchison, Topeka and Santa Fe Railway Company, a corporation organized under the laws of the State of Kansas (hereinafter called "Santa Fe"), party of the first part, Pennsylvania Company, a corporation organized under the laws of the Commonwealth of Pennsylvania, party of the second part, and The Pennsylvania Railroad Company, a corporation likewise organized under the laws of the Commonwealth of Pennsylvania, party of the third part,

WITNESSETH:

Whereas, subject to the approval of the Interstate Commerce Commission, Santa Fe by agreement dated as of May 26, 1955, has agreed to purchase for $135 per share all of the capital stock of the Toledo, Peoria & Western Railroad Company, a corporation organized under the laws of the State of Delaware (hereinafter called "TP&W"), held by the Trustees under the Will of George P. McNear, Jr., and has entered into or is entering into like contracts with the owners of the remainder of the 90,000 shares of outstanding capital stock of TP&W, and

Whereas, Pennsylvania Company states that it has entered into a contract dated April 15, 1955, with the Trustees under the Will of George P. McNear, Jr. providing for the sale to it of 23,400 shares of stock of the TP&W at the price of $100 per share, but that said Trustees have refused to acknowledge their obligations under said contract, and Pennsylvania Company now desires to acquire from Santa Fe shares of stock of TP&W in the amounts and upon the terms and conditions hereinafter set forth, but without prejudice to any claims, causes of action or rights which it may have against such Trustees in respect to the said 23,400 shares; and

[fol. 200] Whereas, it is the desire and intention of Santa Fe and Pennsylvania Company each to acquire 50 per cent of so much of the outstanding capital stock of TP&W as may be available for purchase and for the parties to this

agreement to agree as to the future conduct of the operations of TP&W.

NOW, THEREFORE, for and in consideration of the premises and of the mutual undertakings and obligations herein contained and expressed, the parties agree as follows:

SECTION 1. Subject to the approval of the Interstate Commerce Commission, Santa Fe agrees to sell and Pennsylvania Company agrees to buy at $135 per share 45,000 shares of the capital stock of TP&W or 50 per cent of such lesser number of shares as Santa Fe may in fact acquire, to the end that each of the said two companies shall own 50 per cent of the stock acquired from all sources, including those referred to above. Such purchase of stock as herein provided by Pennsylvania Company shall be without prejudice to any claims, causes of action or rights which Pennsylvania Company may have against the Trustees under the Will of George P. McNear, Jr., in respect to said 23,400 shares of the stock of TP&W referred to above, arising out of the circumstances of April 15, 1955; and in the event Pennsylvania Company should acquire from said Trustees all or any of the aforementioned 23,400 shares, then, to the extent of such acquisition by Pennsylvania Company, the obligation hereunder of Santa Fe to sell and of Pennsylvania Company to buy shall be reduced.

SECTION 2. Santa Fe, Pennsylvania Company, and The Pennsylvania Railroad Company agree to file promptly and diligently prosecute a joint application to the Interstate Commerce Commission for authority to carry out the transaction herein provided and to cooperate fully in the assembly of data and the presentation of evidence in support of all aspects of said application. In the event ap- [fol. 201] proval of the purchase of stock of TP&W by Pennsylvania Company shall be denied by the Interstate Commerce Commission, or in the event approval of the purchase of stock of TP&W by Santa Fe shall be denied by the Interstate Commerce Commission, and any such order of the Commission shall have become final, and any proceedings instituted in court to set aside any such order shall have been finally terminated without said order having been set aside, then this agreement and the obligations of the parties hereunder shall cease and determine.

SECTION 3. The Parties hereto, each with the other, and not for the benefit of others not parties hereto, agree that they will exercise their stock ownership of the TP&W to accomplish the following objectives:

(a) TP&W will continue to be operated as a separate and independent carrier with responsible management located along its lines in order to preserve to shippers and communities the present direct access to its officials.

(b) The properties of the TP&W, including line and equipment, will be maintained and improved in keeping with the requirements of a railroad of its character and importance.

(c) TP&W will continue to maintain its own solicitation forces and will be entirely free to solicit traffic in such manner as best to serve the interests of TP&W.

(d) All existing routes and channels of trade via TP&W will be maintained and kept open without discrimination between connecting lines of railroad.

(e) The Board of Directors of TP&W shall consist of eleven members, of whom one shall be the president of the company, two shall be officers of Santa Fe, two shall be officers of Pennsylvania Company or The Pennsylvania Railroad Company or both, and the remaining six shall be prominent citizens not connected with any one of the [fol. 202] parties to this agreement but selected by the parties to this agreement and the subject of mutual agreement between them.

SECTION 4. The parties hereto further agree as follows:

(a) Pennsylvania Company shall not be required to accept and pay for any shares of stock of TP&W sold to it by Santa Fe if in the opinion of counsel for Pennsylvania Company such shares of stock will not at the time of settlement therefor with Pennsylvania Company be free and clear of all liens, encumbrances, trusts or obligations of any kind or nature, unless Santa Fe shall make a warranty to that effect to Pennsylvania Company.

(b) Settlement hereunder shall be made at the passenger station of The Pennsylvania Railroad Company in

Wilmington, Delaware, or at such other place as the parties may agree upon promptly after the transaction provided for herein has been authorized by the Interstate Commerce Commission and Santa Fe has acquired the shares of stock to be sold by it to Pennsylvania Company.

(c) Pennsylvania Company shall pay any transfer taxes and other incidental expenses incurred by Santa Fe in purchasing and transferring to Pennsylvania Company the stock acquired by Pennsylvania Company from Santa Fe hereunder. Stock certificates are to be delivered at settlement with all endorsements or assignments necessary for the transfer of the stock. Payment therefor shall be made by Pennsylvania Company upon such delivery in cash or by certified, cashier's or treasurer's check to the order of Santa Fe.

(d) If settlement for the stock is made on a payment date for the payment of a quarterly dividend, such dividend shall be paid, endorsed or assigned to Santa Fe by Pennsylvania Company. If settlement for the stock is made on a date other than a payment date for the payment [fol. 203] of a quarterly dividend, the next succeeding quarterly dividend on such shares of stock (and also any extra dividend which may be paid during such quarter-yearly period) shall be apportioned to the date of settlement, and Pennsylvania Company shall pay to Santa Fe its pro-rata portion thereof promptly after the receipt of such dividend. The sum payable to Santa Fe by Pennsylvania Company shall be computed by dividing by ninety the dividend paid on the shares of stock on the quarterly dividend payment date next following settlement hereunder (and also any extra dividend which may be paid during such quarter-yearly period), and then multiplying the quotient of such division by the number of days which shall have elapsed from (but not including) the dividend payment date preceding settlement to (and including) the date of settlement for such stock. To the extent that dividends herein referred to have not been paid at time of settlement, the provisions of this section shall survive the settlement.

Section 5. Santa Fe, on the one hand, and Pennsylvania Company and The Pennsylvania Railroad Company,

on the other hand, agree that if either party at any future time desires to sell all, or any part, of its ownership of shares of stock of TP&W (other than to a company which is controlled by, controls, or is under common control with it), it will give the other party the first opportunity to purchase such shares at a price equal to the best bona fide offer it can obtain therefor at such time from a third party before selling such shares of stock to a third party. Any such sale to a third party shall not be made until a reasonable time, and in any event not less than ten (10) days, following the receipt by the one party from the other of the two parties, as the case may be, of the prior purchase option herein provided.

SECTION 6. This agreement shall be binding upon and [fol. 204] inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, Santa Fe, Pennsylvania Company and The Pennsylvania Railroad Company have caused this agreement to be executed in triplicate as of the date hereinabove written.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

By: F. G. GURLEY

ATTEST:

W. L. CAMP
Assistant Secretary.

(SEAL)

PENNSYLVANIA COMPANY,

By: J. M. SYMES

ATTEST:

BAYARD H. ROBERTS
Secretary.

(SEAL)

THE PENNSYLVANIA RAILROAD COMPANY,

By: J. M. SYMES

ATTEST:

BAYARD H. ROBERTS
Secretary.

(SEAL)

[fol. 205]

EXHIBIT 7-E TO APPLICATION.

THIS AGREEMENT made and entered into as of the fifteenth day of February, 1954, by and between Toledo, Peoria & Western Railroad Company, a corporation organized and existing under the laws of the State of Delaware (hereinafter sometimes referred to as the "Company"), party of the first part, and Elizabeth M. McNear, Clinton M. McNear, Clara McNear Leppo, Miriam M. Korbel, E. Denman McNear, Louise McNear Naffziger, and J. Russel Coulter (hereinafter referred to individually as "Shareholder" and collectively as "Shareholders"), parties of the second part:

WITNESSETH.

WHEREAS, each of the shareholders owns common stock of the Company and desires to insure continuity of management and control of the Company's busjness by providing for reasonable restrictions on the transfer of shares of stock owned by them,

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) paid by the Company to each of the Sharehoiders, and of the mutual covenants herein contained (the receipt and sufficiency of which are hereby acknowledged), it is mutually covenanted and agreed as follows:

First: Each Shareholder agrees that if during his lifetime he should desire to dispose of any shares of the common stock of the Company at any time owned by him, he shall not sell, transfer or otherwise dispose of the same to any person unless and until he has first offered to sell such stock to the Company upon the terms and conditions hereinafter set forth.

Second: Any Shareholder who desires to sell any shares of common stock of the Company owned by him shall immediately notify the Company in writing of his intention. In such notice the Shareholder shall state the price [fol. 206] and terms at which he is willing to sell such shares, and the Company shall then have the prior right to

purchase such shares from the Shareholder at the same price and terms at any time within 30 days from the date of receipt of such notice. In the event that the Company does not elect to purchase said stock, or fails to notify the Shareholder within the thirty-day period whether or not it elects to purchase it, the Shareholder shall be free to sell and transfer the same at the price specified in said notice. The Company agrees that any shares of stock purchased pursuant to this agreement will be cancelled and retired, and not resold.

Third: Any Shareholder who desires to transfer any of his shares of common stock of the Company by gift to his spouse, or to a child or grandchild of his, may do so without restriction provided that the donee will enter into an agreement identical with this one, either directly or in the case of a minor, through a duly appointed guardian. Any Shareholder who desires to make a gift without that limitation, or to any person other than a spouse or child or grandchild, shall immediately notify the Company in writing of his intention, and the Company shall in such case have the right to purchase the said shares of stock from the Shareholder at the fair market value thereof within sixty (60) days after the date of its receipt of such notice, or, in the event of arbitration as hereinafter contemplated, within ten (10) days after the value thereof is fixed by the arbitrators and accepted by the Shareholder as hereinafter specified. In the event the parties are unable to agree within the sixty-day period on a purchase price representing the fair market value of such stock, the question shall be determined by arbitration. The Shareholder and the Company shall each select one arbitrator, and such arbitrators shall in turn select a third arbitrator. The decision of a majority of such arbitrators shall be [fol. 207] conclusive and binding on all parties hereto, as to the fair market value of such stock. The Shareholder, however, may elect by written notice delivered to the Company within ten (10) days after receiving notice of such decision, to retain the stock, not making either the proposed gift nor the sale to the Company. In the event that the Company does not elect to purchase said stock within such sixty-day period, (or, if there shall have been arbitration,

and if the Shareholder shall not elect to retain the stock, within twenty (20) days after the value is fixed by the arbitrators) the Shareholder shall be free to transfer the same only to the donee described in his notice to the Company.

Fourth: Any of the undersigned Shareholders who makes any voluntary assignment for the benefit of creditors, or whose shares shall become the subject of any involuntary transfer because of insolvency, bankruptcy or execution under a judgment, shall immediately notify the Company in writing of the occurrence of such event. The Company shall have the right at any time within thirty (30) days after the receipt of such notice, or the occurrence of any such event, whichever is the shorter period, to purchase the said shares of stock from the Shareholder, or his transferee, at the book value thereof on the date of occurrence of such assignment or involuntary transfer as determined from the Company's books of account by the firm of certified public accountants then regularly employed as auditors of the Company's accounts. In the event that the Company does not elect to purchase the said stock at the price so determined within said thirty-day period, the Shareholder's assignee or transferee shall be free to sell the said shares subject to all of the terms and conditions provided for in paragraph Second of this agreement, *provided, however,* that no person who becomes the owner of shares of common stock of the Company through a Shareholder's volun- [fol. 208] tary assignment for the benefit of creditors or through involuntary transfer from a Shareholder due to insolvency, bankruptcy, or judicial sale, shall have any right to become a party to this agreement or be entitled to any benefits hereunder. If any provision contained in this paragraph shall be held by any court to be invalid due to any statute or rule of law, such holding shall not affect the validity of any other provision of this agreement.

Fifth: Immediately upon execution of this agreement, each certificate evidencing ownership by the undersigned Shareholders of shares of the common stock of the Company shall be surrendered to the Company, and there shall be endorsed thereon the following statement:

"The shares of common stock represented by this certificate are transferable only upon compliance with an agreement between Shareholders dated as of February 15, 1954, copy of which is on file in the office of the Secretary of the Company, under which the Company has a prior right to purchase the said shares on the terms and conditions stated therein."

After such endorsement has been made, each such stock certificate shall be returned to the owner thereof who shall, subject to the terms of this agreement, be entitled to exercise all rights of ownership of the shares represented by such certificate. All certificates of common stock hereafter issued by the Company to the undersigned Shareholders or their transferees shall bear the same endorsement.

Sixth: This agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns.

Seventh: Any notice required under this agreement may be delivered personally or sent to any party hereto by first class mail at the address shown beneath his signature [fol. 209] hereto, but any party shall have the right to change the address to which notices shall be sent by written communication to each of the other parties hereto.

Eighth: The masculine pronoun in this agreement shall be deemed to include the feminine where appropriate.

This agreement may be executed in any number of counterparts all of which together shall constitute one original.

In witness whereof, the Company has caused this agreement to be signed by its President, attested by its Secretary, and its corporate seal to be hereunto affixed, and each of the other parties has hereunto set his hand and seal the day and year first above written.

Toledo, Peoria & Western Railroad Company,

By J. Russel Coulter

President.

Attest:

D. HENDREN
Asst. Secretary.

(SEAL)

CLARA MCNEAR LEPPO
E. DENMAN MCNEAR
LOUISE MCNEAR NAFFZIGER
Shareholders.

Counterparts of the above have been executed by T.P.&W. and by Elizabeth M. McNear, Clinton M. McNear and J. Russel Coulter as shareholders.

[fol. 210]

EXHIBIT 7-F TO APPLICATION.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Chicago April 15 1955

Wilmington Trust Company,
Wilmington, Del.

Mr. Guy A. Gladson,
Chicago, Ill.

Co-Trustees under the Will of George P. McNear, Jr.

GENTLEMEN:

Pursuant to earlier discussions and my conversation today with Messrs. Chinn and Bancroft, this is to confirm the offer to you for the purchase of 23,400 shares, or 26% of the total number of shares outstanding, of the Toledo, Peoria & Western Railroad Company, at a price of $100 a share net cost to us.

This offer, as you will understand, is subject to formal approval by the Board of Directors of this Company and such approval as may be necessary from the Interstate Commerce Commission. The payment of the $2,340,000

total amount for the 23,400 shares is to be made upon delivery of the stock when all required approvals have been obtained.

It is understood that the Toledo, Peoria & Western Railroad Company is to continue its operation as an independent organization after our acquisition of the above described stock. As we agreed, all necessary details, including a purchase agreement, will be arranged by our respective legal representatives.

If this offer has your acceptance, will you kindly so indicate on the enclosed copy of this letter.

Sincerely yours,

E. S. MARSH
Vice President—Finance.

Accepted

JOS. W. CHINN, JR.
J. SELLERS BANCROFT
for the Trustees U/W of
George P. McNear, Jr.

[fol. 211]

EXHIBIT 7-G TO APPLICATION.

PENNSYLVANIA COMPANY
Suburban Station Building
1617 Pennsylvania Boulevard
Philadelphia 4, Pa.

April 15, 1955.

Wilmington Trust Company and Guy A. Gladson,
Trustees under the Will of George P. McNear, Jr.,
Wilmington, Del.

GENTLEMEN:

This letter is to confirm the understanding we have reached with you in connection with the stock of the Toledo, Peoria & Western Railroad Company.

We desire to purchase 23,400 shares of the stock, representing 26% of the total outstanding, at a price of $100 per share, no commissions being involved on either side. This offer is subject to formal approval by our Board of Directors and such approval, if any, as may be necessary from the Interstate Commerce Commission. It is our understanding that the Company will continue to be operated as an independent organization. It is understood that all necessary details to implement this will be worked out by our respective Counsel.

If this meets your approval, will you kindly indicate your acceptance on the attached carbon.

Very truly yours,

DAVID C. BEVAN
Vice-President

Accepted:

JOS. W. CHINN, JR.
J. SELLERS BANCROFT
for the Trustees U/W of
George P. McNear, Jr.

[fol. 212]

EXHIBIT 8 TO APPLICATION.

EXHIBIT 8.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
Balance Sheet as of April 30, 1955

ASSETS

INVESTMENTS		
Road and equipment property		$1,690,635,941
Improvements on leased property		1,301,480
Acquisition adjustment		4,202,370 Cr
Donations and grants		12,175,101 Cr
Accrued depreciation—Road		62,952,824 Cr
Accrued depreciation—Equipment		306,364,189 Cr
Accrued amortization of defense projects—Road		16,216,078 Cr
Accrued amortization of defense projects—Equip.		88,033,132 Cr
Sinking funds		2,993,868
Miscellaneous physical property		19,470,871
Accrued depreciation—Misc. physical property		4,189,544 Cr
Investments in affiliated companies		39,386,864
Other investments		1,971,472
Total		1,270,627,198
CURRENT ASSETS		
Cash		40,141,490
Temporary cash investments		98,131,753
Special deposits		89,086
Loans and bills receivable		800
Traffic and car-service balances—Dr.		9,736,871
Net balance receivable from agents & conductors		4,184,874
Miscellaneous accounts receivable		12,486,261
Material and supplies		44,703,571
Interest and dividends receivable		22,543
Accrued accounts receivable		8,312,497
Other current assets		569,215
Total		218,378,961
DEFERRED ASSETS		
Working fund advances		543,807
Other deferred assets		3,826,175
Total		4,369,982
UNADJUSTED DEBITS		
Prepayments		255,290
Other unadjusted debits		1,270,959
Total		1,526,249
Total Assets		$1,494,902,390

[fol. 213]

Exhibit 8 (Cont.)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
Balance Sheet as of April 30, 1955

LIABILITIES

STOCK	
Capital stock	$ 366,578,800
Premium on capital stock	517,800
Total	367,096,600
LONG TERM DEBT	
Funded debt unmatured	195,469,500
CURRENT LIABILITIES	
Loans and bills payable	10,000,000
Audited accounts and wages payable	25,497,542
Miscellaneous accounts payable	6,426,132
Interest matured unpaid	1,319,128
Dividends matured unpaid	80,086
Unmatured interest accrued	1,126,253
Unmatured dividends declared	6,067,650
Accrued accounts payable	6,111,748
Taxes accrued	39,488,037
Other current liabilities	3,830,453
Total	100,151,031
DEFERRED LIABILITIES	
Other deferred liabilities	2,815,019
UNADJUSTED CREDITS	
Other unadjusted credits	23,206,127
Accrued depreciation—Leased property	Dr. 5,719
Total	23,197,408
SURPLUS	
Unearned surplus	565,749
Earned surplus—Appropriated	90,818,947
Earned surplus—Unappropriated	714,287,534
Total	805,672,230
Total Liabilities	1,494,102,330

STATE OF ILLINOIS
COUNTY OF COOK } ss

L. L. Taylor, being duly sworn, deposes and says: That he is Assistant General Auditor of The Atchison, Topeka and Santa Fe Railway Company; that he has examined the foregoing balance sheet as of April 30, 1955, and that same is true and correct.

L. L. TAYLOR

Subscribed and sworn to before me, a Notary Public, this 7th day of July, 1955.

E. W. EKES

[fol. 214]

Exhibit 8-a to Application.

EXHIBIT 8-a.

THE PENNSYLVANIA RAILROAD COMPANY
General Balance Sheet, April 30, 1955

Assets

Investments:			
Road and equipment property:			
Road	$ 705,575,808		
Equipment	1,073,469,334		
General expenditures	7,724,782		
			1,786,770,524
Improvements on leased property:			
Road	153,243,585		
Equipment	2,198,426		
General expenditures	2,673,874		
			158,115,885
Acquisition adjustment		Cr	32,367
Donations and grants		Cr	3,469,033
Investments in transportation property			1,941,385,009
Accrued depreciation—Road and Equipment	Cr. 627,002,789		
Accrued amortization of defense projects—Road and Equipment	Cr. 64,644,738		
Recorded depreciation and amortization		Cr	691,647,527
Investment in transportation property less recorded depreciation and amortization			1,249,737,482
Sinking funds			572,782
Capital and other reserve funds (excludes securities of Company's issues $355,000)			19,242,081
Miscellaneous physical property			10,958,387
Investments in affiliated companies			729,060,584
Other investments			21,628,796
Total investments less recorded depreciation and amortization			2,031,200,112
Current Assets			
Cash	70,043,062		
Temporary cash investments	49,001,539		
Special deposits	1,268,139		
Loans and bills receivable	20,57[illegible]		
Net balance receivable from agents and conductors	16,331,660		
Miscellaneous accounts receivable	31,153,950		
Material and supplies	62,927,843		
Interest and dividends receivable	1,969,083		
Accrued accounts receivable	8,886,227		
Other current assets	1,071,772		
Total current assets			242,674,733
Deferred Assets:			
Working fund advances	1,401,642		
Insurance and other funds (excludes securities of Company's issues $4,486,000)	165,856,113		
Other deferred assets	6,604,830		
Total deferred assets			171,862,585

[fol. 215]

Exhibit 8-a (Cont.)

UNADJUSTED DEBITS:		
Prepayments	1,562,349	
Discount on funded debt	580,597	
Other unadjusted debits	6,270,768	
Securities issued or assumed—Unpledged $47,919,000		
Total unadjusted debits		8,413,714
Grand Total		2,454,160,164

THE PENNSYLVANIA RAILROAD COMPANY
General Balance Sheet, April 30, 1965

LIABILITIES

STOCK:		
Capital stock	658,387,700	
Premiums and assessments on capital stock	10,148,229	
Total		668,535,929
LONG TERM DEBT:		
Funded debt unmatured (excludes Company's holdings $52,395,000)	444,464,045	
Equipment obligations (excludes Company's holdings $365,000)	308,330,168	
Amount payable to affiliated companies	1,435,752	
Total long term debt		754,229,965
CURRENT LIABILITIES:		
Traffic and car—service balances—Cr.	5,879,064	
Audited accounts and wages payable	41,875,152	
Miscellaneous accounts payable	15,083,112	
Interest matured unpaid	1,653,821	
Dividends matured unpaid	155,330	
Unmatured interest accrued	7,140,329	
Unmatured dividends declared	3,291,939	
Accrued accounts payable	15,865,444	
Taxes accrued	28,967,425	
Other current liabilities	4,521,855	
Total current liabilities		124,433,471
DEFERRED LIABILITIES:		
Other deferred liabilities		2,747,164
UNADJUSTED CREDITS:		
Premium on funded debt	212,458	
Insurance reserves	16,269,273	
Equalization reserves	213,225	
Other unadjusted credits	21,952,986	
Accrued depreciation—leased property	137,921,377	
Total unadjusted credits		176,569,319

[fol. 216]

Exhibit 8-a (Cont.)

SURPLUS:		
Unearned surplus	386,700	
Earned surplus—Appropriated	458,012,908	
Earned surplus—Unappropriated	269,445,008	
Total surplus		727,844,316
Grand Total		2,454,160,164

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.

I, the undersigned, H. J. Ward, Comptroller of The Pennsylvania Railroad Company, on my oath do say that the foregoing General Balance Sheet has been prepared under my direction that I have carefully examined the same, and declare the same to be complete and correct, to the best of my knowledge, information and belief.

H. J. WARD

Subscribed and sworn to before me this
7th day of July, 1955.

JAMES E. BARTON,
Notary Public
Philadelphia, Philadelphia Co., Pa.

My Commission expires June 24, 1958.

[fol. 217]

Exhibit 8-B to Application.

EXHIBIT 8-b.

PENNSYLVANIA COMPANY
General Balance Sheet, April 30, 1955

Assets

Investments:		
Road and equipment property:		
Equipment		$ 9,820,963
Investment in transportation property		9,820,963
Accrued depreciation—Equipment		Cr 485,874
Investment in transportation property less recorded depreciation		9,334,089
Miscellaneous physical property	$ 1,887,472	
Accrued depreciation	Cr 197,107	
Miscellaneous physical property less accrued depreciation		1,690,365
Investments in affiliated companies		167,468,536
Other investments		98,296,306
Total investments less recorded depreciation		216,839,256
Current Assets:		
Cash	4,239,310	
Special deposits	528,140	
Miscellaneous accounts receivable	120,494	
Interest and dividends receivable	3,666,009	
Accrued accounts receivable	4,917	
Total current assets		8,567,870
Unadjusted Debits:		
Discount on funded debt		444,473
Securities issued or assumed Unpledged $2,230,000		
Grand Total		285,851,601

Liabilities

Stock:		
Capital stock		124,025,000
Long Term Debt:		
Funded debt unmatured (excludes Company's holdings $2,230,000)		64,070,000
Current Liabilities:		
Audited accounts and wages payable	17,437	
Miscellaneous accounts payable	3,000,046	
Interest matured unpaid	914,864	
Unmatured interest accrued	26,319	
Unmatured dividends declared	2,000,000	
Taxes accrued	968,507	
Other current liabilities	28,852	
Total current liabilities		6,956,025
Surplus:		
Earned surplus—Unappropriated		89,800,576
Grand Total		285,851,601

[fol. 218]

Exhibit 8-b (Cont.)

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF MONTGOMERY } ss.

I, the undersigned, H. J. Ward, Comptroller of the Pennsylvania Company, on my oath do say that the foregoing Genegal Balance Sheet has been preparel under my direction; that I have carefully examined the same, and declare the same to be complete and correct, to the best of my knowledge, information and belief.

H J Ward
H. J. WARD

Subscribed and sworn to before me this
7th day of July, 1955.

Donald R Powell
DONALD R. POWELL
Notary Public
Lower Merion Township, Montgomery Co.

My Commission Expires January 29, 1959.

[fol. 219]

Exhibit 8-C to Application.

EXHIBIT 8-C

TOLEDO, PEORIA & WESTERN RAILWAY COMPANY
GENERAL BALANCE SHEETS

		*Apr 30 [illegible]
	ASSETS	
	Investments	
701	Road and equipment property	$10,073,130 [illegible]
702 & B	Donations and grants ..... Cr	2,165,980 [illegible]
	Investment in transportation property	$7,908,050 [illegible]
702 & C	& D Accrued depreciation—Road and Equipment .. Cr	2,077,2[illegible]
	Investment in transportation property less recorded depreciation	5,830,772 [illegible]
703	Sinking funds	36,352.71
704	Deposit in lieu of mortgaged property sold	[illegible]
705	Miscellaneous physical property	756,332.70
705 &	Accrued depreciation—Misc. phys. prop. ..... Cr	77,434.12
	Miscellaneous physical property less recorded depreciation	678,898.58
706	Investments in affiliated companies	[illegible]
707	Other investments—Cash value life insurance	80,264.00
	Total investments less recorded depreciation	$6,962,322.07
	Current Assets	
708	Cash	1,382,288.20
709	Temporary cash investments	800,000.00
713	Traffic & car service balances—Dr.	137,065.51
714	Net balance receivable from agents and conductors	38,140.31
715	Miscellaneous accounts receivable	73,078.71
716	Material and supplies	610,054.73
717	Interest and dividends receivable	3,000.00
718	Accrued accounts receivable	203,206.57
719	Other current assets	6,840.47
	Total current assets	3,253,418.20
	Deferred Assets	
720	Working fund advances	7,242.18
722	Other deferred assets	30,[illegible]8.94
	Total deferred assets	37,[illegible]
	Unadjusted Debits	
723	Prepayments	36,[illegible]
725	Discount on funded debt	9,[illegible]
727	Other unadjusted debits	48,[illegible]
	Total unadjusted debits	94,[illegible]
	Grand Total	$10,[illegible]

[fol. 220]

80

EXHIBIT 8-c (Cont.)

LIABILITIES

		Apr 30 1955
	Stock	
751	Capital stock	$ 3,000,000.00
	Long-Term Debt	
765	Funded debt unmatured	1,487,000.00
766	Equipment obligations	256,598.40
	Total long-term debt	1,743,598.40
	Current Liabilities	
760	Audited accounts and wages payable	722,325.09
761	Miscellaneous accounts payable	67,474.03
764	Unmatured interest accrued First Mortgage Series B Bonds	19,828.68
766	Accrued accounts payable	280,065.24
767	Taxes accrued	1,153,983.45
768	Other current liabilities	90,058.08
	Total current liabilities	2,383,923.41
	Deferred Liabilities	
770	Other deferred liabilities	10,834.08
	Unadjusted Credits	
779	Reserve for maintenance of way	61,923.00
784	Other unadjusted credits	648.07
	Total unadjusted credits	62,571.07
	Surplus	
785	Earned surplus Appropriated	10,000.00
789	Earned surplus Unappropriated—Cr balance	2,685,963.99
	Total surplus	2,701,963.99
	Grand Total	$10,082,888.65

EARNED SURPLUS UNAPPROPRIATED

Balance at beginning of year	Cr	$ 2,486,088.25
Miscellaneous credits	Cr	2,901.82
Dividend appropriations of surplus	Dr	51,000.00
Miscellaneous debits		
Balance transferred from income	Cr	249,969.92
	Cr	$ 2,685,963.99

I hereby certify That the above statement reflects the general balance sheet of Toledo, Peoria & Western Railroad Company as of April 30, 1955.

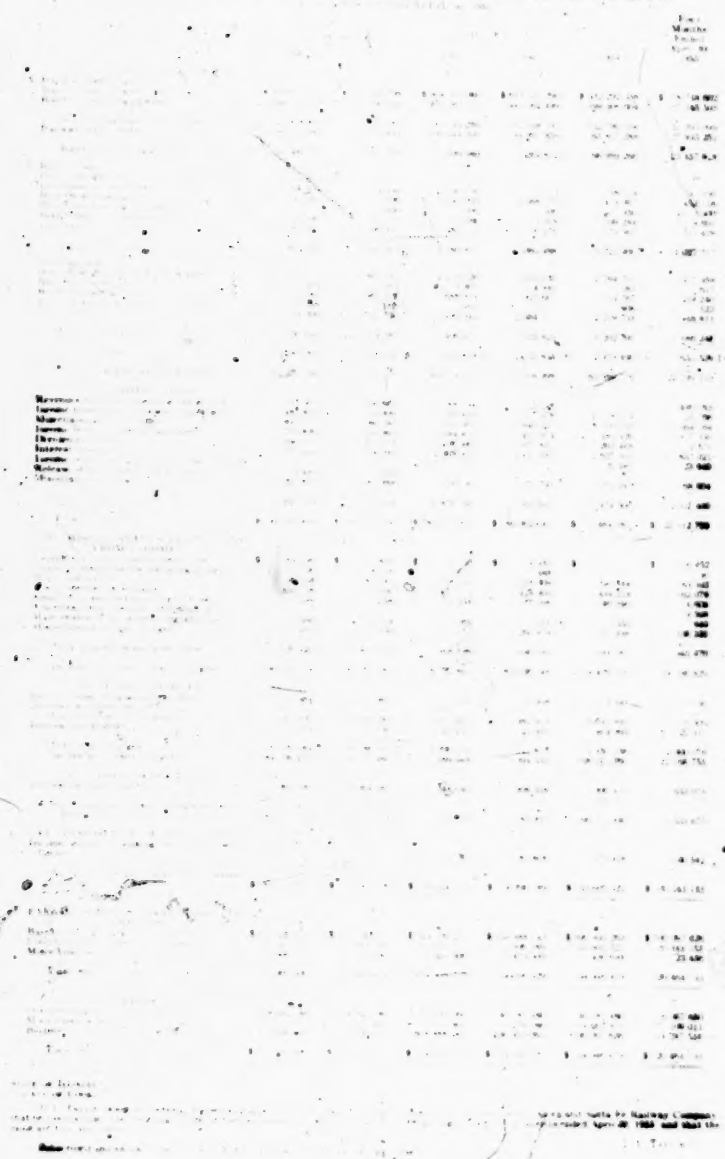
E. Pattison,
Controller.

Subscribed and sworn to before me this 2nd day of July, A. D. 1955.

Ferne S. Holtke,
Notary Public

[fol. 221]

Exhibit 9 to Application.



[fol. 22[illegible]]

Exhibit 9-a to Application.

EXHIBIT NO 9-a



[fol. 223]

Exhibit 9-B to Application.

EXHIBIT NO 9-B

PENNSYLVANIA COMPANY

INCOME ACCOUNTS AND EARNED SURPLUS STATEMENTS FOR THE YEARS 1950 THROUGH 1964 AND FOUR MONTHS ENDED APRIL 30, 1965*

	1950	1951	1952	1963	1964	Four Months Ended April 30, 1965*
OPERATING INCOME						
Railway Operating Income						
Railway operating expenses				$ 77,312	$ 229,221	$ 69,342
Net deficit from railway operations				77,312	229,221	69,342
Railway operating deficit				77,312	229,221	69,342
RENT INCOME						
Rent from locomotives				308,122	1,059,656	353,219
Total rent income				308,122	1,059,656	353,219
Net rents				308,122	1,059,656	353,219
Net railway operating income				229,810	790,435	283,877
OTHER INCOME						
Income from nonoperating property	$ 2,184	$ 3,273	$ 5,951	14,078	5,064	1,464
Dividend income	12,501,378	12,709,983	13,056,188	16,354,052	17,002,829	4,792,928
Income from funded securities	1,375,073					
Income from unfunded securities	308,281					
Interest income		3,448,969	3,417,258	3,412,742	3,328,394	1,073,717
Miscellaneous Income	8	11	14	19	15	38
Total other income	14,087,336	16,218,926	16,479,111	17,782,891	21,089,190	5,868,147
Total income	14,087,336	16,218,926	16,479,111	18,010,891	21,789,625	6,151,989
MISCELLANEOUS DEDUCTIONS FROM INCOME						
Miscellaneous tax accruals	1,276,165	991,944	992,850	892,854	922,991	43,995
Maintenance of investment organization	15,376	50,943	28,139	23,110	22,915	966
Miscellaneous income charges			2,302	7,883	2,475	19
Total miscellaneous deductions	1,291,541	1,042,887	993,291	923,847	947,974	45,009
Income available for fixed charges	13,395,795	15,176,039	15,787,820	17,087,054	21,421,711	6,151,107
FIXED CHARGES						
Interest on funded debt:						
Fixed interest not in default	1,519,972	2,405,980	2,414,337	2,331,462	2,230,046	717,799
Interest on unfunded debt	6,886	920	70	14		
Amortization of discount on funded debt	50,713	52,473	50,267	48,051	45,454	14,543
Total fixed charges	1,577,571	2,459,373	2,464,674	2,379,527	2,275,500	732,342
Income after fixed charges	11,818,224	12,716,666	13,323,146	14,707,527	19,146,211	5,418,765
DISPOSITION OF NET INCOME						
Divided appropriations of income	6,231,250	9,340,875	8,000,000	8,000,000	10,000,000	
BALANCE OF INCOME TRANSFERRED TO EARNED SURPLUS—UNAPPROPRIATED	5,586,974	3,375,791	5,323,146	6,707,527	9,146,211	5,418,765
EARNED SURPLUS—UNAPPROPRIATED						
Balance at beginning of year	65,000,201	70,020,102	74,102,020	79,724,330	80,417,907	85,032,170
Credit balance transferred from income	5,586,974	3,375,222	5,323,146	6,707,517	9,139,241	5,418,765
Miscellaneous credits	1,020	157,020	301,476	1,000,051	107,117	1,000
	70,020,244	74,127,383	79,726,691	80,431,798	89,744,265	90,451,935
Dividend appropriations of surplus						
Miscellaneous debits	2,142	25,314	2,361	1,891	11,111,908	66
CREDIT BALANCE AT END OF PERIOD	70,020,102	74,102,069	79,724,330	80,417,907	88,632,357	90,451,869

* The accounts have not been restated in order to give effect to any changes in classifications from year

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF MONTGOMERY } ss

I, the undersigned, H. J. Ward, Comptroller of the Pennsylvania Company, on my oath do say that the Income Accounts and Earned Surplus Statements above presented under my direction, that I have carefully examined the same and declare the same to be complete and correct to the best of my knowledge, information and belief.

Subscribed and sworn to before me this
7th day of July 1965

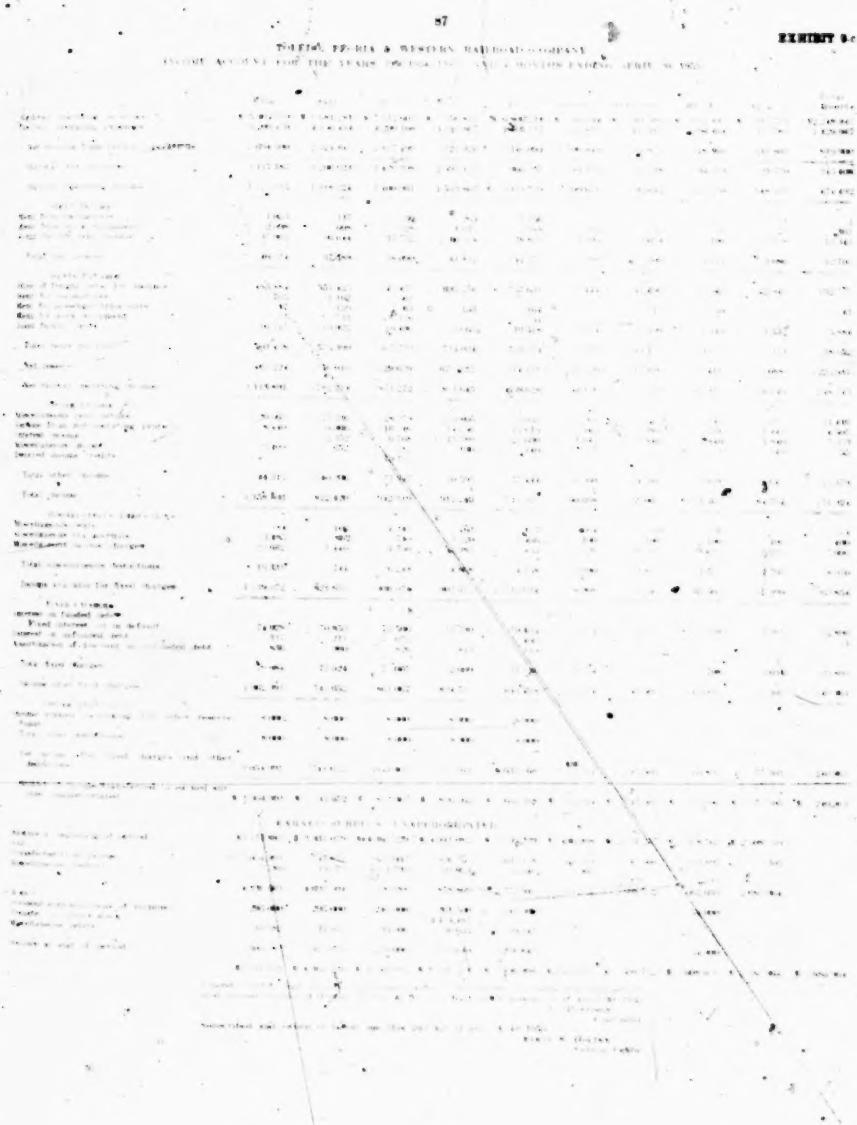
H. J. Ward

Donald R. Powell
Notary Public
Lower Merion Township, Montgomery Co.

My Commission expires January 29, 1969

[fol. 224]

Exhibit 9-C to Application.



[fol. 225] EXHIBIT 10:

Not Applicable.

EXHIBIT 11:

Not Applicable.

EXHIBIT 12:

Not Applicable.

[fol. 226]

BEFORE THE INTERSTATE COMMERCE COMMISSION
Washington, D. C.

Finance Docket No. 18991

APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY and PENNSYLVANIA COMPANY for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.

PETITION OF MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY FOR LEAVE TO INTERVENE—Filed July 20, 1955

Comes now petitioner, Minneapolis & St. Louis Railway Company, and respectfully represents that it has an interest in the matters and issues presented by the application in the above-entitled proceeding and desires to intervene in and become a party to that proceeding, and to present evidence in opposition to the application; and for grounds in support of the proposed intervention petitioner states the following:

1. Petitioner, a corporation organized and existing under the laws of the State of Minnesota, is engaged in transportation in interstate commerce as a common carrier by railroad, subject to the provisions of the Interstate Commerce Act, and operates a railroad between Leola, South Dakota, Minneapolis, Minnesota, and Peoria, Illinois.

2. Petitioner now has and for many years has had direct interchange connections with the Toledo, Peoria & Western Railroad Company at Peoria, Illinois and currently interchanges with that railroad approximately 13,000 carloads [fol. 227] per year. Petitioner also has direct interchange connections and interchanges traffic with The Atchison, Topeka and Santa Fe Railway Company and has indirect interchange connections with The Pennsylvania Railroad Company via the Toledo, Peoria and Western Railroad Company and other railroads.

3. As early as June 10, 1954 and at all times thereafter, to and including May 26, 1955, petitioner was in active negotiation to acquire the controlling stock in the TP&W from the trustees of the estate of George P. McNear, Jr. Petitioner's last bid for the TP&W stock was substantially higher than the price at which the trustees had agreed to sell the controlling stock to applicants on April 15, 1955. While petitioner's bid was pending before the trustees, applicants made a bid higher than petitioner's by only an immaterial amount and the trustees denied petitioner an opportunity to meet or exceed the last bid of the applicants. Petitioner desires to obtain control of the TP&W and asserts that control by it would be in furtherance of the public interest as declared in the National Transportation Policy, the Clayton Act and the Sherman Act; whereas the control of the TP&W by applicants would contravene the principles of the Interstate Commerce Act, the Clayton Act and the Sherman Act for the following reasons:

A. The acquisition by the applicants of the controlling stock of the TP&W was not designed to improve the service of the applicants, or to materially increase the ability of the TP&W to serve its own shippers or its other railroad connections, but, on the contrary, was designed, and its effect would be, substantially to lessen competition and create monopoly.

[fol. 228] B. The acquisition by the applicants of control of the properties and assets of the TP&W was designed, and its effect would be, to prevent petitioner from expanding the territory it serves and from im-

proving and enhancing its financial and physical condition, to the injury and competitive disadvantage of petitioner, and to the undue competitive advantage of applicant railroads over petitioner.

C. The applicant railroads now provide freight service in competition with the TP&W. The competition now afforded by this independent railroad to applicants will disappear if they are permitted to control it. Furthermore, it will be to applicants' economic interest to route freight via their existing Chicago route rather than via the TP&W route. The long-term effects of these economies on the TP&W will be detrimental to it, to the shipping public, to the national defense, and to adequate, efficient and economical transportation service.

D. Your petitioner in no sense competes with the TP&W, but on the contrary, its acquisition of control of the assets and property of the TP&W would be a natural, normal and logical extension of petitioner's lines and the territory it serves. Your petitioner, unlike the applicants, would have no incentive other than to maximize the traffic routed over and carried by the TP&W, and, accordingly, its acquisition, unlike that by the applicants, would enhance competition, tend to restrict and confine monopoly, and otherwise be in the public interest.

[fol. 229] E. The acquisition by the applicants of the TP&W will not result in economies in rail operation, whereas the acquisition by petitioner of the TP&W would result in substantial economies both to the petitioner and to the TP&W, with a consequent strengthening of both companies, all of which is in the public interest.

4. Petitioner further alleges that the application for authority to acquire the control through stock ownership of the TP&W should be denied because neither the terms nor conditions proposed by the applicants are just and reasonable, nor would the control sought to be effectuated be consistent with the public interest.

Wherefore, your petitioner requests leave to intervene in opposition to the application and be treated as a party in interest in the above-entitled proceeding with the right to have notice of and to appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard through counsel on brief and at oral argument, if oral argument is granted.

Petitioner requests that the application be assigned for hearing.

Minneapolis & St. Louis Railway Company, by Burton K. Wheeler, Edward K. Wheeler, Its Attorneys.

July 20, 1955

Of Counsel: Wheeler & Wheeler, 704 Southern Building, Washington 5, D. C.

[fol. 230] Certificate of Service (omitted in printing).

[fol. 231]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE IN OPPOSITION TO THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—August 2, 1955.

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company, and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and

by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on July 20, 1955, the Minneapolis & St. Louis Railway Company filed its petition for leave to intervene in opposition to the application and requested that the application be assigned for hearing, and that copies of said petition have been served upon the applicants;

It is ordered, That said Minneapolis & St. Louis Railway Company be, and it is hereby, permitted to intervene and be treated as a party to this proceeding.

It is further ordered, That the proceeding be, and it is hereby, assigned for hearing at a time and place hereafter to be designated.

And it is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, and West Virginia.

Dated at Washington, D.C., this 2nd day of August, A.D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 232]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE CITY OF PEORIA FOR LEAVE TO INTERVENE—July 21, 1955

Comes now your petitioner, the City of Peoria, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. Petitioner is a Municipal Corporation in the State of Illinois.

2. On July 19, 1955 the City Council of the City of Peoria adopted the following resolution:

> An application has been filed with the Interstate Commerce Commission for approval of joint ownership of the TOLEDO, PEORIA & WESTERN RAILROAD by the SANTA FE and PENNSYLVANIA Railroads, which assures operation of the TOLEDO, PEORIA & WESTERN RAILROAD as a separate entity under its present management and with its headquarters in the Peoria Area.
>
> [fol. 233] NOW, THEREFORE, BE IT RESOLVED that such action is in the best interest of the City of Peoria and the Corporation Counsel is hereby directed to intervene in the proceedings before the Commission requesting that a hearing be held in Peoria and urgently recommending the approval of the application.

Petitioner's position and interest in this proceeding is that stated in the resolution of the Council of the City of Peoria adopted on July 19, 1955.

Wherefore, said City of Peoria prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person, or

by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Peoria, Illinois, July 21st, 1955.

Max J. Lipkin, Corporation Counsel, City Hall, Peoria, Illinois.

Duly sworn to by Max J. Lipkin, jurat omitted in printing.

[fol. 234]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF PEORIA ASSOCIATION OF COMMERCE FOR LEAVE TO INTERVENE—July 22, 1955

Comes now your petitioner, Peoria Association of Commerce, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding, and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. Petitioner is a Corporation of the State of Illinois, having its office in the City of Peoria, with Industrial, Commercial, and Professional Membership of 2875. Its purpose is to promote the civic, economic and social welfare of the people of Peoria and vicinity.

2. On July 18, 1955, Petitioner, by its Board of Directors adopted the following Resolution:

[fol. 235] RESOLUTION

PEORIA ASSOCIATION OF COMMERCE
PEORIA, ILLINOIS

WHEREAS, Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for au-

thority under Section 5 (2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock, Finance Docket No. 18991 has been filed with the Interstate Commerce Commission as of July 8, 1955.

WHEREAS, This application in exhibit 7-d, Section 3 commits the applicants to the following:

(a) TP&W will continue to be operated as a separate and independent carrier with responsible management located along its lines in order to preserve to shippers and communities the present direct access to its officials.

(b) The properties of the TP&W, including line and equipment, will be maintained and improved in keeping with the requirements of a railroad of its character and importance.

(c) TP&W will continue to maintain its own solicitation forces and will be entirely free to solicit traffic in such manner as best to serve the interests of TP&W.

(d) All existing routes and channels of trade via TP&W will be maintained and kept open without discrimination between connecting lines of railroad.

(e) The Board of Directors of TP&W shall consist of eleven members, of whom one shall be the president of the company, two shall be officers of Santa Fe, two shall be officers of Pennsylvania Company or The Pennsylvania Railroad Company or both, and the remaining six shall be prominent citizens not connected with any one of the parties to this agreement but selected by the parties to this agreement and the subject of mutual agreement between them.

WHEREAS, Under joint ownership by the Santa Fe and Pennsylvania the Toledo, Peoria & Western Railroad as an independently operated Railroad can continue its active role in support of this Association's program

[fol. 236] for the industrial development and growth of The Greater Peoria Area and Central Illinois.

WHEREAS, Ownership of the Toledo, Peoria & Western Railroad by these two railroads, which are its most important connections on the East and the West and whose interests are therefore complementary rather than competitive, will not only insure the continued growth of the through traffic for which the Toledo, Peoria & Western Railroad provides such a vital link but will also permit the Toledo, Peoria & Western Railroad to take an even stronger interest in the industrial development of this area;

NOW, THEREFORE BE IT RESOLVED that the Peoria Association of Commerce give its full support to the application of the Santa Fe and Pennsylvania Railroads to the Interstate Commerce Commission for approval of their joint acquisition of control of the Toledo, Peoria & Western Railroad through purchase of its capital stock; and

BE IT FURTHER RESOLVED that the Executive Vice President of this Association be and he is hereby authorized and directed to sign, verify and file in behalf of this Association a Petition for leave to intervene in support of the aforesaid application to the Interstate Commerce Commission, to take all reasonable steps in furtherance thereof, and to request said Commission to set the matter for hearing in Peoria.

APPROVED and ADOPTED by the Board of Directors, Peoria Association of Commerce, Peoria, Illinois at their meeting July 18, 1955.

PEORIA ASSOCIATION OF COMMERCE

By A. D. Theobald
A. D. Theobald, President

ATTEST:

Herbert N. Johnson
Executive Vice President

(Seal)

3. Petitioner's position and interest in this proceeding is that stated in the resolution of its Board of Directors Adopted and Approved July 18, 1955, as above stated.

[fol. 237] Wherefore, said Peoria Association of Commerce prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Peoria, Illinois, July 22nd, 1955.

By Herbert N. Johnson, Executive Vice President, Peoria Association of Commerce, Peoria, Illinois.

Duly sworn to by Herbert N. Johnson, jurat omitted in printing.

[fol. 238]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITIONS FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—August 2, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on July 25, 1955, The City of Peoria and the Peoria Association of Commerce filed their petitions for leave to intervene in support of the application and that the latter petitioner requested that the hearing be set in Peoria;

It is ordered, That said The City of Peoria and Peoria Association of Commerce be, and they are hereby, permitted to intervene and be treated as parties to this proceeding;

It is further ordered, That the question of where a public hearing is to be held be deferred pending future determination by the Commission;

And it is further ordered, That a copy of the petitions and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D.C., this 2nd day of August, A.D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(Seal)

[fol. 239]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE CITY OF KEOKUK, IOWA, FOR LEAVE TO INTERVENE TO THE INTERSTATE COMMERCE COMMISSION—July 28, 1955

Comes now the Petitioner, City of Keokuk, Iowa, and respectfully represents that it has a substantial interest in the subject matter of this proceeding and requests leave to intervene and to become a party thereto, and for the grounds of the proposed intervention, says:

(1) That the Petitioner, City of Keokuk, is a municipal corporation of the State of Iowa.

(2) That the Petitioner is the western terminus of the Toledo, Peoria & Western Railroad; that large quantities of goods are shipped into and out of Keokuk, Iowa, over the Toledo, Peoria & Western Railroad; that the City of Keokuk, Iowa, owns the bridge linking Keokuk, Iowa, with Hamilton, Illinois, and over which the Toledo, Peoria & Western Railroad operates; that the City of Keokuk, Iowa, has a financial interest in the continued flow of goods over the Keokuk Municipal Bridge and in the efficient [fol. 240] operation of the Toledo, Peoria & Western Railroad.

That Petitioner feels the Toledo, Peoria & Western Railroad will continue its efficient operation if the proposed Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company, known as Finance Docket No. 18991, before the Interstate Commerce Commission, is approved.

That Petitioner approves the continued operation of the Toledo, Peoria & Western Railroad Company under independent management as proposed in said Application and that it is in the public interest for said Application to be approved, and therefore, this Petitioner supports the position of The Atchison, Topeka and Santa Fe Railroad

Company, The Pennsylvania Railroad Company and Pennsylvania Company in said Application.

Wherefore, the City of Keokuk prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Keokuk, Iowa, this 28 day of July, 1955.

[fol. 241] Respectfully submitted,

City of Keokuk, Iowa, By Paul Proctor, City Attorney, 9½ North Seventh Street, Keokuk, Iowa.

Duly sworn to by Hubert Schouten, jurat omitted in printing.

[fol. 242]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE KEOKUK CHAMBER OF COMMERCE, KEOKUK, IOWA, FOR LEAVE TO INTERVENE TO THE INTERSTATE COMMERCE COMMISSION—July 28, 1955

Comes now the Petitioner, The Keokuk Chamber of Commerce, Keokuk, Iowa, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding and for grounds of the proposed intervention, says:

(1) That Petitioner is a corporation organized to do business in the State of Iowa, the membership of which represents the business interests of the City of Keokuk, Iowa.

(2) That Petitioner, The Keokuk Chamber of Commerce, is interested in the efficient operation of the Toledo, Peoria & Western Railroad; that a number of its members ship large quantities of goods to and from Keokuk over the

Toledo, Peoria & Western Railroad; that Petitioner approves of the continued operation of the Toledo, Peoria & Western Railroad under independent management as proposed in the Application of The Atchison, Topeka and [fol. 243] Santa Fe Railway Company, The Pennsylvania Railroad Company, and Pennsylvania Company under Finance Docket No. 18991 before the Interstate Commerce Commission; that Petitioner feels that it is in the public interest for the said application to be approved, and therefore supports the position of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company.

Wherefore, the Petitioner, The Keokuk Chamber of Commerce, prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Keokuk, Iowa, this 28 day of July, 1955.

Respectfully submitted

The Keokuk Chamber of Commerce, By R. N. Hoerner, President, 12 North Fourth Street, Keokuk, Iowa.

[fol. 244] *Duly sworn to by R. N. Hoerner, jurat omitted in printing.*

[fol. 245]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE HUBINGER COMPANY, AN IOWA CORPORATION, OF KEOKUK, IOWA, FOR LEAVE TO INTERVENE TO THE INTERSTATE COMMERCE COMMISSION—July 27, 1955

Comes now the Petitioner, The Hubinger Company, an Iowa Corporation of Keokuk, Iowa; and respectfully represents that it has a substantial interest in the subject

matter of this proceeding and requests leave to intervene and to become a party thereto, and for the grounds of the proposed intervention, says:

(1) That the Petitioner, The Hubinger Company, is an Iowa Corporation with principal offices located at Keokuk, Lee County, Iowa.

(2) That Petitioner is a manufacturer and processor of corn products with its principal plant located at Keokuk, Iowa; that the Petitioner is a shipper of large quantities of goods in bulk, package and by tank car; that the majority of all shipments made by the Petitioner are by railroad, both to and from its plant at Keokuk, Iowa; that a large portion of the shipments by railroad to and [fol. 246] from the Petitioner's Keokuk, Iowa, plant are over the Toledo, Peoria & Western Railroad; that the Petitioner is vitally interested, financially and otherwise, in the continued, efficient operation of the Toledo, Peoria & Western Railroad.

That Petitioner feels the Toledo, Peoria & Western Railroad will continue its efficient operation under the proposals made in the Application of the Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company, filed as Finance Docket No. 18991, before the Interstate Commerce Commission; that Petitioner approves the continued operation of the Toledo, Peoria & Western Railroad Company under independent management as proposed in the Application of The Atchison, Topeka and Santa Fe Railway Company, and further, that it is in the public interest for the Application to be approved and for these reasons, the Petitioner supports the position of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company as stated in their Application filed as Docket No. 18991 before the Interstate Commerce Commission.

Wherefore, The Hubinger Company prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in per-

sion or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Keokuk, Iowa, this 27th day of July, 1955.

[fol. 247] Respectfully submitted,

The Hubinger Company, By Robert H. Walker, Boyd, Walker, Huiskamp & Concannon, 609 Blondeau Street, Keokuk, Iowa, Attorneys for The Hubinger Company.

Duly sworn to by Roy L. Krueger, jurat omitted in printing.

[fol. 248]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITIONS FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—August 15, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on August 1, 1955, the City of Keokuk, Iowa, The Keokuk Chamber of Commerce and The Hubinger Company filed their petitions for leave to intervene in support of the application;

It is ordered, That said City of Keokuk, Iowa, The Keokuk Chamber of Commerce and The Hubinger Com-

pany be, and they are hereby, permitted to intervene and be treated as parties to this proceeding.

It is further ordered, That a copy of the petitions and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 15th day of August, A. D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 250]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE AND FOR OTHER RELIEF.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—August 15, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by

Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on August 1, 1955, The New York, Chicago and St. Louis Railroad Company filed its petition for leave to intervene and requested authority to acquire an equal share in the control of Toledo, Peoria & Western Railroad Company, or if inclusion in the transaction is denied or found not required, petitioner opposes and requests denial of the application;

It is ordered, That said The New York, Chicago and St. Louis Railroad Company be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That consideration of the other requests in said petition is withheld pending final determination by the Commission;

And it is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 15th day of August, A. D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 251]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE CITY OF EAST PEORIA FOR LEAVE TO INTERVENE—August 3, 1955

Comes now your petitioner, The City of East Peoria, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. Petitioner is a Municipal Corporation in the State of Illinois.

2. On July 26, 1955 the City Council of the City of East Peoria adopted the following resolution:

> WHEREAS, an application has been filed with the Interstate Commerce Commission for approval of joint ownership of the T. P. & W. R.R. by acquisition of the corporate stock of said Railroad by the Santa Fe and Pennsylvania Railroads, which assures continued operation of the T. P. & W. R.R. as a separate entity under its present management, with headquarters in the City of East Peoria; and
>
> WHEREAS, the acquisition of control of the said T. P. & W. desired is to the best interest of the people of this community and the industrial expansion will be best served by continuing the T. P. & W. as a strong and independent railroad.
>
> [fol. 252] NOW THEREFORE, BE IT RESOLVED by the City Council of the City of East Peoria, Illinois, that the anticipated acquisition of the joint ownership of the T. P. & W. R.R. by the Santa Fe and Pennsylvania Railroads is deemed in the best interest of the City of East Peoria, and the City Attorney, Fred V. Stiers, is hereby directed to intervene in the proceedings before the Interstate Commerce Commission requesting that a hearing be held in Peoria and urgently recommending the approval of the application.

Petitioner's position and interest in this proceeding is that stated in the resolution of the Council of the City of East Peoria adopted on July 26, 1955.

Wherefore, said City of East Peoria prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at East Peoria, Illinois, August 3, 1955.

Fred V. Stiers, City Attorney, City Hall, East Peoria, Illinois.

Duly sworn to by Fred V. Stiers, jurat omitted in printing.

[fol. 253]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—August 15, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on August 5, 1955, the City of East Peoria, Illinois, filed its petition for leave to intervene in support of the application;

It is ordered, That said City of East Peoria, Illinois be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 15th day of August, A. D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 255]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE AND FOR OTHER RELIEF.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—August 16, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Com-

pany, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company.

It further appearing, That on August 11, 1955, the Illinois Central Railroad Company filed its petition for leave to intervene and asserts that their lines connect at various places for the interchange of traffic with the lines of applicants and if the application be granted, it be granted subject to the condition that the applicants shall maintain and keep open all routes and channels of trade with petitioner via existing gateways unless and until otherwise authorized by the Commission.

It is ordered, That said Illinois Central Railroad Company be, and they are hereby, permitted to intervene and be treated as a party to this proceeding;

And it is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 16th day of August, A. D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 257]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER — PETITION FOR LEAVE TO INTERVENE.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION — August 16, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on August 10, 1955, the Chicago, Rock Island and Pacific Railroad Company, filed its petition for leave to intervene and opposes the granting of the application for sole control, but if the purchase of stock of the Toledo, Peoria & Western is approved, requests as a condition to the approval of the transaction that petitioner be included in such purchase on an equal basis with the two applicant carriers and such other railroad companies as may be authorized to participate in such acquisition.

It is ordered, That said Chicago, Rock Island and Pacific Railroad Company be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commis-

sions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 16th day of August A. D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 258]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE KEOKUK BRIDGE COMMISSION, KEOKUK, IOWA, FOR LEAVE TO INTERVENE TO THE INTERSTATE COMMERCE COMMISSION — August 25, 1955

Comes now the Petitioner, Keokuk Bridge Commission of Keokuk, Iowa, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding and for grounds of the proposed intervention says:

(1) That Petitioner is a Commission appointed by the Mayor of the City of Keokuk, under the provisions of Section 383.14 of the 1954 Code of Iowa, with power to operate the Keokuk Municipal Bridge.

(2) That Petitioner, Keokuk Bridge Commission is interested in the continued efficient operation of the Toledo, Peoria & Western Railroad; that the Toledo, Peoria & Western Railroad ship large quantities of goods to and from the City of Keokuk across the Keokuk Municipal

Bridge which is controlled and operated by the Petitioner; that the City of Keokuk receives substantial income from the shipments which cross the Keokuk Municipal Bridge; that Petitioner is vitally interested in the continued flow [fol. 259] of goods across the Keokuk Municipal Bridge and approves the continued operation of the Toledo, Peoria & Western Railroad Company as an independent entity under its present management as proposed in the application of The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company under Finance Docket No. 18991 before the Interstate Commerce Commission; that Petitioner feels that the ownership of the Toledo, Peoria & Western Railroad by The Atchison, Topeka and Santa Fe Railway Company, and The Pennsylvania Railroad Company will improve the facilities of the Toledo, Peoria & Western Railroad Company and increase the traffic across the Keokuk Municipal Bridge, and therefore supports the position of The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company.

Wherefore, the Petitioner, Keokuk Bridge Commission prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in person or by counsel upon brief and at the oral argument if oral argument is granted.

Dated at Keokuk, Iowa, this 25th day of August, 1955.

Respectfully submitted,

Keokuk Bridge Commission, By W. A. Logan, Chairman, 601 Main Street, Keokuk, Iowa.

[fol. 260] *Duly sworn to by W. A. Logan, jurat omitted in printing.*

[fol. 261]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—September 14, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on August 31, 1955, the Keokuk Bridge Commission filed its petition for leave to intervene in support of the application;

It is ordered, That said Keokuk Bridge Commission be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 14th day of September, A. D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 263]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—September 27, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company, and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on September 22, 1955, the Gulf, Mobile and Ohio Railroad Company filed its petition for leave to intervene alleging that petitioner maintains with the Toledo, Peoria & Western Railroad Company, The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company through routes and joint rates and interchanges with said carriers a substantial volume of traffic, and requested that, if the application be granted, it be granted subject to the condition that said carriers and such other railroads in the territory involved as may be included in the transaction, and each of them, shall maintain and keep open all routes and channels

of trade with petitioner via existing gateways unless and until otherwise authorized by the Commission;

It is ordered, That said Gulf, Mobile and Ohio Railroad Company be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That consideration of the condition requested by petitioner be deferred pending final determination by the Commission;

And it is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 27th day of September, A. D., 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 264]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

APPLICATION OF ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL., TO ACQUIRE CONTROL OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY.

PETITION OF CITY OF EUREKA FOR LEAVE TO INTERVENE—August 20, 1955

Now comes your Petitioner, the City of Eureka, Eureka, Illinois, and respectfully represents that it has an interest in the matters and issues in controversy in the above entitled proceeding and desires to intervene in and become a party to that proceeding and for grounds for the proposed intervention, states:

1. Petitioner is a municipal corporation in the State of Illinois.

2. Petitioner urges this commission to approve the application as outlined in the Petition of the Santa Fe and Pennsylvania Companies in its entirety, for the following reasons:

(a.) That the application provides that the T P & W will continue to be operated as a separate and independent carrier with responsible local management which is in the interest of this community and others by providing ready access to management.

[fol. 265] (b.) That the application provides that the properties and facilities of the T P & W will be maintained and improved, which is of benefit to this community and others through the maintenance of maximum employment in the community; Petitioner further requests that the applicants be denied the right to abandon any of its major facilities along the existing line, as a condition of the purchase.

(c.) That the application provides for an independent Board of Directors which is in the interest of this community, since granting the Petitions of competing railroads to participate in the purchase would result in a Board of Directors not concerned with the interests of the T P & W and the communities it serves, and would further result in increase of the Board to an unworkable size.

(d.) That your Petitioner has an interest in industrial development which would be best served by the granting of the joint application of the Santa Fe and Pennsylvania, and would likewise be best served by denial of the Petitions of competing lines to participate in the purchase, since competing lines would have no substantial interest or concern in industrial development along the line of the T P & W; that if the Illinois Central should be given the right to participate, the community of El Paso would be favored and the community of Eureka would be ignored; should the Petition of the Nickel Plate to participate be granted, Peoria would be the favored site for industrial

development to the exclusion of all the smaller communities along the line.

(c.) That Petitioner believes the present independent management of the T P & W should be maintained as outlined in the application of the Santa Fe and Pennsylvania, since such management has maintained the tenure of employees and offers the best hope for uninterrupted employment.

[fol. 266] Wherefore, said City of Eureka prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the hearing of this matter, produce and cross examine witnesses and be heard through its duly elected officers or by counsel upon brief and oral argument, if oral argument be granted.

Petitioner further requests that the hearing on this application be held in the City of Peoria, Illinois.

Dated at Eureka, Illinois, this 20th day of August, 1955.

The City of Eureka, By Don B. Pioletti, City Attorney.

Duly sworn to by Don B. Pioletti, jurat omitted in printing.

[fol. 267]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

APPLICATION OF ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL., TO ACQUIRE CONTROL OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY.

PETITION OF VILLAGE OF SECOR FOR LEAVE TO INTERVENE—August 20, 1955

Now comes your Petitioner, the Village of Secor, Secor, Illinois, and respectfully represents that it has an interest in the matters and issuances in controversy in the above entitled proceeding and desires to intervene in and become a party to that proceeding and for grounds for the proposed intervention, states:

1. Petitioner is a municipal corporation in the State of Illinois.

2. Petitioner urges this commission to approve the application as outlined in the Petition of the Santa Fe and Pennsylvania Companies in its entirety, for the following reasons:

(a.) That the application provides that the T P & W will continue to be operated as a separate and independent carrier with responsible local management which is in the interest of this community and others by providing local access to management.

[fol. 268] (b.) That the application provides that the properties and facilities of the T P & W will be maintained and improved, which is of benefit to this community and others through the maintenance of maximum employment in the community; Petitioner further requests that the applicants be denied the right to abandon any of its facilities along the existing line, as a condition of the purchase.

(c.) That the application provides for an independent Board of Directors which is in the interest of this community, since granting the Petitions of competing railroads to participate in the purchase would result in a Board of Directors not concerned with the interests of the T P & W and the communities it serves, and would further result in increase of the Board to an unworkable size.

(d.) That your Petitioner has an interest in industrial development which would be best served by the granting of the joint application of the Santa Fe and Pennsylvania, and would likewise be best served by denial of the Petitions of competing lines to participate in the purchase, since competing lines would have no substantial interest or concern in industrial development along the line of the T P & W; that if the Illinois Central should be given the right to participate, the community of El Paso would be favored and the community of Secor would be ignored; should the Petition of the Nickel Plate to participate be granted, Peoria would be the favored site for industrial development to the exclusion of all the smaller communities along the line.

(c.) That Petitioner believes the present independent management of the T P & W should be maintained as outlined in the application of the Santa Fe and Pennsylvania, since such management has maintained the tenure of employees and offers the best hope for uninterrupted employment.

[fol. 269] Wherefore, said Village of Secor prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the hearing of this matter, produce and cross examine witnesses and be heard through its duly elected officers or by counsel upon brief and oral argument, if oral argument be granted.

Petitioner further requests that the hearing on this application be held in the City of Peoria, Illinois.

Dated at Secor, Illinois, this 20th day of August, 1955.

The Village of Secor, By Don B. Pioletti, City Attorney.

Duly sworn to by Don B. Pioletti, jurat omitted in printing.

[fol. 270]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITIONS FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—September 30, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control

of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on September 23, 1955, The City of Eureka and The Village of Secor filed their petitions for leave to intervene in support of the application alleging that their interests would be best served by denial of the petitions of competing lines to participate in the purchase and requested that the applicants be denied the right to abandon any of its major facilities along the existing line of the Toledo, Peoria & Western Railroad Company, as a condition of the purchase, and that the hearing on the application be held in the City of Peoria, Illinois;

It is ordered, That said The City of Eureka and The Village of Secor be, and they are hereby, permitted to intervene and be treated as parties to this proceeding;

It is further ordered, That consideration of petitioners' request that grant of authority to purchase be conditioned on denial of the right to abandon any of the major facilities along the existing line of Toledo, Peoria & Western Railroad Company be deferred pending final determination by the Commission;

It is further ordered, That the question of where a public hearing is to be held be deferred pending future determination by the Commission;

And it is further ordered, That a copy of the petitions and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 30th day of September A. D., 1955.

By the Commission; Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 271]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF CITY OF GILMAN FOR LEAVE TO INTERVENE—September 17, 1955

Comes Now, your Petitioner, The City of Gilman, Gilman, Illinois, and respectfully represents that it has an interest in the matters and issues in controversy in the above-entitled proceeding and desires to intervene in and become a party to that proceeding and for grounds of the proposed intervention says:

1. That Petitioner is a municipal corporation located in the County of Iroquois in the State of Illinois.

2. That Petitioner is interested in the proposed application of the Atchison, Topeka & Santa Fe Railroad and the Pennsylvania Railroad Company to acquire control of the Toledo, Peoria & Western Railroad Company and urges this Commission to approve the application as outlined in the Petition of the Santa Fe and Pennsylvania Railroads in its entirety, for the following reasons:

[fol. 272] (a) That the application provides that the properties and facilities of the T. P. & W. Railroad will be maintained and improved, which is a benefit to this community and others through the maintenance of maximum employment in the community and adequate facilities for the maintenance of the railroad service to the community.

(b) That the application provides that the T. P. & W. Railroad will continue to be operated as a separate and independent carrier with responsible local management which is in the interest of this community and others served by the railroad in providing access to the management.

(c) That the application provides for an independent Board of Directors which is in the interest of this community since the granting of petitions for competing railroads to participate in the purchase would result in the vesting of the control in a Board of Directors not concerned with the interests of the T. P. & W. Railroad and the communities it serves.

(d) That Petitioner believes the present independent management of the T. P. & W. Railroad should be maintained as outlined in the application of the Santa Fe and Pennsylvania Railroads since such management has maintained a tenure of employees and offers the best in uninterrupted employment for such employees.

(e) That your Petitioner has an interest in the industrial development of the municipality and community and [fol. 273] would be best served by granting the joint application of the Santa Fe and Pennsylvania Railroads and by denial of the petitions of competing lines to participate in the purchase, since competing lines would have no substantial interest or concern in the industrial development along the lines of the T. P. & W. Railroad; that competing lines would be inclined to and would favor the industrial development of the communities located along their lines to the exclusion of the small communities located along the lines of the T. P. & W. Railroad.

Wherefore, the City of Gilman prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the hearing on this matter and produce and cross-examine witnesses and be heard through its duly elected officers or by counsel upon brief and oral argument, if oral argument is granted.

Dated at Gilman, Illinois, this 17th day of September, A. D. 1955.

The City of Gilman, Illinois, By Fred Raney Miller, City Attorney.

[fol. 274] *Duly sworn to by Fred Raney Miller, jurat omitted in printing.*

[fol. 276]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF VILLAGE OF SHELDON FOR LEAVE TO INTERVENE—September 13, 1955

Comes Now, your Petitioner, The Village of Sheldon, Sheldon, Illinois, and respectfully represents that it has an interest in the matters and issues in controversy in the above-entitled proceeding and desires to intervene in and become a party to that proceeding and for grounds of the proposed intervention says:

1. That Petitioner is a municipal corporation located in the County of Iroquois in the State of Illinois.

2. That Petitioner is interested in the proposed application of the Atchison, Topeka & Santa Fe Railroad and the Pennsylvania Railroad Company to acquire control of the Toledo, Peoria & Western Railroad Company and urges this Commission to approve the application as outlined in the Petition of the Santa Fe and Pennsylvania Railroads in its entirety, for the following reasons:

[fol. 277] (a) That the application provides that the properties and facilities of the T. P. & W. Railroad will be maintained and improved, which is a benefit to this community and others through the maintenance of maximum employment in the community and adequate facilities for the maintenance of the railroad service to the community.

(b) That the application provides that the T. P. & W. Railroad will continue to be operated as a separate and

independent carrier with responsible local management which is in the interest of this community and others served by the railroad in providing access to the management.

(c) That the application provides for an independent Board of Directors which is in the interest of this community since the granting of petitions for competing railroads to participate in the purchase would result in the vesting of the control in a Board of Directors not concerned with the interests of the T. P. & W. Railroad and the communities it serves.

(d) That Petitioner believes the present independent management of the T. P. & W. Railroad should be maintained as outlined in the application of the Santa Fe and Pennsylvania Railroads since such management has maintained a tenure of employees and offers the best in uninterrupted employment for such employees.

(e) That your Petitioner has an interest in the industrial development of the municipality and community and [fol. 278] would be best served by granting the joint application of the Santa Fe and Pennsylvania Railroads and by denial of the petitions of competing lines to participate in the purchase, since competing lines would have no substantial interest or concern in the industrial development along the lines of the T. P. & W. Railroad; that competing lines would be inclined to and would favor the industrial development of the communities located along their lines to the exclusion of the small communities located along the lines of the T. P. & W. Railroad.

Wherefore, the Village of Sheldon prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the hearing on this matter and produce and cross-examine witnesses and be heard through its duly elected officers or by counsel upon brief and oral argument, if oral argument is granted.

Dated at Sheldon, Illinois, this 13th day of September, A. D. 1955.

The Village of Sheldon, Illinois, By Milo J. Fleming, Village Attorney.

[fol. 279] *Duly sworn to by Milo J. Fleming, jurat omitted in printing.*

[fol. 281]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE CITY OF WATSEKA FOR LEAVE TO INTERVENE—September 13, 1955

Comes Now, your Petitioner, The City of Watseka, Watseka, Illinois, and respectfully represents that it has an interest in the matters and issues in controversy in the above-entitled proceeding and desires to intervene in and become a party to that proceeding and for grounds of the proposed intervention says:

1. That Petitioner is a municipal corporation located in the County of Iroquois in the State of Illinois.

2. That Petitioner is interested in the proposed application of the Atchison, Topeka & Santa Fe Railroad and the Pennsylvania Railroad Company to acquire control of the Toledo, Peoria & Western Railroad Company and urges this Commission to approve the application as outlined in the Petition of the Santa Fe and Pennsylvania Railroads in its entirety, for the following reasons:

[fol. 282] (a) That the application provides that the properties and facilities of the T. P. & W. Railroad will be maintained and improved, which is a benefit to this community and others through the maintenance of maximum employment in the community and adequate facilities for the maintenance of the railroad service to the community.

(b) That the application provides that the T. P. & W. Railroad will continue to be operated as a separate and independent carrier with responsible local management which is in the interest of this community and others served by the railroad in providing access to the management.

(c) That the application provides for an independent Board of Directors which is in the interest of this com-

munity since the granting of petitions for competing railroads to participate in the purchase would result in the vesting of the control in a Board of Directors not concerned with the interests of the T. P. & W. Railroad and the communities it serves.

(d) That Petitioner believes the present independent management of the T. P. & W. Railroad should be maintained as outlined in the application of the Santa Fe and Pennsylvania Railroads since such management has maintained a tenure of employees and offers the best in uninterrupted employment for such employees.

(e) That your Petitioner has an interest in the industrial development of the municipality and community and would [fol. 283] be best served by granting the joint application of the Santa Fe and Pennsylvania Railroads and by denial of the petitions of competing lines to participate in the purchase, since competing lines would have no substantial interest or concern in the industrial development along the lines of the T. P. & W. Railroad; that competing lines would be inclined to and would favor the industrial development of the communities located along their lines to the exclusion of the small communities located along the lines of the T. P. & W. Railroad.

Wherefore, the City of Watseka prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the hearing on this matter and produce and cross-examine witnesses and be heard through its duly elected officers or by counsel upon brief and oral argument, if oral argument is granted.

Dated at Watseka, Illinois, this 13th day of September, A.D. 1955.

The City of Watseka, Illinois, By Milo J. Fleming, City Attorney.

[fol. 284] *Duly sworn to by Milo J. Fleming, jurat omitted in printing.*

[fol. 286]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITIONS FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—October 25, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on September 23, 1955, The City of Gilman, Illinois, The Village of Sheldon, Illinois and The City of Watseka, Illinois, filed their petitions for leave to intervene in support of the application in its entirety alleging that their interests would be best served by denial of the petitions of competing lines to participate in the purchase;

It is ordered, That said The City of Gilman, Illinois, The Village of Sheldon, Illinois, and The City of Watseka, Illinois, be, and they are hereby, permitted to intervene and be treated as parties to this proceeding;

It is further ordered, That a copy of the petitions and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commission of the States of Illinois and Iowa, and that a copy of

this order be served upon the Governors and public regulatory Commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 25th day of October, A. D., 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL.)

[fol. 287]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE CANTON CHAMBER OF COMMERCE, INC., CANTON, ILLINOIS, FOR LEAVE TO INTERVENE TO THE INTERSTATE COMMERCE COMMISSION—October 8, 1955

Comes now the Petitioner, The Canton Chamber of Commerce, Inc., Canton, Illinois, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceedings and desires to intervene in and become a party to said proceedings and for grounds of the proposed intervention, says:

(1) That the Petitioner is a corporation, incorporated not-for-profit, in the State of Illinois, the membership of which represents the business interests of the City of Canton, Illinois and surrounding area.

[fol. 288] (2) That the Petitioner, The Canton Chamber of Commerce, Inc., is interested in the continued efficient operation of the Toledo, Peoria & Western Railroad; that a number of its members ship large quantities of goods into and out of Canton, Illinois over the Toledo, Peoria & Western Railroad; that the Petitioner approves of the continued

operation of the Toledo, Peoria & Western Railroad under independent management as proposed in the application of the Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company, and Pennsylvania Company under Finance Docket No. 18991 before the Interstate Commerce Commission; that the Petitioner feels that it is in the public interest for the said application to be approved, and therefore supports the position of the Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and the Pennsylvania Company.

Wherefore, the Petitioner, The Canton Chamber of Commerce, Inc., prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine wit-
[fol. 289] nesses and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Canton, Illinois this 8th day of October 1955.

Respectfully submitted,

The Canton Chamber of Commerce, Inc., By J. Harry Pinson, President, 35 South Main Street, Canton, Illinois.

Duly sworn to by J. Harry Pinson, jurat omitted in printing.

[fol. 290]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—October 18, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company.

It further appearing, That on October 11, 1955, The Canton Chamber of Commerce, Inc., Canton, Illinois filed its petition for leave to intervene in support of the application.

It is ordered, That said The Canton Chamber of Commerce, Inc., Canton, Illinois, be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 18th day of October, A.D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 291]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—October 12, 1955

Comes now your petitioner, the Village of Lomax, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceedings and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. Petitioner is a Municipal Corporation in the State of Illinois.

2. On October 4, 1955 the Village Trustees of the Village of Lomax adopted the following resolution:

Whereas an application has been filed with the Interstate Commerce Commission for approval of joint ownership of the Toledo, Peoria & Western Railroad by the Santa Fe and Pennsylvania Railroads which assures operation of the Toledo, Peoria & Western Railroad as a separate entity under its present management.

Now, Therefore, Be It Resolved that such action is in the best interest of the Village of Lomax and the corporation counsel is hereby directed to intervene in the proceedings before the Commission urgently recommending the approval of the application.

[fol. 292] Petitioner's position and interest in this proceeding is that stated in the resolution of the Trustees of the Village of Lomax adopted on October 4, 1955.

Wherefore, said Village of Lomax prays to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Lomax, Illinois October 12, 1955.

Fort and Fort, Corporation Counsel, Stronghurst, Illinois, By Charles E. Fort.

Duly sworn to by Charles E. Fort, jurat omitted in printing.

[fol. 293]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—October 20, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on October 14, 1955, the Village of Lomax, Illinois filed its petition for leave to intervene in support of the application;

It is ordered, That said Village of Lomax be, and it is hereby permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That a copy of the petition and of this order be served upon each of the parties to this pro-

ceeding and the Governors and public regulatory commission of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and regulatory commission of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pa., Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 20th day of October, A D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 294]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE WARSAW CHAMBER OF COMMERCE, WARSAW, ILLINOIS FOR LEAVE TO INTERVENE TO THE INTERSTATE COMMERCE COMMISSION—September 17, 1955

Comes now the Petitioner, The Warsaw Chamber of Commerce, Warsaw, Illinois, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding and for grounds of the proposed intervention, says:

(1) That Petitioner is an organization of business men, the membership of which represents the business interests of the City of Warsaw, Illinois.

(2) That Petitioner, The Warsaw Chamber of Commerce, is interested in the efficient operation of the Toledo, Peoria & Western Railroad; that a number of its members ship large quantities of goods to and from Warsaw over the Toledo, Peoria & Western Railroad; that Petitioner

approves of the continued operation of the Toledo, Peoria & Western Railroad under independent management as proposed in the Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company, and Pennsylvania Company under Finance Docket No. 18991 before the Interstate Commerce Commission; that Petitioner feels that it is in the public interest for the said application to be approved, and therefore supports the position of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company.

[fol. 295] Wherefore, the Petitioner, The Warsaw Chamber of Commerce, prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Warsaw, Illinois, this 17th day of September, 1955.

Respectfully submitted

The Warsaw Chamber of Commerce, By Cyrus E. Phillips, III, President, Warsaw, Illinois.

Duly sworn to by Cyrus E. Phillips, III, jurat omitted in printing.

[fol. 296]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—October 20, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on October 17, 1955, The Warsaw Chamber of Commerce, Warsaw, Illinois, filed its petition for leave to intervene in support of the application;

It is ordered, That said The Warsaw Chamber of Commerce, Warsaw, Illinois, be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the State of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 20th day of October, A.D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 297]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

APPLICATION OF ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL., TO ACQUIRE CONTROL OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY.

PETITION OF CITY OF WARSAW FOR LEAVE TO INTERVENE

September 29, 1955

Now comes your Petitioner, the City of Warsaw, Warsaw, Illinois, and respectfully represents that it has an interest in the matters and issues in controversy in the above entitled proceeding and desires to intervene in and become a party to that proceeding and for grounds for the proposed intervention, states:

1. Petitioner is a municipal corporation in the State of Illinois.

2. Petitioner urges this commission to approve the application as outlined in the Petition of the Santa Fe and Pennsylvania Companies in its entirety, for the following reasons:

(a.) That the application provides that the T P & W will continue to be operated as a separate and independent carrier with responsible local management which is in the interest of this community and others by providing ready access to management.

(b.) That the application provides that the properties and facilities of the T P & W will be maintained and improved, which is of benefit to this community and others through the maintenance of maximum employment in the community; Petitioner further requests that the applicants be denied the right to abandon any of its trackage facilities along the existing line, as a condition of the purchase.

(c.) That the application provides for an independent Board of Directors which is in the interest of this com-

munity, since granting the Petitions of competing railroads to participate in the purchase would result in a Board of Directors not concerned with the interests of the T P & W and the communities it serves, and would further result in increase of the Board to an unworkable size.

(d.) That your Petitioner has an interest in industrial development which would be best served by the granting of the joint application of the Santa Fe and Pennsylvania, and would likewise be best served by denial of the Petitions of competing lines to participate in the purchase, since competing lines would have no substantial interest, or concern in industrial development along the line of the T P & W.

(e.) That Petitioner believes the present independent management of the T P & W should be maintained as outlined in the application of the Santa Fe and Pennsylvania, since such management has maintained the tenure of employees and offers the best hope for uninterrupted employment.

Wherefore, said City of Warsaw prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the hearing of this matter, produce and cross-examine witnesses and be heard through its duly elected officers or by counsel upon brief and oral argument, if oral argument be granted.

[fol. 298] Petitioner further requests that the hearing on this application be held in the City of Peoria, Illinois.

Dated at Warsaw, Illinois, this 29th day of September, 1955.

The City of Warsaw, By Henry Thalmann, Mayor;
Attest: Cecile Spinauger, City Clerk.

Duly sworn to by Henry Thalmann, jurat omitted in printing.

[fol. 299]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—October 26, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on October 17, 1955, the City of Warsaw, Illinois, filed its petition for leave to intervene in support of the application alleging that its interest would be best served by denial of the petitions of competing lines to participate in the purchase, and requested that the applicants be denied the right to abandon any of the major facilities along the existing line of the Toledo, Peoria & Western Railroad Company, as a condition of the purchase, and that the hearing on the application be held in the City of Peoria, Ill.:

It is ordered, That said City of Warsaw, Ill., be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That consideration of petitioner's request that grant of authority to purchase be conditioned

on denial of the right to abandon any of the major facilities along the existing line of the Toledo, Peoria & Western Railroad Company be deferred pending final determination by the Commission

It is further ordered, That consideration of the request that the hearing in the proceeding be held in Peoria, Ill. be, and it is hereby, deferred:

It is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 26th day of October, A.D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 301]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—October 26, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway

Company, The Pennsylvania Railroad Company, and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company:

It further appearing, That on October 19, 1955, the Chicago, Indianapolis & Louisville Railway Company filed its petition for leave to intervene alleging that petitioner with the applicants in this proceeding and with Toledo, Peoria & Western Railroad Company maintains through routes and joint rates, and interchanges and handles a substantial volume of traffic, and that in the handling of such traffic petitioner is in competition with through routes jointly maintained by applicants herein and Toledo, Peoria & Western Railroad Company:

It is ordered, That said Chicago, Indianapolis & Louisville Railway Company be, and it is hereby, permitted to intervene and be treated as a party to this proceeding:

It is further ordered, That a copy of the petition and of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia.

Dated at Washington, D. C., this 26th day of October, A.D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 302]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF CITY OF LALLARPE FOR LEAVE TO INTERVENE—December 22, 1955

Comes now your Petitioner, the City of LaHarpe, LaHarpe, Illinois, and respectfully represents that it has an interest in the matters and issues in controversy in the above-entitled proceeding and desires to intervene in and become a party to that proceeding, and for grounds of the proposed intervention, says:

1. That Petitioner is a municipal corporation organized and existing under the Revised Cities and Villages Act, Chapter 24, Illinois Revised Statutes;

2. That on October 11, 1955, Petitioner, by its City Council, adopted the following Resolution:

[fol. 303] "WHEREAS, We have been informed that the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company have contracted to purchase the Toledo, Peoria and Western Railroad, and

"WHEREAS, We have also been informed that objections have been filed with the Interstate Commerce Commission objecting to said sale, and

"WHEREAS, We feel and know that the sustaining of said objections to said sale would be detrimental to the best interests of our merchants, our farming community and our country, and

"WHEREAS, We have been informed that said objections to said sale are now pending before the Interstate Commerce Commission at Washington, D. C.

"THEREFORE, BE IT RESOLVED by the City Council of the City of LaHarpe, Hancock County, Illinois in regular meeting assembled that this City petition and ask that the Interstate Commerce Commission overrule the objections to the sale of the Toledo, Peoria and Western Railroad to the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company and that the said Commission approve and confirm the said sale of the Toledo, Peoria and Western Railroad to the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company.

"BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded by the City Clerk of this City to the Interstate Commerce Commission at Washington, D. C. and also the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company."

3. That Petitioner's position and interest in the proceeding is that stated in the foregoing Resolution [fol. 304] of the City Council of the City of LaHarpe, adopted on October 11, 1955.

Wherefore, said City of LaHarpe prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at LaHarpe, Illinois, this day of Dec. 22, 1955.

City of La Harpe, By Dale H. Dunn, Mayor.

Duly sworn to by Dale H. Dunn, jurat omitted in printing.

[fol. 305] Certificate of Service (omitted in printing).

[fol. 306]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Toledo, Peoria & Western Railroad Company Control

IN THE MATTER OF PETITION FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION.

PRESENT: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—January 10, 1956

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of The Pennsylvania Railroad Company;

It further appearing, That on December 27, 1955, the city of LaHarpe, Illinois, filed its petition for leave to intervene in support of the application alleging that its interest would be best served if the objections to the proposed sale of the Toledo, Peoria and Western Railroad were overruled by the Commission;

It is ordered, That said city of LaHarpe be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That a copy of the petition and of this order be served upon the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Arizona, California, Colorado,

Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, and West Virginia.

Dated at Washington, D. C., this 10th day of January, A. D. 1956.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary

(SEAL)

[fol. 307]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF CENTRAL ILLINOIS LIGHT COMPANY FOR LEAVE TO INTERVENE—January 6, 1956

Comes now your Petitioner, Central Illinois Light Company, an Illinois corporation with its principal offices at 316 South Jefferson Street, Peoria, Illinois, and respectfully represents that it is vitally and substantially interested in the matters and issues in controversy in the above entitled proceeding and desires to intervene and become a party to that proceeding, and for grounds for the proposed intervention says:

1. Petitioner is a corporation organized and doing business in the State of Illinois as a public utility and is engaged, among other things, in the generation and distribution of electricity and steam heat in the Central Illinois area.

2. That Petitioner's principal generating station is located at East Peoria, Illinois, and in connection with the operation of said plant, Petitioner is the largest consignee now served by the Toledo, Peoria & Western Railroad Company. Petitioner receives annually over the tracks of said railroad approximately 600,000 tons of shipping, of

which approximately 400,000 tons originate in Toledo, Peoria & Western Railroad Company territory and along the lines of said railroad. The other 200,000 tons are [fol. 308] switched from other railroads over the Toledo, Peoria & Western Railroad Company lines for delivery to Petitioner. The plans of Petitioner for expansion of its operations also call for Petitioner to receive over Toledo, Peoria & Western Railroad Company lines an additional 300,000 tons of freight by 1960. These plans would be vitally and adversely affected by any future course which would enable or permit said railroad to be so integrated, dismembered or divided in ownership so as to interfere with its future operation on the same basis as it is now being operated. As a result of Petitioner's extensive use and reliance on the facilities of the Toledo, Peoria & Western Railroad Company for the delivery of coal, construction materials and other freight to Petitioner for its use in generating and distributing electricity, Petitioner is vitally and substantially interested in the above-entitled proceeding.

3. As a public utility with its principal offices at Peoria, Illinois and its principal generating station at East Peoria, Illinois, Petitioner is vitally and substantially interested in the industrial development of its territory, a large portion of which is served by the Toledo, Peoria & Western Railroad Company.

4. That because of the character of the Petitioner's operations and its frequent and extensive use of facilities of said railroad, and because of Petitioner's vital interest in the industrial development of its territory, Petitioner is substantially interested in the proposed application of the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company to acquire control of the Toledo, Peoria & Western Railroad Company. Petitioner urges this Commission to approve the application as out- [fol. 309] lined in the Petition filed in this proceeding for the following reasons:

(a) Petitioner believes that the property and facilities of the Toledo, Peoria & Western Railroad Company will be maintained and improved under owner-

ship by the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company. Such course is essential to the public welfare in the territory served by such railroad and is to the best interests of the Petitioner, its customers and the communities it serves.

(b) The proposal of the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company for sharing ownership of the Toledo, Peoria & Western Railroad Company and maintaining its present independent management would best guarantee the continued operation of the Toledo, Peoria & Western Railroad on its present basis and is to the best interests of Petitioner, its customers and the communities it serves.

(c) Petitioner believes that the proposal of the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company would also best provide supplies for industrial development of the territories served both by the Petitioner and the Toledo, Peoria & Western Railroad Company, and would be in the best interests of Petitioner and the public.

Wherefore, Central Illinois Light Company prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in person or by counsel upon brief and at the oral argument, if [fol. 310] oral argument is granted. Petitioner also requests that the hearing in this matter be held at Peoria, Illinois if it is feasible so to do.

Dated at Peoria, Illinois this 6th day of January, 1956.

Central Illinois Light Company, By E. D. Edwards, Vice President

Duly sworn to by E. D. Edwards, jurat omitted in printing.

[fol. 311] Certificate of Service (omitted in printing).

[fol. 313]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE VILLAGE OF GRIDLEY FOR LEAVE TO INTERVENE—December 6, 1955

Comes now your petitioner, The Village of Gridley, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. Petitioner is a Municipal Corporation located in the County of McLean and State of Illinois.

2. Petitioner is now being served by the Toledo, Peoria & Western Railroad.

3. On December 5, 1955 the Board of Trustees of the Village of Gridley adopted the following Resolution:

> RESOLVED that the Village of Gridley, Illinois, shall go on record as being in favor of the proposed acquisition of the Toledo, Peoria & Western Railroad by the Atchison, Topeka & Santa Fe and Pennsylvania Railroads; and that the Village Attorney be instructed to file a Petition of intervention to that effect with the Interstate Commerce Commission stating full support of ICC finance docket 18991.
>
> The above Resolution was passed at a regular meeting of the Board of Trustees of the Village of Gridley held on the 5th day of December, A.D. 1955.

[fol. 314] Petitioners position and interest is that stated in the Resolution of the Board of Trustees adopted on December 5, 1955 and as set forth in this Petition.

Wherefore, said Village of Gridley prays leave to intervene and be treated as a party hereto with the right to

have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Gridley, Illinois, this 6th day of December, A.D. 1955.

L. C. Sieberns, Village Attorney, Gridley, Illinois.

Duly sworn to by L. C. Sieberns, jurat omitted in printing.

[fol. 315] Certificate of Service (omitted in printing).

[fol. 316]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE VILLAGE OF FORREST FOR LEAVE TO INTERVENE—December 10, 1955

Comes now your Petitioner, the Village of Forrest, Forrest, Illinois, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. Petitioner is a municipal corporation in the State of Illinois.

2. On December 7, 1955, the Board of Trustees of the Village of Forrest adopted the following resolution:

> "An application has been filed with the Interstate Commerce Commission for approval of joint ownership of the Toledo, Peoria and Western Railroad by the Santa Fe and Pennsylvania Railroads, which assures operation of the Toledo and Western Railroad as a separate entity under the present management and with its headquarters in the Peoria Area, or vicinity."

RESOLVED that such ownership is for the best interest of the Village of Forrest and that the President [fol. 317] of this Village file a Petition of Intervention with the Interstate Commerce Commission urging the approval of the application of the Santa Fe and Pennsylvania Railroads.

The said Petitioner's interest and position in this proceeding is that stated in the Resolution of the Board of Trustees of the Village of Forrest and adopted December 7, 1955.

Wherefore, said Village of Forrest prays leave to intervene and be treated as a party hereto with the rights to have a notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument if oral argument is granted.

Dated at Forrest, Illinois, this 10th day of December, 1955.

Fred Rieger, President, Board of Trustees.

Duly sworn to by Fred Rieger, jurat omitted in printing.

[fol. 318] Certificate of Service (omitted in printing).

[fol. 319]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE CITY OF FAIRBURY FOR LEAVE TO INTERVENE—December 16, 1955

The City of Fairbury respectfully alleges that it is interested in the issues involved in the above captioned application and desires to become an intervening party in the proceedings and for grounds for such intervention alleges:

1. Petitioner is a Municipality organized under the laws of the State of Illinois.

2. Petitioner is located on the main line track of the Toledo, Peoria & Western Railroad.

3. The following resolution has been adopted by Petitioner's City Council and is now in full force and effect

> [fol. 320] WHEREAS, the Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company have applied to the Interstate Commerce Commission of the United States for approval to acquire control of the Toledo, Peoria & Western Railroad; and
>
> WHEREAS, it appears to be for the best interests of the City of Fairbury that the said Santa Fe and Pennsylvania Railroads shall acquire said ownership and operate the said Toledo, Peoria & Western Railroad as a separate entity as set forth in their application therefor.
>
> NOW, THEREFORE, BE IT RESOLVED That the proper officials of this City be and they are hereby authorized and directed to intervene in the proceedings before the Interstate Commerce Commission in support of said application, to request that the entire hearing before the Commission may be held in the City of Peoria, Illinois or such other place along the line of Toledo, Peoria & Western Railroad as shall be convenient for the appearance of representatives of this and other communities on said line and that said officials shall take such other steps as may be necessary or desirable in urging the approval of said application by the Commission.

The position and interest of the City of Fairbury in the matter is as set forth in the above resolution.

Wherefore, the City of Fairbury requests leave to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony in

introduce testimony and to be heard in all other respects on this matter by the Commission.

Dated at Fairbury, Illinois, December 16, 1955.

Roy E. Taylor, Mayor of the City of Fairbury, Fairbury, Illinois.

[fol. 321] *Duly sworn to by Roy E. Taylor, jurat omitted in printing.*

[fol. 322]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF CITY OF BUSHNELL FOR LEAVE TO INTERVENE—October 3, 1955

Comes now your petitioner, City of Bushnell, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. That said City of Bushnell is a Municipal Corporation organized under the City and Village Act of the State of Illinois.

2. That the City of Bushnell is interested in said proceedings and the position it takes is that the matters proposed for in said cause will be to the best interest of the City of Bushnell.

Wherefore, said City of Bushnell prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in per [fol. 323] son or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Bushnell, Illinois, October 3, 1955.

City of Bushnell, By Ross M. Varner, Mayor; Attest Rex Lomax, City Clerk.

Duly sworn to by Ross M. Varner and Rex Lomax; jurats omitted in printing.

[fol. 324] Certificate of Service (omitted in printing)

[fol. 326]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF GOLDEN RULE CLUB OF CITY OF LAHARPE, INC. FOR LEAVE TO INTERVENE—January 23, 1956

Comes now your Petitioner, the Golden Rule Club of the City of LaHarpe, Illinois, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention, says:

1. That the Golden Rule Club of the City of LaHarpe, Hancock County, Illinois, is an unincorporated civic asso-
[fol. 327] ciation of business and professional men of the City of LaHarpe, Illinois;

2. That Petitioner, LaHarpe Golden Rule Club, is interested in the Application of The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company for the reasons that (1) the community of LaHarpe, Illinois, is located on the line of the Toledo, Peoria & Western Railroad at the point where the Lomax and Keokuk lines converge and that consequently, this community has an economic interest in the Toledo, Peoria & Western Railroad; (2) the Golden Rule Club has an interest in the industrial development of the community of LaHarpe and believes that its interests would best be served

by the acquisition of control of the Toledo, Peoria & Western Railroad by The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company, and further believes that the economic incentives would not exist for stimulating the growth of industry along the line of the Toledo, Peoria & Western Railroad if it were controlled by more than these two carriers; and (3) the [fol. 328] membership of Petitioner, the Golden Rule Club, is comprised of business and professional men, many of whom have occasion to regularly utilize the transportation services afforded by the Toledo, Peoria & Western Railroad, and consequently have a direct interest in the management and operation of this carrier;

3. That Petitioner, Golden Rule Club of the City of LaHarpe, adopted the following Resolution on October 3, 1955.

"Whereas, We have been informed that the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company have contracted to purchase the Toledo, Peoria and Western Railroad, and

"Whereas, We have also been informed that objections have been filed with the Interstate Commerce Commission objecting to said sale, and

"Whereas, We feel and know that the sustaining of said objections to said sale would be detrimental to the best interests of our merchants, our farming community and our country, and

"Whereas, We have been informed that said objections to said sale are pending before the Interstate Commerce Commission at Washington, D.C.,

"Therefore, be it resolved by the Golden Rule Club (the Business and Professional Men's Association) [fol. 329] of the City of LaHarpe, Hancock County, Illinois in Regular Meeting assembled, that we petition and ask that the Interstate Commerce Commission overrule the objections to the sale of the Toledo, Peoria & Western Railroad Company to the Atchison,

Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company and that the said Commission approve and confirm the said sale of the Toledo, Peoria and Western Railroad to the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company."

4. That Petitioner, the Golden Rule Club, urges this Commission to approve the Application of The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company.

Wherefore, said Golden Rule Club prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument. Petitioner further prays that the hearing in connection with this proceeding be set at Peoria, Illinois.

Dated at LaHarpe, Illinois, this 23 day of January, 1956.

Golden Rule Club, LaHarpe, Ill., By Harold Miller, President.

[fol. 330] *Duly sworn to by Harold Miller, jurat omitted in printing.*

[fol. 331] Certificate of Service (omitted in printing).

[fol. 332]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE CITY OF CANTON FOR LEAVE TO INTERVENE—January 19, 1956

Comes now your Petitioner, the City of Canton, Illinois, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and

desires to intervene in and become a party to said proceeding; and for grounds of the proposed intervention, says:

1. That the City of Canton, Illinois, is a municipal corporation existing under the Revised Cities and Villages Act of Illinois;

2. That Petitioner, the City of Canton, is interested in the Application of The Atchison, Topeka and Santa Fe [fol. 333] Railway Company and The Pennsylvania Railroad Company for the reasons that (1) the City of Canton, Illinois, is located on the line of the Toledo, Peoria & Western Railroad Company and consequently this community has an economic interest in the Toledo, Peoria & Western Railroad; (2) the City of Canton has an interest in the industrial development of the community of Canton and believes that its interests would best be served by the acquisition of control of the Toledo, Peoria & Western Railroad by The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company, and further believes that the economic incentives would not exist for stimulating the growth of industry along the line of the Toledo, Peoria & Western Railroad if it were controlled by more than these two carriers;

3. That Petitioner, the City of Canton, adopted the following Resolution on September 20, 1955:

> "An application has been filed with the Interstate Commerce Commission for approval of joint ownership and control of the TOLEDO, PEORIA & WESTERN RAILROAD by the SANTA FE and PENNSYLVANIA Railroads, which assures continued operation of the TOLEDO, PEORIA & WESTERN RAILROAD as a separate entity under [fol. 334] its present management and with its headquarters remaining on the TOLEDO, PEORIA & WESTERN RAILROAD.
>
> "NOW, THEREFORE, BE IT RESOLVED that such action is in the best interest of the city of Canton, Illinois, and the City Attorney is hereby directed to intervene in the proceedings before the Commission in support of the said application and urgently recommending its approval."

4. That Petitioner, the City of Canton, urges this Commission to approve the Application of The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company.

Wherefore, said City of Canton prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument. Petitioner further prays that the hearing in connection with this proceeding be set at Peoria, Illinois.

Dated at Canton, Illinois, this 19th day of January, 1956.

City of Canton, By W. Paul Woods, Mayor.

[fol. 335] *Duly sworn to by W. Paul Woods, jurat omitted in printing.*

[fol. 336] Certificate of Service (omitted in printing).

[fol. 337]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE PEORIA JUNIOR CHAMBER OF COMMERCE FOR LEAVE TO INTERVENE—January 24, 1956

Now comes your petitioner, the Peoria Junior Chamber of Commerce, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention, says:

1. That it is a not-for-profit corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office at 516 Commercial National Bank Building, Peoria, Illinois.

[fol. 338] 2. That your petitioner is a group of more than Four Hundred (400) young men between the ages of 21 and 36 who live in the immediate Peoria area. Your petitioner is on record in favor of the acquisition of the Toledo, Peoria & Western Railroad Company by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and the Pennsylvania Company for the following reasons:

(a) It is to the best interests of the Peoria area that the offices of the Toledo, Peoria & Western Railroad Company remain in the Peoria area.

(b) The civic mindedness and willingness of civic responsibilities of the present Toledo, Peoria & Western Railroad Company management is a matter of record and well known to the officers and members of this organization and it will be of a definite benefit to our community if the present management of the Toledo, Peoria & Western Railroad Company continues.

(c) The joint acquisition of the Toledo, Peoria & Western Railroad Company by said Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and the Pennsylvania Company will increase and [fol. 339] encourage further industrial development along the line of the Toledo, Peoria & Western Railroad Company and particularly in the Peoria area. Your petitioner is well aware of the necessity for continued industrial development in this area and recognizes the Toledo, Peoria & Western Railroad Company as a leader in our community along these lines.

(d) That your petitioner, the Peoria Junior Chamber of Commerce, further believes that the economic incentives for the industrial development of the property contiguous to the line of the Toledo, Peoria & Western Railroad Company and for the further development of the railroad would not exist if the ownership of the Toledo, Peoria & Western Railroad Company were divided between more than the applicant carriers, The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company. Your petitioner is therefore opposed to

multiple ownership of the capital stock of the Toledo, Peoria & Western Railroad Company.

Wherefore, said Peoria Junior Chamber of Commerce prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking [fol. 340] of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument.

Dated at Peoria, Illinois, January 24, 1956.

Thomas G. Schwarzlose, President, Peoria Junior Chamber of Commerce, 516 Commercial National Bank Bldg., Peoria, Illinois.

Duly sworn to by Thomas G. Schwarzlose, jurat omitted in printing.

[fol. 341] Certificate of Service (omitted in printing).

[fol. 343]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO INTERVENE—January 5, 1956

Comes now your petitioner, Railway Labor Executives' Association, and respectfully represents that it has an interest in the matter in controversy in the above entitled proceeding, that it desires to intervene in and become a party to said proceeding, and for grounds in support of said petition, respectfully shows:

1.

That the petitioner, Railway Labor Executives' Association, is a voluntary unincorporated association, with which are affiliated the following standard international railway labor organizations:

Switchmen's Union of North America
Order of Railroad Telegraphers
American Train Dispatchers' Association
Railway Employes' Department, A.F. of L.
International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America
[fol. 344] Sheet Metal Workers' International Association
International Brotherhood of Electrical Workers
Brotherhood Railway Carmen of America
International Brotherhood of Firemen & Oilers
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood of Railroad Signalmen of America
International Organization Masters, Mates & Pilots of America
National Marine Engineers' Beneficial Association
Hotel & Restaurant Employees' and Bartenders International Union
Railroad Yardmasters of America
Brotherhood of Maintenance of Way Employes
Brotherhood of Sleeping Car Porters
Brotherhood of Locomotive Firemen & Enginemen
Brotherhood of Railroad Trainmen
Order of Railway Conductors and Brakemen

The principal office of the petitioner, Railway Labor Executives' Association, is located at 401 Third Street, N.W., Washington 1, D. C.

2.

That certain of the organizations comprising this petitioner represents employees of the carriers involved for the purpose of collective bargaining and have agreements with said carrier concerning rates of pay, rules, and working conditions.

3.

This application, in part, falls within the provisions of Section 5(2) of the Interstate Commerce Act and is there-

fore a proposed transaction in which the Commission is obligated by Section 5(2)(f) to give weight to the interests of the carriers' employees in its consideration of the merits of the transaction. The evidence which is to be developed before the Commission may well disclose serious and substantial adverse effect which will result to certain employees [fol. 345] of the involved carriers should the proposed transaction be approved by the Commission. Petitioner has a direct and substantial interest in any terms and conditions which parties to the proceeding may propose for the protection of employee interests, as well as in itself proposing the imposition of terms and conditions which may be required for the protection of the interests of said employees.

4.

That the intervention of this petitioner will not broaden the issues already before the Commission in this proceeding.

Wherefore, your petitioner, in its own behalf and in behalf of the international standard railway labor organizations affiliated with it, together with the individual members of such organizations, prays leave to intervene in this cause and be treated as a party hereto with the right to have notice of and participate in any further proceeding, to appear thereat, to present testimony, to produce and examine witnesses, and to be heard by counsel upon brief or oral argument.

Respectfully submitted,

Clarence M. Mulholland, 741 National Bank Building, Toledo 4, Ohio, Philip L. Hoag, 741 National Bank Building, Toledo 4, Ohio, Attorneys for Petitioner.

Of Counsel: Mulholland, Robie & Hickey, 741 National Bank Building, Toledo 4, Ohio.

[fol. 346] Certificate of Service (omitted in printing).

[fol. 348]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE CITY OF CHENOA FOR LEAVE TO INTERVENE—December 20, 1955

The City of Chenoa respectfully alleges that it is interested in the issues involved in the above captioned application and desires to become an intervening party in the proceedings and for grounds for such intervention alleges:

1. Petitioner is a Municipality organized under the laws of the State of Illinois.

2. Petitioner is located on the main line track of the Toledo, Peoria & Western Railroad.

3. The following resolution has been adopted by Petitioner's City Council and is now in full force and effect:

> Resolved that the City of Chenoa, Illinois, shall go on record as being in favor of the proposed acquisition of the Toledo, Peoria & Western Railroad by the Atchison, Topeka & Santa Fe and Pennsylvania Railroads, and that the City Clerk be instructed to file a [fol. 349] petition of intervention to that effect with the Interstate Commerce Commission stating full support of Interstate Commerce Commission Finance Docket #18991;

The position and interest of the City of Chenoa in this matter is as set forth in the above resolution.

Wherefore, the City of Chenoa requests leave to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony to introduce testimony and to be heard in all other respects on this matter by the Commission.

Dated at Chenoa, Illinois, December 20th, 1955.

W. Neal, City Clerk of the City of Chenoa.

Duly sworn to by W. Neal, jurat omitted in printing.

[fol. 350] Certificate of Service (omitted in printing).

[fol. 352]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY and PENNSYLVANIA COMPANY for authority under Section 5(2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company by purchase of its capital stock.

No. 19086

APPLICATION OF THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY for authority under Section 5(2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of its capital stock.

PETITION OF GUY A. GLADSON AND WILMINGTON TRUST COMPANY, AS TRUSTEES, FOR LEAVE TO INTERVENE—January 25, 1956

To the Interstate Commerce Commission:

Now come Guy A. Gladson and Wilmington Trust Company, a corporation, as trustees, petitioners, and respectfully represent that, as such trustees, they have an interest in the matters in controversy in this proceeding, and desire to intervene in and become parties thereto; and for grounds of the proposed intervention say:

(1) Petitioners are co-trustees of the Estate of George P. McNear, Jr. duly appointed by and acting under the power conferred by the Last Will and Testament of said George P. McNear, Jr.

[fol. 353] (2) As such co-trustees petitioners hold the legal title to approximately 82% of the capital stock of

Toledo, Peoria & Western Railroad Company proposed to be acquired in these proceedings. Petitioners, as such co-trustees, have agreed, subject to the authorization of this Commission, to sell all such shares of capital stock to The Atchison, Topeka & Santa Fe Railway Company, an applicant in Finance Docket No. 18991.

(3) Petitioners believe that the acquisition of control of Toledo, Peoria & Western Railroad Company by applicants in Finance Docket No. 18991 is in the public interest and file this petition in support of the application of said applicants for the authority to make such acquisition.

Wherefore, petitioners pray leave, as such co-trustees, to intervene in this proceeding and be treated as parties hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Chicago, Illinois, this 25th day of January, 1956.

Guy A. Gladson, Wilmington Trust Company, As Trustees as Aforesaid, By Bryce L. Hamilton, Richard J. Faietti.

January 25, 1956

1400 First National
Bank Building
Chicago 3, Illinois

[fol. 354] Certificate of Service (omitted in printing).

[fol. 355]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Finance Docket No. 19086

[Titles omitted]

PETITION OF ELIZABETH M. MCNEAR, INDIVIDUALLY AND AS GUARDIAN FOR JOHN W. MCNEAR, ELIZABETH H. MCNEAR, THE HANOVER BANK, AND WILLIAM MCDOWELL FREDERIC AND COMMERCIAL NATIONAL BANK OF PEORIA AS EXECUTORS OF THE ESTATE OF CLINTON M. MCNEAR, FOR LEAVE TO INTERVENE—January 24, 1956

Come now petitioners, Elizabeth M. McNear, individually and as guardian for John W. McNear, Elizabeth H. McNear, The Hanover Bank, and William McDowell Frederic and Commercial National Bank of Peoria as Executors of the Estate of Clinton M. McNear, and respectfully represent that they have an interest in the matters in controversy in the above entitled proceedings and desire to intervene in and become parties to said proceedings, and for grounds of the proposed intervention state:

1. Petitioner Commercial National Bank of Peoria, a [fol. 356] national banking association, and William McDowell Frederic are duly appointed and acting Executors of the Estate of Clinton M. McNear; said Estate consists, in part, of 527 shares of the capital stock of the Toledo, Peoria & Western Railroad Company. The Hanover Bank, a corporation organized under the laws of the State of New York, is the owner of 13,142 shares of the capital stock of the Toledo, Peoria & Western Railroad Company. Elizabeth H. McNear is a beneficiary under the trust created by the Will of George P. McNear, Jr. The remaining petitioners each own shares of the capital stock of the Toledo, Peoria & Western Railroad Company and are also beneficiaries under the trust created by the Will of George P. McNear, Jr.; said trust estate consists, in part, of [illegible] shares of the capital stock of the Toledo, Peoria & Western Railroad Company.

2. The interest of each of the petitioners as owners of shares of the capital stock of the Toledo, Peoria & Western Railroad Company and as income beneficiaries under the trust created by the Will of George P. McNear, Jr., is as follows:

	Individual Holdings	*Income Beneficiaries under Trust*
Elizabeth M. McNear	450 shares	36,900 shares
Elizabeth M. McNear as Guardian for John W. McNear	254 "	6,150 "
Elizabeth H. McNear		6,150 "
William McDowell Frederic and Commercial National Bank of Peoria as Executors of the Estate of Clinton M. McNear	527 "	
The Hanover Bank	13,142 "	

(fol. 357) 3. Petitioners have entered into agreements to sell to The Atchison, Topeka and Santa Fe Railway Company all of the capital stock of the Toledo, Peoria & Western Railroad Company owned by them, on the terms and conditions set out in the application in Finance Docket No. 18991, Exhibits 7-A and 7-C. Similarly, the Trustees under the Will of George P. McNear, Jr., have agreed to sell to the Atchison, Topeka and Santa Fe Railway Company all of the capital stock of the Toledo, Peoria & Western Railroad Company held by them as Trustees, as shown by Exhibit 7 to the Application in Finance Docket No. 18991.

4. Petitioners desire to intervene in support of the application in Finance Docket No. 18991 and request the Commission to find that consummation of the agreements described in paragraph 3 hereof is consistent with the public interest and to grant the authority sought by the application in Finance Docket No. 18991.

Wherefore petitioners pray for leave to intervene herein and be treated as parties hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard by counsel upon brief and at oral argument, if oral argument is granted.

Elizabeth M. McNear, Individually and as Guardian for John W. McNear, Elizabeth H. McNear, The Hanover Bank, and William McDowell Frederick and Commercial National Bank of Peoria as Executors of the Estate of Clinton M. McNear, By Edwin C. Austin, Walter J. Cummings, Jr., Martin M. Lucente, Attorneys for Petitioners, 11 South La Salle Street, Chicago 3, Illinois.

[fol. 357a] January 24, 1956.

Of Counsel: Sidley, Austin, Burgess & Smith, 11 South La Salle Street, Chicago 3, Illinois.

Certificate of Service (omitted in printing).

[fol. 358]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE BUSHNELL CHAMBER OF COMMERCE, BUSHNELL, ILLINOIS, FOR LEAVE TO INTERVENE TO THE INTERSTATE COMMERCE COMMISSION—January 28, 1956

Comes now the Petitioner, The Bushnell Chamber of Commerce, Bushnell, Illinois, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceedings and desires to intervene in and become a party to said proceedings and for grounds of the proposed intervention, says:

1) That the Petitioner is an unincorporated association the membership of which represents the business and pro-

fess onal interests of the City of Bushnell, Illinois, and surrounding area.

[fol. 359] 2) That the Petitioner, The Bushnell Chamber of Commerce, is interested in the continued efficient operation of the Toledo, Peoria & Western Railroad; that a number of its members ship large quantities of goods into and out of Bushnell, Illinois, over the Toledo, Peoria & Western Railroad; that the Petitioner approves of the continued operation of the Toledo, Peoria & Western Railroad under independent management as proposed in the application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company, and Pennsylvania Company under Finance Docket No. 18901 before the Interstate Commerce Commission; that the Petitioner feels that it is in the public interest for the said application to be approved, and therefore supports the position of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company, and the Pennsylvania Company.

Wherefore, the Petitioner, The Bushnell Chamber of Commerce, prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief [fol. 360] and at the oral argument, if oral argument is granted.

Dated at Bushnell, Illinois, this 28th day of January, 1956.

Respectfully submitted,

The Bushnell Chamber of Commerce, By James R. Roark, President, Bushnell, Illinois.

Duly sworn to by James R. Roark, jurat omitted in printing.

[fol. 361] Certificate of Service (omitted in printing).

[fol. 362]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

[Title omitted]

PETITION OF THE UNITED ELECTRIC COAL COMPANIES FOR LEAVE TO INTERVENE—January 30, 1956

Comes now your Petitioner, The United Electric Coal Companies, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. Petitioner is a corporation organized and existing under the laws of the State of Delaware and duly authorized to do business in Illinois. Its principal office is located at 307 North Michigan Avenue, Chicago, Illinois.

2. Petitioner is engaged in the mining and production of coal in central and southern Illinois territories. For several years last past Petitioner has shipped substantial tonnages of coal to Peoria, Illinois, over the Toledo, Peoria & Western Railroad Company. The receivers of Petitioner's coal at Peoria are making plans to expand their operations within the next 5 years so as to receive over the Toledo, Peoria & Western Railroad Company lines, hundreds of thousands of additional tons of coal. In the opinion of Petitioner these tonnages would be vitally and adversely af-
[fol. 363] fected by any future course which would permit said railroad to be dismembered or divided in ownership so as to cause a change in the present operation and management. As a result of Petitioner's extensive use and reliance on the facilities of the Toledo, Peoria & Western Railroad Company for the delivery of Coal to its customers, Petitioner is vitally and substantially interested in the above entitled proceeding.

3. The policy announced by the Santa Fe Railway Company and the Pennsylvania Railroad Company "to continue the present independent management and operation of

Toledo, Peoria & Western Railroad Company" will insure continuity of management, operation and service as in the past and this declaration of policy is of paramount interest to Petitioner.

4. As a large producer of coal with mines close to Peoria, Petitioner is vitally and substantially interested in the industrial development of this territory, a large portion of which will be served by the Toledo, Peoria & Western Railroad Company.

5. Because of the character of the Petitioner's operations and its frequent and extensive use of facilities of said railroad, and because of Petitioner's vital interest in the industrial development of the territory, Petitioner is substantially interested in the proposed application of the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company to acquire control of the Toledo, Peoria & Western Railroad Company. Petitioner urges this Commission to approve the application as outlined in the Petition filed in this proceeding for the following reasons:

[fol. 364] (a) Petitioner believes that the property and facilities of the Toledo, Peoria & Western Railroad Company will be maintained and improved under ownership by the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company. Such course is essential to the public welfare in the territory served by such railroad and is to the best interests of the Petitioner, its customers and the communities it serves.

(b) The proposal of the Atchison, Topeka and Santa Fe Railroad Company and the Pennsylvania Railroad Company for sharing ownership of the Toledo, Peoria & Western Railroad Company and maintaining its present independent management would best guarantee the continued operation of the Toledo, Peoria & Western Railroad on its present basis and is to the best interests of Petitioner, its customers and the communities it serves.

(c) Joint ownership of the Toledo, Peoria & Western Railroad by the Santa Fe Railway Company and the Pennsylvania Railroad Company would insure an adequate car supply at all times which is of vital importance to both the shipper and receiver of coal.

(d) Petitioner believes that the proposal of the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company would provide the [fol. 365] impetus for industrial development of the territories served by the Toledo, Peoria & Western Railroad Company, and would be in the best interests of Petitioner and the public.

Wherefore, said The United Electric Coal Companies prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Chicago, Illinois this 30th day of January, 1956.

John L. Bordes of Kirkland, Fleming, Green, Martin & Ellis, Attorneys for Petitioner, 33 North LaSalle Street, Chicago 2, Illinois, RAndolph 6-2929.

[fol. 366] Certificate of Service (omitted in printing).

[fol. 370-372]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19086

APPLICATION OF THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY for authority under Section 5(2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of its capital stock. Filed October 13, 1955

[fol. 373] *To The Interstate Commerce Commission, Washington 25, D. C.*

INTRODUCTORY STATEMENT

This is an application under Section 5(2) of the Interstate Commerce Act for authorization and approval of the acquisition of control of the Toledo, Peoria & Western Railroad Company by The Minneapolis & St. Louis Railway Company through purchase of its capital stock.

The M&StL is no stranger or latecomer to efforts to acquire control of the TP&W.

As early as June 10, 1954, and at all times thereafter to and including May 26, 1955, the M&StL was actively seeking to acquire the controlling stock in the TP&W from the Trustees under the Will of George P. McNear, Jr. These activities were commenced and pursued by the M&StL long prior to any negotiations by the Pennsylvania Railroad or the Atchison, Topeka & Santa Fe Railway Company to acquire such control.*

[fol. 374] On or about April 15, 1955, the Wilmington Trust Company, one of the Trustees, purported to sell the controlling stock to the Pennsylvania and Santa Fe. Thereafter, believing such "sale" to be invalid, the M&StL offered to buy the controlling stock from the Trustees at a substantially higher price than had theretofore been offered by the Pennsylvania-Santa Fe. On May 26, 1955, while the M&StL's bid was still pending, the Trustees accepted a bid of the Santa Fe which was higher than the M&StL's by only an immaterial amount, and the M&StL was not given the opportunity to meet or exceed this last offer of the Santa Fe.

The Pennsylvania, the Santa Fe and the Pennsylvania Company** have heretofore filed an application to acquire control of the TP&W pursuant to agreements entered into by the Santa Fe to purchase, subject to Commission approval, at least 99.2 per cent of the total shares of the

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* The companies referred to above are respectively termed the "TP&W" "M&StL", "Santa Fe" and "Pennsylvania."

** A wholly owned subsidiary of Pennsylvania Railroad.

TP&W stock outstanding. Such application has been assigned Finance Docket No. 18991. The M&StL has heretofore been granted leave to intervene in those proceedings in opposition to the Pennsylvania-Santa Fe application.

By filing this application, the M&StL believes that it can demonstrate to the Commission in a comparative or consolidated hearing on both applications, that, to paraphrase the *Carolina Coach Purchase case*,* "it would be more desirable in the public interest" for control of the TP&W to be acquired by the M&StL alone, rather than by the Pennsylvania-Santa Fe alone or in combination with other railroads. The M&StL further believes that only by a comparative consideration of the two applications together can the Commission administer Section 5 in accordance with the purpose and intent of Congress to place acquisition of control of railroads within the control of the Commission rather than within the control of private corporations.

[fol 375]

I. Contents of Application

(a) Identification of applicant, or of each applicant, if there are two or more applicants.

1. Full and correct name of applicant and the business address of applicant (street and number, city, county and State).

Answer: The Minneapolis & St. Louis Railway Company, 111 East Franklin Avenue, Minneapolis 4, Hennepin County, Minnesota.

2. Whether applicant is an individual, firm, copartnership, corporation, company, association, joint stock company, trustee, receiver, assignee, or other personal representative, and trade name or style, if any, under which applicant is doing business.

Answer: Applicant is a corporation organized and existing under the laws of the State of Minnesota.

3. Whether applicant is a carrier by railroad or an express company subject to Part I of the Act, or a water

* Carolina Coach Co. of Virginia Purchase, Richmond-Greyhound Lines, Inc., 38 M.C.C. 347.

carrier subject to Part III of the Act, or a person which is not a carrier subject to the Act.

Answer: Applicant is a carrier by railroad subject to Part I of the Interstate Commerce Act.

4. State or States in which any part of the property of the carrier or carriers involved is situated, and, in case of a water carrier, in which any port served by such carrier is located.

Answer: The properties owned by applicant are situated in the States of Illinois, Iowa, Minnesota and South Dakota.

5. The name, title, and business address of the officer or officers to whom correspondence with respect to the application should be addressed.

Answer: Burton K. Wheeler and Edward K. Wheeler, 704 Southern Building, Washington 5, D. C., Special Counsel for The Minneapolis & St. Louis Railway Company, and Richard Musenbrock, General Counsel, The Minneapolis & St. Louis Railway Company, 111 East Franklin Avenue, Minneapolis 4, Minnesota.

[fol. 376] 6. If applicant or other party to the transaction has been authorized by the Interstate Commerce Commission to engage in interstate or foreign commerce, the date of the certificate, permit, or temporary authority, and the number of the Commission's docket assigned to the application upon which such certificate, permit, or temporary authority was issued or granted; or, if application to engage in interstate or foreign commerce has been made but not granted, date of the application and the docket number.

Answer: By decision dated March 4, 1941, in Finance Docket No. 12414 (244 I.C.C. 357), applicant was authorized to purchase portions of the lines of railroad of The Minneapolis & St. Louis Railroad Company. In the same docket and in the same decision The Minneapolis & St. Louis Railroad Corporation was authorized to purchase other portions of the lines of railroad of the Railroad Company—both pursuant to Section 5(2) of the Interstate Commerce Act.

By decision dated November 25, 1944, in Finance Docket No. 14667 (257 I.C.C. 815—not reported in full), applicant was authorized to merge its properties with those of The

Minneapolis & St. Louis Railroad Corporation for ownership, management and operation pursuant to Section 5(2) of the Interstate Commerce Act.

Since December 1, 1944, applicant has been operating the aforesaid merged properties pursuant to authority of the Interstate Commerce Commission, and has been engaged in interstate and foreign commerce.

(b) Information respecting applicant, or each applicant if there are two or more applicants.

1. If applicant is a corporation:

(1) Date of incorporation and Government, State, or Territory of incorporation.

Answer: March 8, 1939, under the laws of the State of Minnesota.

[fol. 377] (2) Name and business address of directors.

Answer:

Name	*Business Address*
Arthur S. Bowes	1420 Lake Shore Drive, Chicago, Illinois.
Archibald G. Bush	900 Fauquier Avenue, St. Paul, Minnesota
Henry DeMeester	4290 Ocean Shore Boulevard, Ormond Beach, Florida
John W. Devins	111 East Franklin Avenue, Minneapolis, Minnesota
William E. Fay	210 South Center Street, Joliet, Illinois.
Ben W. Heineman	135 South LaSalle Street, Chicago, Illinois.
Franklin Lyons	208 South LaSalle Street, Chicago, Illinois.
Joseph Nye	14 Wall Street, New York, New York.
Lee A. Potter	121 South Second Street, Minneapolis, Minnesota
Jouett Shouse	1966 National Press Building, Washington, D. C.
Howell P. E. Stevens	50 Hennepin Avenue, Minneapolis, Minnesota

(3) Name, title, and business address of officers:
Answer:

Name	*Title*	*Business Address*
W. Devins	President	111 East Franklin Avenue, Minneapolis, Minnesota.
W. Nelson	Vice President and Traffic Manager	111 East Franklin Avenue, Minneapolis, Minnesota.
S. Provo	Vice President and Comptroller	111 East Franklin Avenue, Minneapolis, Minnesota.
E. Eaton	Secretary	111 East Franklin Avenue, Minneapolis, Minnesota.
E. Bailey	Treasurer	111 East Franklin Avenue, Minneapolis, Minnesota.
Muscabrock	General Counsel	111 East Franklin Avenue, Minneapolis, Minnesota.
Powell	General Solicitor	111 East Franklin Avenue, Minneapolis, Minnesota.

(4) Name and business address of 20 principal stockholders as of September 30, 1955, and their respective holdings.

	Business Address	*Holdings as of Sept. 30, 1955*
	80 Beaver Street New York, N. Y.	20,223
DuPont Co.	1 Wall Street, New York, N. Y.	24,487
Hammond and Co.	135 West Adams Street, Chicago 90, Ill.	22,634
Lynch, Pierce, and Beane	70 Pine Street, New York, N. Y.	15,477
Wagner	Drake Tower Apts., 179 Lake Shore Drive, Chicago, Ill.	14,384

Name	*Business Address*	*Holdings as of Sept. 30, 19[illegible]*
Bache and Co.	36 Wall Street, New York, N. Y.	11,825
Travelers Ins. Co.	700 Main Street, Hartford, Conn.	11,200
Smith Barney and Co.	14 Wall Street, New York, N. Y.	10,587
[fol. 379]		
Eastman Dillon & Co.	15 Broad Street, New York, N. Y.	9,550
David A. Noyes & Co.	208 South LaSalle Street, Chicago, Illinois	8,900

2. If applicant is a copartnership:
Answer: Not applicable.

3. If applicant is an association or other form of organization, except a corporation:
Answer: Not applicable.

4. If applicant is a trustee, receiver, assignee, or a personal representative of the real party in interest:
Answer: Not applicable.

5. If applicant is not a carrier:
Answer: Not applicable.

6. The length of time applicant has been continuously engaged in the type of business in which it is now engaged; and, if applicant is not a carrier, particulars of its present and prospective activities which have or may have a relation to transportation subject to the Interstate Commerce Act or facilities used therein.

Answer: See answer to Question (a) 6 supra. Applicant and its predecessors in title and interest have been operating railroad properties in interstate and foreign commerce since 1887, the date of the passage of the Interstate Commerce Act—and prior thereto.

Applicant is also engaged in the transportation of property in interstate and foreign commerce by motor vehicle

pursuant to Part II of the Interstate Commerce Act (see Docket MC 104873).

7. Whether or not applicant is controlled by any other corporation or corporations, and, if such control is held, [fol. 380] state the name of the controlling corporation or corporations, the form of control, whether sole or joint, direct or indirect, and its extent.

Answer: Applicant is not controlled by any other corporation or corporations.

8. The measure of control or ownership, if any, now exercised by applicant over any carrier corporation subject to the Interstate Commerce Act, or over the properties of such corporation.

Answer: (a) The Railway Transfer Company of the City of Minneapolis, 100 per cent control.

(b) The Minnesota Transfer Railway Company, 11.11 per cent control. The Minnesota Transfer Railway Company is jointly controlled through ownership of capital stock by applicant, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railroad Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Chicago, Rock Island & Pacific Railroad Company, Chicago, St. Paul, Minneapolis & Omaha Railway Company, Great Northern Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, and Northern Pacific Railway Company, each owning a one ninth (1/9) interest.

9. If applicant, or the real party in interest, is part of a system or group of corporations or other persons, the relationship of the applicant, or of the real party in interest, to the members of such system or group, including the form and extent of such relationship, direct or indirect.

Answer: Applicant is not a part of a system or group of corporations or other persons.

10. Whether there are any intercorporate relationships, not disclosed in responses to prior instructions, through holding companies, ownership of securities, or otherwise, direct or indirect, between applicant and any carrier or person affiliated with any carrier, or between any person

affiliated with applicant and any carrier or person affiliated with any carrier, at the time of making the application; if so, the nature and extent of such relationship; and, if applicant owns securities of a carrier corporation or corporations subject to the Act, the name of the corporation, [fol. 381] a description of the securities, and the par value of each class of securities held.

Answer: Applicant has no such relationships, intercorporate or otherwise, as set forth in the above question. See answer to Question 8 supra as to 100 per cent control of The Railway Transfer Company of the City of Minneapolis, and 11.11 per cent control of Minnesota Transfer Railway Company. Various directors of the applicant have investments not amounting to control in other railroads.

11. Whether any of the applicants or any of their affiliates have officers or directors in common with any other applicant or its affiliates; and, if so, a reference to the Commission's order, or orders, if any, authorizing the holding of such positions in common, with the names of such officers or directors, and the position held in each corporation.

Answer: Neither applicant nor The Railway Transfer Company of the City of Minneapolis has any officers or directors in common with any other applicant or its affiliates.

12. The amount of applicant's outstanding capital stock, by classes, and in connection therewith the par value of each share, its voting rights, if any, the total number of stockholders of record, and the voting power of all security holders.

Answer: Applicant has an authorized issue of 800,000 shares of common stock, no par value. As of September 30, 1955, applicant held in its treasury 21,900 of these shares; and as of the same date 765,363 full shares and 1119 thirds of shares (without voting rights until transferred into full shares) were outstanding in the hands of the public. The balance of 12,364 shares are held for issuance in exchange for bonds of predecessor company pursuant to the plan of reorganization of predecessor company (see Finance Docket No. 12414, 240 I.C.C. 57, and 244 I.C.C. 357).

The stated value as fixed by the Interstate Commerce Commission is $25 per share. See Finance Dockets Nos. 15426 and 18383. The shares possess voting power without preference or restriction in the proportion of one vote for each share. As of September 30, 1955, 787,263 shares were [fol. 382] held by 2,691 stockholders of record. The stockholders of applicant possess the sole voting power.

(c) Information respecting the nature of the transaction proposed and the terms and conditions thereof.

1. The nature of the transaction, whether a consolidation or merger, or a purchase, lease, contract to operate properties, or any part thereof, of a carrier subject to part I or part III of the act, or for acquisition of control of such carrier, or to acquire trackage rights over or joint ownership in, or joint use of, any railroad line or lines.

Answer: The proposed transaction for which approval is sought is the acquisition of control of the Toledo, Peoria & Western Railroad Company by applicant through ownership of its capital stock.

2. Briefly, the terms and conditions of the contract or agreement pursuant to which the proposed transaction is to be effected, including the manner in which it is proposed to consummate the transaction and the consideration, in money or otherwise, to be paid by applicant or applicants.

Answer: Applicant proposes to purchase for cash all of the capital stock of the Toledo, Peoria & Western Railroad Company owned and held by the Trustees of the Estate of George P. McNear, Jr., and owned and held by all other shareholders of the TP&W, at a price of $135 per share.

To effectuate this purchase, the M&StL proposes to enter into a contract with the sellers in substantially the form annexed hereto as Exhibit 7.

3. Whether there is any financial or other relationship, direct or indirect, not disclosed in responses to prior instructions, existing at the present time between applicant or applicants and the other party or parties to the transaction proposed; and, if so, a full explanation of such relationship.

Answer: There is no financial or other relationship, direct or indirect, not disclosed in response to prior instruc-
[fol. 383] tions, existing at the present time between applicant and the other party to the transaction proposed.

4. The route, termini, and mileage of the lines to be consolidated, merged, purchased, leased, operated, or controlled, giving the principal points of interchange, with ports served in cases involving carriers subject to part III of the act, and with main line mileage and branch line mileage shown separately in case of railroad properties.

Answer: The route and termini of the TP&W are as follows: From the eastern terminus at Effner, Indiana, via Peoria, Illinois, to the western termini, at Lomax, Illinois, and Keokuk, Iowa, with a branch from Hamilton, Illinois, to Warsaw, Illinois. The only point of interchange between applicant and the TP&W is at Peoria, Illinois. Other points of interchange with other railroads are as follows: Effner, Indiana; Lomax, Sheldon, Webster, Watseka, Gilman, Forrest, Fairbury, Honegger, Chenoa, El Paso, Eureka, Washington, Peoria, Hollis, Farmdale, Canton, Cuba, Bushnell, Ferris, Elvaston and Hamilton, all in Illinois; and Keokuk, Iowa.

The mileage of the TP&W consists of 234.4 miles of main line, and 5 miles of branch line.

5. Whether the property involved in the proposed transaction includes all the property of the applicants proposing a consolidation or merger, or of the carrier whose property it is proposed to purchase, lease, or operate, or control of which is proposed; and, if not, definitely what property is included in the proposed transaction.

Answer: Not applicable. Acquisition of control of the TP&W through stock ownership is sought by applicant.

6. Value of each of the properties involved in the proposed transaction as found by the Commission, or if such value has not been found by the Commission, as appraised for the purposes of the proposed transaction; and, separately, the net cost of additions and betterments made after the date of valuation or appraisal.

Answer: Not applicable. This is an application for acquisition of control through stock ownership and not acquisition of property.

fol. 384] 7. The policy and practice followed by each party to the transaction with respect to reserves for depreciation and similar reserves, including rates by classes of property.

Answer: Not applicable. This is an application for acquisition of control through stock ownership and not acquisition of property.

8. The market value of any securities acquired or proposed to be acquired in consummating the proposed transaction; or, if there be no ascertainable market value, the estimated value, giving the basis of the estimate.

Answer: The stock of the TP&W is not listed on any exchange, but its market value has been established at $135 per share by the amounts bid for the stock when recently offered for sale.

9. If any of the property covered by the application is encumbered and applicant has agreed to assume obligation or liability in respect thereof:

Answer: Not applicable.

10. If a consolidation or merger is proposed:

Answer: Not applicable.

(d) Facts and circumstances relied upon to show that the proposed transaction is within the scope of section 5(2)(a) of the Interstate Commerce Act, will be consistent with the public interest, and will otherwise be within the requirements of section 5, particularly.

1. In case of any proposed transaction:

(1) To establish that the transaction covered by the application will be consistent with the public interest.

Answer: (a) The Trustees under the Will of George P. McNear, Jr., owners of 82 per cent of the total outstanding capital stock of the TP&W, desire to sell their controlling interest in the company in order to diversify the holdings of the Trust Estate. Under these circumstances, the acquisition of such control by the M&StL will definitely promote

the public interest. The Commission has recognized that it [fol. 385] is in the public interest for control to pass from non-carrier interests which no longer desire it, to carrier auspices.

(b) The M&StL is the natural railroad to acquire control of the TP&W. About 5 per cent of the M&StL's total revenue loads is interchanged by it with the TP&W at Peoria, Illinois. In 1954, $1,251,981 or 6.4 per cent of the M&StL's total freight revenues were derived from revenue loads interchanged with the TP&W at Peoria.

No other carrier interested in the acquisition of all or a portion of the control of the TP&W interchanges anything like such a proportion of its total revenue loads with the TP&W, or derives anything like such a proportion of its total revenues from its interchange with the TP&W.

Control by the M&StL will assure continuance of this vital and profitable interchange service which otherwise may be lost if other carriers interested in the TP&W are permitted to acquire control of that property.

The TP&W is a natural extension of the M&StL. The M&StL has based its advertising, its traffic solicitation and much of its service to shippers upon the conception that it is "The Peoria Gateway," providing a bypass of the congested Chicago area. Its acquisition of the TP&W would implement the service that it now provides to shippers to the advantage of both the M&StL and the TP&W. Its failure to acquire the TP&W would materially curtail the expansion of the M&StL's service and the full use and development of the Peoria gateway.

(c) Substantial economies would result from the joint operation of the M&StL and the TP&W which would redound not only to the benefit of these two small carriers, but would also redound to the benefit of shippers and the public generally through improved service.

Both the M&StL and the TP&W are small roads presently in excellent financial and physical condition. Their prior histories, however, emphasize the need for continual alertness to maintain and strengthen that financial and physical condition, and to enable them to compete successfully with their larger, neighboring roads.

(d) The acquisition of control of the TP&W by the M&StL would materially enhance competition. The M&StL [fol. 386] alone of all carriers interested in the acquisition of all or a portion of the control of the TP&W has no conflict of interest with the TP&W, or the Peoria gateway, and no incentive other than to maximize the traffic and service that would be rendered over the combined lines.

Conversely, all other carriers interested in the acquisition of all or a portion of the control of the TP&W have their main lines, interests and investments in direct competition with the TP&W and the Peoria gateway. Hence, acquisition of the TP&W by any other interested carriers would sharply decrease competition, not only in that it would be the acquisition of the TP&W by its competitors, but also in that, for the reasons stated above, it would materially decrease the ability of the M&StL to compete with such other carriers.

The Commission has recognized that an acquisition by two of the strongest carriers in the United States, which endangers or impairs the operation of another railroad, such as the M&StL, is contrary to the public interest.

(e) Additional affirmative harm would result to the M&StL from its failure to acquire control of the TP&W. At the present time, an important portion of the M&StL's bridge traffic is received by it at Peoria and delivered by it to the Santa Fe at Nemo, or received by it at Nemo and delivered by it to connecting carriers, including the TP&W, at Peoria. If the TP&W were acquired by the Pennsylvania and Santa Fe, it would be to the advantage of these large roads to utilize their extensive traffic departments for the purpose of diverting such bridge traffic from the M&StL to the TP&W between Peoria and Lomax. In 1954, such bridge traffic over the M&StL between Nemo and Peoria amounted to 9,891 revenue carloads, contributing $664,397 of total M&StL freight revenues. This amounted to 4.7 per cent of the M&StL's total revenue carloads and 3.4 per cent of its total freight revenues.

(f) The utility of the TP&W as an essential link in a fast, strong and reliable through transportation service

would be enhanced for all of the reasons stated above and elsewhere in this application; nothing in the acquisition of the control of the TP&W by the M&StL would or could adversely affect the function of the TP&W as an important bridge carrier.

[fol. 387] The M&StL and the TP&W are complementary. No other carrier interested in acquiring all or a portion of the control of TP&W can operate it to greater advantage or more economically than the M&StL.

By acquiring control of TP&W, the M&StL will not only strengthen its own freight service but will also materially increase the ability of TP&W to serve its own public and its other railroad connections. The mutual support of these two small railroads will increase the stability of both roads, will assure fast, strong and dependable service and thus will encourage development of the territories served and the location of new industries along their lines.

(2) To explain and properly support the financial considerations involved in the proposed transaction, including an explanation of economies, if any, to be effected in operation, and increase, if any, in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

Answer: (a) Unlike any other proposal for the acquisition of control of the TP&W, acquisition by the M&StL would result in substantial economies. Among such economies would be the elimination or substantial reduction of duplicate facilities and duplication of effort of all kinds.

(b) For the reasons set out above, the acquisition by the M&StL of control of the TP&W would enable both to compete with the Chicago and other gateways for traffic on more vigorous terms, and hence would be expected to increase gross revenues. Revenues of the M&StL and TP&W as presently constituted and without regard to anticipated economies or additional revenues would be more than sufficient to meet fixed charges, provide necessary funds for the continued maintenance, improvement and modernization of the combined physical plant, and provide satisfactory net income available for dividends. The M&StL con-

siders that the purchase of control of the TP&W will prove to be a sound and profitable investment.

An additional advantage of control by the M&StL will be the retention of future dividend payments within the railroad industry.

fol. 388 (3) To show the effect of the proposed transaction upon adequate transportation service to the public.

Answer: The M&StL would have every incentive to maximize and improve the transportation service to the public via the TP&W. It would have no conflict of interest with that route. The strengthening of the M&StL through the acquisition of control of the TP&W would enable both to increase and improve their transportation service. No diminution in the present transportation service afforded by the TP&W will occur.

(4) To establish that the increase, if any, of total fixed charges resulting from the proposed transaction would not be contrary to the public interest.

Answer: It is contemplated that subject to the approval of the Commission, the M&StL would issue $12,000,000 First Mortgage Sinking Fund Bonds bearing interest at the rate of approximately 4¼ per cent, maturing 30 years from date with equal annual sinking fund payments of $480,000 commencing in the sixth year.

There are attached hereto the following schedules:

Schedule I. Statements of Income and Earned Surplus (actual)

(i) For the M&StL and its subsidiary for the eleven years ended December 31, 1954.

(ii) For the TP&W for the seven years ended December 31, 1954.

(iii) For the M&StL and TP&W combined for the seven years ended December 31, 1954.

Schedule II. Pro forma Condensed Combined Statements of Income and Earned Surplus for

the M&StL and TP&W for the seven years ended December 31, 1954, giving effect to the proposed issuance of bonds on the assumption that they had been issued January 1, 1948.

[fol. 389] Schedule III. Pro forma Combined Schedule of Excess of Total Depreciation of M&StL and TP&W over Long-term Debt Maturities and Proposed Bond Sinking Fund Requirements.

The annexed schedules make clear that the creation of total additional fixed charges would not be contrary to the public interest. Such fixed charges, if they had been incurred by the M&StL on January 1, 1948, in connection with acquisition of control of the TP&W at that time, would have been covered an average of 6.6 times in the intervening seven years. The minimum coverage in the seven-year period would have been 4.4 times in 1949; the maximum coverage would have been 9.0 times in 1950.

By incurring such fixed charges in order to make the acquisition, the net income of the M&StL after taxes and all charges (without regard to economies or additional revenues from such acquisition) would have been increased by $3,837,000 over such seven-year period, or an average of $548,143.

The cash flow to the M&StL and TP&W combined would be amply adequate to make provision for the sinking fund payments and all predictable cash requirements of the two roads.

(5) To show the interest of the carrier employees affected:

Answer: By strengthening both the TP&W and the M&StL, the proposed transaction is plainly in the interest of the employees of both carriers.

(6) To establish that any guaranty or assumption of payment of dividends or fixed charges contemplated in the transaction is not inconsistent with the public interest.

Answer: No guaranty or assumption of payment of dividends or fixed charges is contemplated in the transaction.

2. Also, if the proposed transaction involves a railroad:

(1) To show the effect upon the public interest of the inclusion, or the failure to include, other railroads in the territory involved in the proposed transaction:

[fol. 390] Answer: The public interest will not be adversely affected by not including other railroads in the contemplated transaction:

(a) If such other railroads were included, such benefits from the transaction as the contemplated economies, the increased competition and the strengthening of two small roads would not take place.

(b) Such carriers are competitors of the TP&W via gateways other than Peoria; and the M&StL is not.

(c) Joint ownership is not as conducive to efficient, aggressive management as single ownership. The TP&W became insolvent in the past under joint ownership by two roads.

(d) Acquisition of control of the TP&W by the M&StL will bring about no change in the TP&W as a route open to all roads on an equal basis.

(2) To indicate what terms and conditions should be imposed by the Commission to meet the requirements of section 5(2)(f) of the Interstate Commerce Act.

Answer: Pursuant to the provisions of Section 5(2)(f) of the Act, the M&StL will apply the provisions of the so-called Washington Agreement of 1936 for the benefit of all employes who may be affected by the acquisition of control of the TP&W or as a result of the economies achieved thereby. And in any event, just as it is doing now in areas where it is making economies in its present operations, the M&StL would proceed only with the most scrupulous regard for the protection of its employees.

3. Also, in case of a transaction involving a carrier by water subject to part III of the Act, where any applicant is a carrier as defined in section 1(3) of part I of the Act, or is a person controlling, controlled by, or under common control with such a carrier, to establish that the transaction is not within the inhibition of section 5(14) of part I

of the Act; or, if so, that the transaction will not prevent the common carrier by water or vessel involved from being operated in the interest of the public and with advantage to the convenience and commerce of the public and that it will not exclude, prevent, or reduce competition on the route by water under consideration.

Answer: Not applicable.

[fol. 394]

REQUIRED EXHIBITS

(a) The following exhibits are filed with the original application and as a part thereof, but not with copies:

EXHIBIT A — Certified copy of Amended Articles of Incorporation of applicant, as amended to date.

EXHIBIT A-1 — Certified copy of applicant's By-Laws as amended to date.

EXHIBIT B — Authenticated copy of Annual Report to Shareholders of applicant, for calendar year 1953.

EXHIBIT B-1 — Authenticated copy of Annual Report to Shareholders of applicant, for calendar year 1954.

(b) There are filed with the original application and with each copy thereof, the following exhibits:

EXHIBITS 1 & 2 — Certified copy of resolution of applicant's Executive Committee authorizing the proposed transaction and the making of the within application; and designating by name the executive officer by whom the within application is signed, verified and filed on behalf of applicant.

EXHIBIT 3 — Not applicable.

EXHIBIT 4 — Not applicable.

EXHIBIT 5 — Opinion of Counsel.

EXHIBIT 6 — Key map.

EXHIBIT 7 — Copy of contract applicant proposes to enter into pertaining to transaction covered by the application.

EXHIBIT 8 — Authenticated copy of applicant's General Balance Sheet as of August 31, 1955.

EXHIBIT 8-a — Copy of General Balance Sheet of Toledo, Peoria & Western Railroad Company as of April 30, 1955.

fol. 392]

EXHIBIT 9 — Authenticated copy of applicant's Income Statement as of August 31, 1955, and for each of the preceding 5 calendar years.

EXHIBIT 9-a — Authenticated copy of applicant's Profit and Loss Statement as of August 31, 1955, and for each of the preceding 5 calendar years.

EXHIBIT 9-b — Copy of Income Statement and Profit and Loss Statement of Toledo, Peoria & Western Railroad Company as of April 30, 1955, and for each of the preceding 5 calendar years.

EXHIBIT 10 — Not applicable.

EXHIBIT 11 — Not applicable.

EXHIBIT 12 — Not applicable.

EXHIBIT 13 — Not applicable.

The following schedules are also filed in support of Answer to Question (d)-1 (4):

SCHEDULE I. Statements of Income and Earned Surplus (actual)

(i) For the M&StL and its subsidiary for the eleven years ended December 31, 1954.

(ii) For the TP&W for the seven years ended December 31, 1954.

(iii) For the M&StL and TP&W combined for the seven years ended December 31, 1954.

SCHEDULE II. Pro forma Condensed Combined Statements of Income and Earned Surplus for the M&StL and TP&W for the seven years ended December 31, 1954, giving effect to the proposed issuance of bonds on the assumption that they had been issued January 1, 1948.

SCHEDULE III. Pro forma Combined Schedule of Excess of Total Depreciation of M&StL and TP&W over Long-term Debt Maturities and Proposed Bond Sinking Fund Requirements.

[fol. 393] WHEREFORE, applicant prays that the Interstate Commerce Commission issue an order herein under Section 5(2) of the Interstate Commerce Act authorizing applicant to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of its capital stock.

Dated at Minneapolis, Minnesota, this 12th day of October, 1955.

Respectfully submitted,

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,

By .....

President

Duly sworn to by John W. Devins, jurat omitted in printing.

[Vol. 394]

EXHIBITS 1 AND 2 TO APPLICATION

THIS IS TO CERTIFY that at a meeting of the Executive Committee of The Minneapolis & St. Louis Railway Company duly and regularly called and held in the City of Minneapolis, State of Minnesota, on the 28th day of September, 1955, the following action was unanimously taken, as appears from the records of said meeting:

RESOLVED, that subject to the approval of the Interstate Commerce Commission, the purchase by the Company of the 90,000 shares of capital stock of the Toledo, Peoria & Western Railroad Company or any portion thereof equal to or greater than 73,800 shares, at a purchase price of $135 per share, be and the same is hereby authorized and approved; and the President or any Vice President of this Company be and he is hereby authorized, empowered and directed to execute and deliver any and all contracts, agreements or other documents necessary, appropriate or proper to effectuate such purchase, including but not limited to any and all contracts, agreements or other documents with the Trustees of the Estate of George P. McNear, Jr., and any other owners of the capital stock of the Toledo, Peoria & Western Railroad Company; and it is

FURTHER RESOLVED, that the appropriate officers of this Company be and they are hereby authorized and empowered, subject to the approval of the Interstate Commerce Commission, to take appropriate steps to finance such acquisition, including but not limited to, causing the Company to issue appropriate First Mortgage Bonds upon the property of the Company, and to pledge solely as collateral the acquired stock of the TP&W to the extent necessary, and to execute and deliver any and all contracts, agreements or other documents necessary or appropriate to carrying out the authority herein conferred; and it is

FURTHER RESOLVED, that an application be prepared and filed with the Interstate Commerce Commission by and in behalf of the Company for an order authoriz-

ing the Company to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of its capital stock; and it is

[fol. 395] FURTHER RESOLVED, that an application be prepared and filed with the Interstate Commerce Commission by and in behalf of this Company at such future time as in the opinion of counsel may be appropriate, for an order authorizing the Company to issue necessary securities for such acquisition; and it is

FURTHER RESOLVED, that John W. Devins, President, or Larry S. Provo, Vice President, or Roy W. Nelson, Vice President, be and each of them is hereby authorized and designated as the executive officer of this Company to make, sign, verify and file with the Interstate Commerce Commission such application or applications, as well as supplements and amendments thereto and other papers in form approved by counsel for the Company, as may be necessary or appropriate for the obtaining of an order or orders authorizing the acquisition of control of the TP&W through ownership of its capital stock, and authorizing the issuance of necessary securities for such acquisition; and it is

FURTHER RESOLVED, that the proper officers of this Company be and they hereby are authorized to take any and all further action and do any and all further things they may deem to be desirable or necessary to effectuate the purposes of the within resolutions, as advised by counsel, in connection with the acquisition of control of the TP&W through ownership of its capital stock, and in connection with the issuance of necessary securities for such acquisition.

A TRUE COPY.

ATTEST: .....

IRENE L. RIEKE
Assistant Secretary, The Minneapolis & St. Louis Railway Company.

(Corporate Seal)

[fol. 396]

EXHIBIT 5 TO APPLICATION

October 12, 1955.

Interstate Commerce Commission,
Washington, D.C.

Re: Application of The Minneapolis & St. Louis Railway Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of its capital stock.

Gentlemen:

I have examined the foregoing application and am familiar with the proposed transaction therein set forth and with the purposes thereof.

In my opinion, the proposed transaction is for a lawful object within the corporate powers of The Minneapolis & St. Louis Railway Company; that said proposed transaction meets the requirements of law and will be lawful and valid upon approval and authorization by the Interstate Commerce Commission.

Very truly yours,

.....

RICHARD MUSENBROCK,

General Counsel for The Minneapolis & St. Louis Railway Company.

[fol. 397]

EXHIBIT 6 TO APPLICATION

(See Opposite) ☞

CRIP
OMAHA AND UP RR

D R G
TO DENVER AND
COLORADO SPRINGS

ROCK ISLAND

C R I & P
TO TUCUMCARI
AND TEXAS POINTS

S P
TO SAN FRANCISCO
AND L A

MISSOURI

ILLINOIS

K C S
KANSAS CITY

M K T
KANSAS CITY

T P & W

GULF MOBILE & OHIO RR

ILLINOIS PEORIA & WESTERN RR

IOWA

MISSOURI

KANSAS

LAKE MICHIGAN

DIXON

PRINCETON

GALESBURG

MONMOUTH

NEWTON

PERU

LA SALLE

ANCONA

LA HARPE

LOMAX

FT MADISON

BUSHNELL

FERRIS

CARTHAGE

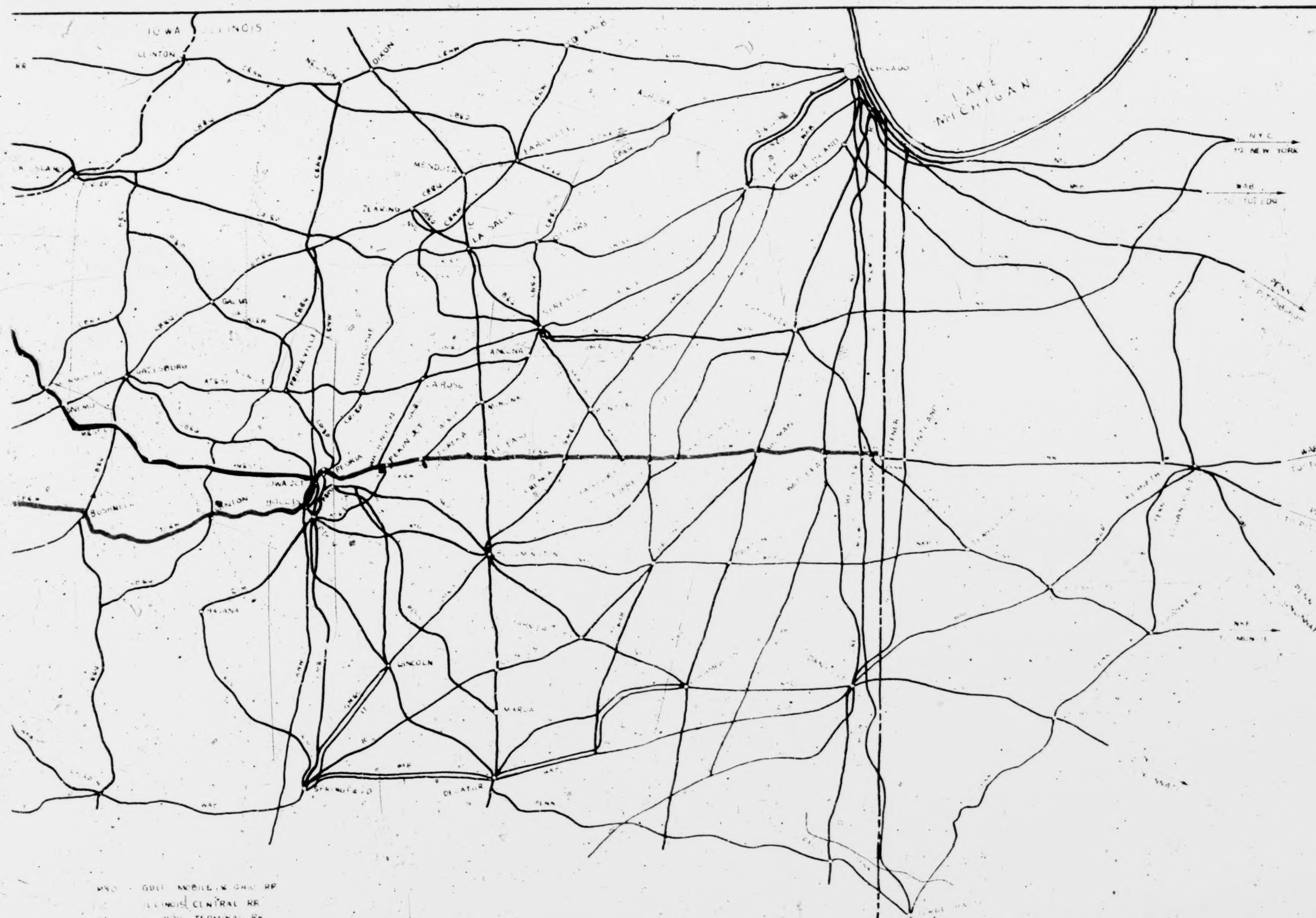
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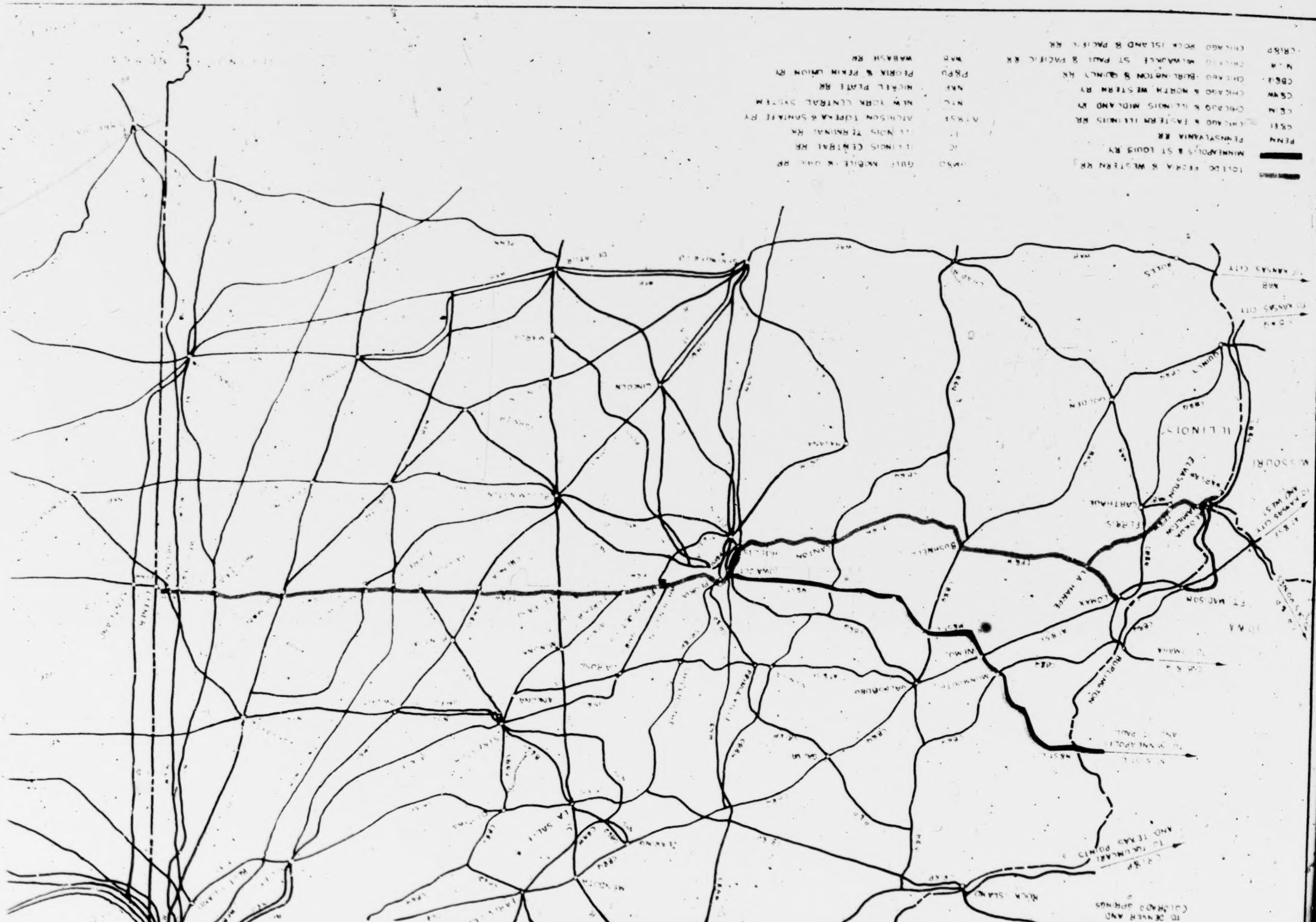
LINCOLN

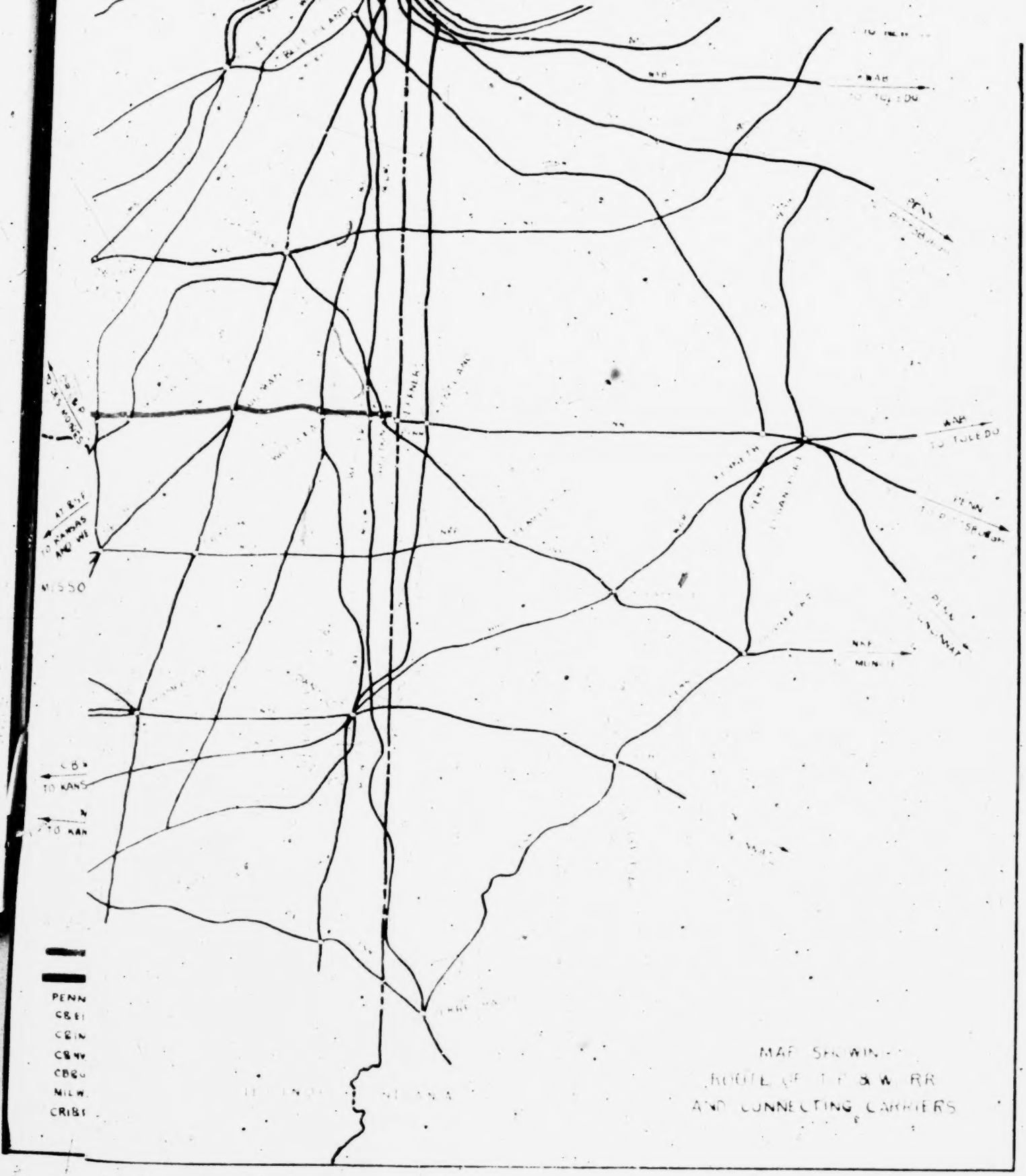
MACOMB

PEORIA

JOLIET


IOWA
ILLINOIS
CLINTON
NELSON
DIXON
LAKE MICHIGAN
NYC
TO NEW YORK
MENDOTA
LA SALLE
GALVA
GALESBURG
PRINCEVILLE
LITTLE ROCK
ANCONA
LA RUE
MINONK
PEORIA
EAST PEORIA
EAST PEORIA JCT
PEORIA JCT
BUSHNELL
LINCOLN
MARCA
SPRINGFIELD
DECATUR
PENN
TO TOLEDO
TO PITTSBURGH
MEN
GM&O - GULF MOBILE & OHIO RR
IC - ILLINOIS CENTRAL RR
T&P - TEXAS & PACIFIC RR


TOLEDO PEORIA & WESTERN RR
MINNEAPOLIS & ST LOUIS RY
PENNSYLVANIA RR
CHICAGO & EASTERN ILLINOIS RR
CHICAGO & ILLINOIS MIDLAND RY
CHICAGO & NORTH WESTERN RY
CHICAGO BURLINGTON & QUINCY RR
CHICAGO MILWAUKEE ST PAUL & PACIFIC RR
CHICAGO ROCK ISLAND & PACIFIC RR
GULF MOBILE & OHIO RR
ILLINOIS CENTRAL RR
ILLINOIS TERMINAL RR
ATCHISON TOPEKA & SANTA FE RY
NEW YORK CENTRAL SYSTEM
NICKEL PLATE RR
PEORIA & PEKIN UNION RY
WABASH RR
PENN
MNSP
PRR
CGEI
CB&Q
C&NW
CRI&P
N.Y.C.
CMSP&P
GM&O
IC
IT
ATSF
NYC
NKP
P&PU
WAB
ILLINOIS
MISSOURI
IOWA
KANSAS CITY
ST LOUIS
CHICAGO
PEORIA
LINCOLN
QUINCY
GALESBURG
DES MOINES
OMAHA
DENVER
COLORADO SPRINGS
PUEBLO
ROCK ISLAND
FT MADISON
BURLINGTON
TO KANSAS CITY
TO MINNEAPOLIS AND ST PAUL
TO OMAHA
TO TEXAS POINTS
TO DENVER AND COLORADO SPRINGS


PENN
CBEI
CBIN
CBNW
CBQU
MILW
CRIBS
MAP SHOWING
AND CONNECTING CARRIERS

[fol. 398]

EXHIBIT 7 TO APPLICATION

THIS AGREEMENT, dated as of , between The Minneapolis & St. Louis Railway Company, a corporation of the State of Minnesota (hereinafter called "Company"), party of the first part, and the Wilmington Trust Company, a corporation organized under the laws of the State of Delaware, and Guy A. Gladson, an individual, Trustees under the Will of George P. McNear, Jr. (hereinafter collectively called "Trustees"), parties of the second part,

WITNESSETH:

THAT WHEREAS, the Toledo, Peoria & Western Railroad Company (hereinafter called "TP&W") has issued and outstanding a total of 90,000 shares of capital stock; and

WHEREAS, the Trustees, owners of 82 per cent (73,800 shares) of the total outstanding capital stock of the TP&W, desire to sell the stock held by them; and

WHEREAS, the Company desires to purchase the stock of the TP&W held by the Trustees,

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and obligations herein contained, the parties agree as follows:

1. The Trustees agree to sell and the Company agrees to buy 73,800 shares of the capital stock of the TP&W at a price of $135 per share, for an aggregate purchase price of $9,963,000.

2. The purchase of the stock of TP&W provided in this agreement is subject to the approval of the Interstate Commerce Commission, and Company agrees that it will file and prosecute an application or applications to the Interstate Commerce Commission for authority to carry out the transaction herein proposed.

The Trustee will in all reasonable ways cooperate with Company in the prosecution of such application and the assembly of data pertinent to its presentation and consideration.

Settlement hereunder shall take place not more than a reasonable time which shall not exceed sixty (60) days after the order of the Interstate Commerce Commission [fol. 399] granting its approval has become effective. In the event approval of the purchase of the stock of TP&W by Company shall be denied by the Interstate Commerce Commission and the order of the Commission shall become final, and any proceedings instituted in court to set aside such an order shall have been finally terminated without said order having been set aside, then this agreement shall cease and determine.

3. Trustees represent and warrant to Company that:

(a) the shares of stock of TP&W delivered to Company will be free and clear of all liens, encumbrances, trusts or obligations of any kind or nature;

(b) no approval of the sale of said shares of stock is required to be obtained by them or either of them from any court, heirs, or other person under the terms of the Will of George P. McNear, Jr., or otherwise.

4. Trustees agree that between the date hereof and the date of settlement, if it is within their power or control, they will not cause or permit TP&W, without first obtaining the consent of Company, to increase the amount of capital stock outstanding of the TP&W, impair its capital, waste its assets, declare dividends in excess of earnings of the year in which said dividends are declared and earnings of the year immediately preceding said year available for dividends and not theretofore distributed, make any unusual expenditures or incur voluntarily any unusual debts or obligations, in an amount sufficient in either case to affect substantially and adversely the value of the stock to be sold pursuant to the terms hereof; except that between the date hereof and the date of settlement or the date December 31, 1957, whichever of the latter two dates is the earlier, no declarations or payments of dividends may be made in any year totaling more than 50 per cent of the net earnings of the TP&W for such year available for dividends; it being understood that in any event quarterly dividends may be declared on the basis of estimated earn

ings and to the extent such estimated earnings prove incorrect, appropriate adjustment shall be made in a subsequent dividend or dividends.

[fol. 400] 5. Settlement hereunder shall be made at the office of the Wilmington Trust Company, in Wilmington, Delaware, or at such other place as Trustees may designate. All transfer taxes with respect to the sale of the stock are to be paid by Trustees. Stock certificates are to be delivered at settlement with all endorsements or assignments necessary for transfer of the stock. Payment of the sum provided for in Section 1 hereof shall be made by Company upon such delivery in cash, or by certified check, or cashier's or treasurer's check to the order of Trustees. If settlement for the stock is made on a payment date for the payment of a quarterly dividend, such dividend shall be paid, endorsed or assigned to Trustees by Company. If settlement for the stock is made on a date other than a payment date for the payment of a quarterly dividend, the next succeeding quarterly dividend on such shares of stock (and also any extra dividend which may be paid during such quarter-yearly period) shall be apportioned to the date of settlement, and Company shall pay to Trustees their pro-rata portion thereof promptly after the receipt of such dividend. The sum payable to Trustees by Company shall be computed by dividing by ninety (90) the dividend paid on the shares of stock on the quarterly dividend payment date next following settlement hereunder (and also any extra dividend which may be paid during such quarter yearly period), and then multiplying the quotient of such division by the number of days which shall have elapsed from (but not including) the dividend payment date preceding settlement to (and including) the date of settlement for such stock. To the extent that dividends herein referred to have not been paid at time of settlement, the provisions of this section shall survive the settlement.

6. This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

[fol. 401] In Witness Whereof, Trustees and Company have signed and sealed this agreement or caused it to be signed and sealed, in triplicate, as of the date first hereinabove written.

Wilmington Trust Company, as Trustee under the Will of George P. McNear, Jr.,

By .....

(Title)

Attest:

.....

Guy A. Gladson, as Trustee under the Will of George P. McNear, Jr.

.....

The Minneapolis & St. Louis Railway Company

By .....

(Title)

Attest:

.....

[fol. 402]

EXHIBIT S TO APPLICATION

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

GENERAL BALANCE SHEET
AUGUST 31, 1955

ASSETS

INVESTMENTS:	
Road and equipment property -	
Road	$46,078,353
Equipment	26,131,215
General	2,579,153
Acquisition adjustment - Cr.	29,509,296
Donations and grants - Cr.	36,899
Accrued depreciation - Road - Cr.	4,111,509
Accrued depreciation - Equipment - Cr.	7,627,391
Accrued amortization of defense projects - Equipment - Cr.	3,693,184
Capital and other reserve funds	2,589
Miscellaneous physical property	750,518
Accrued depreciation - Miscellaneous physical property - Cr.	92,123
Investments in affiliated companies -	
Stock	91,500
Advances	290,369
Other investments	751
Total	$30,854,046
CURRENT ASSETS:	
Cash	$ 1,520,857
Special deposits	19,107
Traffic and car-service balances - Dr.	116,845
Net balance receivable from agents and conductors	421,518
Miscellaneous accounts receivable	352,588
Material and supplies	2,442,684
Accrued accounts receivable	876,964
Other current assets	153,317
Total	$ 5,903,880
DEFERRED ASSETS:	
Working fund advances	$ 13,853
Other deferred assets	10,758
Total	$ 24,611
UNADJUSTED DEBITS:	
Prepayments	$ 20,554
Discount on funded debt	11,673
Other unadjusted debits	55,484
Total	$ 87,711
	$36,870,248

EXHIBIT 8 (Cont

[fol. 403]

33

GENERAL BALANCE SHEET
AUGUST 31, 1955

LIABILITIES

CAPITAL STOCK (Authorized 800,000 shares with stated value of $25 per share)		
Capital stock, less 17,700 shares in treasury		$19,234,925
Stock liability for conversion		322,575
Total		$19,557,500
LONG TERM DEBT:		
Funded debt unmatured		$ 822,891
Equipment obligations		6,444,640
Current balances include amounts payable within one year as follows:		
Funded debt unmatured	$ 45,411	
Equipment obligations	984,425	
Total		$ 7,267,531
CURRENT LIABILITIES:		
Audited accounts and wages payable		$ 898,811
Miscellaneous accounts payable		176,582
Dividends matured unpaid		16,297
Unmatured interest accrued		4,939
Unmatured dividends declared		273,185
Accrued accounts payable		215,919
Taxes accrued		1,752,098
Other current liabilities		272,275
Total		$ 3,610,026
DEFERRED LIABILITIES		$ 112,582
UNADJUSTED CREDITS:		
Insurance reserves		$ 40,909
Equalization reserves - Dr.		168,448
Other unadjusted credits		702,880
Total		$ 575,341
SURPLUS:		
Capital surplus		$ 46,604
Earned surplus		5,700,664
Total		$ 5,747,268
		$36,870,248

OFFICE OF COMPTROLLER

I, Larry S. Provo, Comptroller of The Minneapolis & St. Louis Railway Company, and in charge of the books of said corporation, do hereby certify that the foregoing exhibit (Exhibit 8) is a true general balance sheet of said corporation as of August 31, 1955.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of October, 1955.

Larry S. Provo

[fol. 404]

Exhibit 8-A to Application

TOLEDO, PEORIA & WESTERN RAILWAY COMPANY
GENERAL BALANCE SHEETS

Apr. 30, 1955

ASSETS

	Investments	
701	Road and equipment property	$19,073,420.26
702(B	Donations and grants ..... Cr	2,165,389.86
	Investment in transportation property	7,908,030.40
702(C	& D Accrued depreciation—Road and Equipment .. Cr	2,077,280.62
	Investment in transportation property less recorded depreciation	5,830,753.78
703	Sinking funds	16,353.71
704	Deposit in lieu of mortgaged property sold	3,952.00
705	Miscellaneous physical property	750,332.70
705(	Accrued depreciation—Misc. phys. prop. ..... Cr	77,434.12
	Miscellaneous physical property less recorded depreciation	678,898.58
706	Investments in affiliated companies	43,000.00
707	Other investments—Cash value life insurance	89,364.00
	Total investments less recorded depreciation	6,662,322.07
	Current Assets	
708	Cash	1,382,288.96
709	Temporary cash investments	800,000.00
713	Traffic & car service balances—Dr.	135,085.51
714	Net balance receivable from agents and conductors	38,193.31
715	Miscellaneous accounts receivable	73,938.71
716	Material and supplies	610,354.73
717	Interest and dividends receivable	38,620.00
718	Accrued accounts receivable	208,206.57
719	Other current assets	6,810.47
	Total current assets	3,288,418.23
	Deferred Assets	
720	Working fund advances	7,212.13
722	Other deferred assets	30,118.54
	Total deferred assets	37,330.67
	Unadjusted Debits	
723	Prepayments	30,077.87
725	Discount on funded debt	9,829.94
727	Other unadjusted debits	18,286.14
	Total unadjusted debits	94,787.08
	Grand Total	$10,082,858.05

[fol. 405]

EXHIBIT 8-a (Cont.)

LIABILITIES

		Apr. 30, 1955
	Stock	
751	Capital stock	$ 2,000,000.00
	Long-Term Debt	
755	Funded debt unmatured	1,487,000.00
756½	Equipment obligations	256,596.40
	Total long-term debt	1,743,596.40
	Current Liabilities	
760	Audited accounts and wages payable	122,335.60
761	Miscellaneous accounts payable	67,474.06
764	Unmatured interest accrued—First Mortgage—Series B Bonds	19,821.68
766	Accrued accounts payable	239,095.24
767	Taxes accrued	1,452,983.45
768	Other current liabilities	60,678.08
	Total current liabilities	1,963,923.11
	Deferred Liabilities	
770	Other deferred liabilities	10,834.08
	Unadjusted Credits	
773½	Reserve for maintenance of way	61,923.00
778	Other unadjusted credits	648.07
	Total unadjusted credits	62,571.07
	Surplus	
785	Earned surplus—Appropriated	16,000.00
786	Earned surplus—Unappropriated—Cr. balance	2,685,903.99
	Total surplus	2,701,903.99
	Grand Total	$10,082,888.65

EARNED SURPLUS—UNAPPROPRIATED

Balance at beginning of year	Cr	$ 2,505,098.25
Miscellaneous credits	Cr	2,904.82
Dividend appropriations of surplus	Dr	54,000.00
Miscellaneous debits		
Balance transferred from income	Cr	240,900.92
	Cr	$ 2,685,903.99

THE MINNEAPOLIS & ST. LOUIS RAILWAY
STATEMENT OF NET INCOME FOR THE FIVE YEARS AND EIGHT

	1950	1951	1952
RAILWAY OPERATING REVENUES	$20,881,599	$21,893,507	$22,901,461
RAILWAY OPERATING EXPENSES	15,008,926	16,474,046	17,318,404
Net revenue from railway operations	$ 5,872,673	$ 5,419,461	$ 5,583,057
Railway tax accruals	2,848,550	2,908,368	2,861,011
Railway operating income	$ 3,024,123	$ 2,511,093	$ 2,722,046
RENT INCOME FROM:			
Hire of freight cars (Credit balance)	$ -	$ -	$ -
Locomotives	81	283	7,341
Passenger train cars	-	-	-
Work equipment	764	1,529	1,373
Joint facilities	151,215	152,351	153,930
Total	$ 152,060	$ 154,163	$ 162,644
RENT PAYABLE FOR:			
Hire of freight cars	$ 519,849	$ 808,163	$ 491,024
Locomotives	112	42	44
Passenger train cars	682	371	946
Work equipment	444	354	446
Joint facilities	152,470	158,255	155,805
Total	$ 673,557	$ 967,185	$ 648,265
Net rent - income or (expense)	$ (521,497)	$ (813,022)	$ (485,621
Net railway operating income	$ 2,502,626	$ 1,698,071	$ 2,236,425
OTHER INCOME FROM:			
Lease of road and equipment	$ 43,935	$ 45,486	$ 43,528
Miscellaneous rents	49,009	51,748	54,021
Non-operating property	35,518	37,002	39,019
Interest	12,100	8,062	10,507
Delayed income credits	293,320	-	-
Miscellaneous	7	-	-
Total	$ 433,889	$ 142,298	$ 147,075
Total income	$ 2,936,515	$ 1,840,369	$ 2,383,499
MISCELLANEOUS DEDUCTIONS FROM INCOME:			
Miscellaneous rents	$ 1,501	$ 1,441	$ 1,511
Miscellaneous tax accruals	21,834	18,465	18,795
Miscellaneous income charges	15	3,208	20,865
Delayed income debits	-	-	-
Total	$ 23,350	$ 23,114	$ 41,167
Income available for fixed charges	$ 2,913,165	$ 1,817,255	$ 2,342,332
FIXED CHARGES:			
Rent for leased road and equipment	$ 17,794	$ -	$ -
Interest on funded debt	127,274	149,905	230,184
Interest on unfunded debt	1,341	13	1,090
Amortization of discount on funded debt	1,508	3,551	8,560
Total	$ 147,917	$ 153,469	$ 239,834
Net income	$ 2,765,248	$ 1,663,786	$ 2,102,486

[fol. 406]

'OLIS & ST. LOUIS RAILWAY COMPANY
HE FIVE YEARS AND EIGHT MONTHS ENDED AUGUST 31, 1955

EXHIBIT 9 TO APPLICATION

951	1952	1953	1954	8 Months Ended August 31, 1955
893,507	$22,901,461	$22,000,504	$20,543,381	$13,665,408
474,046	17,318,404	17,018,800	16,275,293	10,760,007
419,461	$ 5,583,057	$ 4,981,704	$ 4,268,088	$ 2,905,401
908,368	2,861,011	2,602,855	2,349,743	1,771,108
511,093	$ 2,722,046	$ 2,378,849	$ 1,918,345	$ 1,134,293
-	$ -	$ -	$ -	$ 9,311
283	7,341	19,509	22,930	4,471
-	-	-	-	-
1,529	1,373	1,582	891	116
152,351	153,930	176,596	209,156	145,101
154,163	$ 162,644	$ 197,687	$ 232,977	$ 158,999
808,163	$ 491,024	$ 301,792	$ 197,610	$ -
42	44	82	7	52
371	946	1,756	326	130
354	446	160	102	138
158,255	155,805	148,656	165,214	106,633
967,185	$ 648,265	$ 452,446	$ 363,259	$ 106,953
813,022)	$ (485,621)	$ (254,759)	$ (130,282)	$ 52,046
698,071	$ 2,236,425	$ 2,124,090	$ 1,788,063	$ 1,186,339
45,486	$ 43,528	$ 43,469	$ 43,661	$ 29,917
51,748	54,021	55,175	56,770	58,178
37,002	39,016	45,109	27,231	36,760
8,062	10,507	9,971	4,740	2,139
-	-	-	-	-
-	-	6	-	4,981
142,298	$ 147,072	$ 153,730	$ 132,402	$ 131,975
840,369	$ 2,383,497	$ 2,277,820	$ 1,920,465	$ 1,318,314
1,441	$ 1,513	$ 1,445	$ 1,440	$ 1,878
18,465	18,794	24,687	26,211	15,513
3,208	20,862	12,428	727	612
-	-	-	-	-
23,114	$ 41,169	$ 38,560	$ 28,378	$ 18,003
817,255	$ 2,342,328	$ 2,239,260	$ 1,892,087	$ 1,300,311
-	$ -	$ -	$ -	$ -
149,905	230,185	288,404	272,517	162,400
13	1,090	504	1,135	82
3,551	8,567	1,690	834	660
153,469	$ 239,842	$ 290,598	$ 274,486	$ 163,142
663,786	$ 2,102,486	$ 1,948,662	$ 1,617,601	$ 1,137,169

[fol. 407]

EXHIBIT 9-A TO APPLICATION

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENTS OF EARNED SURPLUS FOR THE FIVE YEARS AND EIGHT MONTHS ENDED AUGUST 31, 1955

	1950	1951	1952	1953	1954	8 Months Ended August 31, 1955
BALANCE AT BEGINNING OF PERIOD	$4,893,344	$6,875,857	$7,895,863	$ 9,261,662	$10,223,214	$5,439,533
ADD:						
Net income	2,765,248	1,663,786	2,102,486	1,948,662	1,617,601	1,137,169
Miscellaneous credits	14,059	10,648	3,306	1,543	467,701	1,117
DEDUCT:						
Dividend appropriations of surplus	(750,000)	(600,000)	(660,000)	(900,000)	(5,940,000)	(833,105)
Stock discount extinguished through surplus	(399)	-	-	(13)	-	-
Miscellaneous debits	(46,395)	(54,428)	(79,993)	(88,640)	(928,983)	(44,050)
BALANCE AT END OF PERIOD	$6,875,857	$7,895,863	$9,261,662	$10,223,214	$ 5,439,533	$5,700,664

OFFICE OF COMPTROLLER

I, Larry S. Provo, Comptroller of The Minneapolis & St. Louis Railway Company, and in charge of the books of said corporation, do hereby certify that the foregoing exhibits marked "Exhibit 9" and "Exhibit 9-a" are true and correct statements showing the net income and earned surplus of said corporation for the five years and 8 months ended August 31, 1955.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of October, 1955.

Larry S. Provo

EXHIBIT 9 & 10 TO APPLICATION

[fol. 410]

SCHEDULE II TO APPLICATION

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY AND SUBSIDIA.

AND

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

PRO FORMA CONDENSED COMBINED STATEMENTS OF INCOME AND EARNED SURPLUS

FOR THE SEVEN YEARS ENDED DECEMBER 31, 1954

Year Ended December 31,	Income Before Fixed Charges and Taxes on Income	Fixed Charges (See Note)	Ratio of Income Before Fixed Charges and Taxes on Income to Fixed Charges	Provision For Taxes on Income (See Note)	Income Available For Fixed Charges	Ratio of Income Available For Fixed Charges to Fixed Charges	Earned Surplus				
							Net Income	Balance Beginning of Year	Dividend Distribution	Other, Net	Balance at End of Year
1954	$4,363,000	$858,000	5.1	$1,462,000	$2,901,000	3.4	$2,043,000	$11,077,000	($6,188,000)	$ (479,000)	$ 6,453,000
1953	5,828,000	872,000	6.7	2,363,000	3,465,000	4.0	2,593,000	13,115,000	(1,162,000)	(3,469,000)	11,077,000
1952	6,037,000	825,000	7.3	2,445,000	3,592,000	4.4	2,767,000	11,369,000	(900,000)	(121,000)	13,115,000
1951	5,278,000	735,000	7.2	2,342,000	2,936,000	4.0	2,201,000	10,128,000	(895,000)	(65,000)	11,369,000
1950	6,633,000	734,000	9.0	2,278,000	4,355,000	5.9	3,621,000	7,595,000	(1,045,000)	(43,000)	10,128,000
1949	3,177,000	725,000	4.4	759,000	2,418,000	3.3	1,693,000	6,953,000	(835,000)	(216,000)	7,595,000
1948	4,950,000	744,000	6.7	1,378,000	3,572,000	4.8	2,828,000	7,461,000	(3,340,000)	4,000	6,953,000

NOTE: Effect has been given in combining the income and earned surplus accounts of the two companies for the years shown above to the following:

(a) Additional annual fixed charges of $510,000 representing interest at 4-1/4% on $12,000,000 principal amount of first mortgage bonds assumed to have been outstanding since January 1, 1948.

(b) A related reduction in provision for taxes on income for each of the years of $265,000 representing the tax reduction (computed at 52%) resulting from the increased interest charges.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

AND

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

PRO FORMA SCHEDULE OF EXCESS OF TOTAL DEPRECIATION OVER LONG-TERM DEBT AND PROPOSED BOND SINKING FUND REQUIREMENTS

Toledo, Peoria & Western Railroad Company — Combined

Long-Term Debt Maturities

Year	Depreciation (Note 1)	Excess of Depreciation Over Total Long-Term Debt Maturities	Equipment Obligations	First Mortgage Bonds Due 1967	Total	Depreciation (Note 1)	Excess of Depreciation Over Total Long-Term Debt Maturities	Total Long-Term Debt Maturities	Depreciation (Note 1)	Excess of Depreciation Over Total Long-Term Debt Maturities	Proposed Bond Sinking Fund Requirements (Note 2)	Excess of Total Depreciation over Long-Term Debt Maturities and Proposed Bond Sinking Fund Requirements (Note 3)
1967	$	$	$ 74,600	$	$ 74,600	$	$	$	$	$	$	$
1968			74,600		74,600							
1969			38,750		38,750							
1970			35,150		35,150							
1971			35,150		35,150							
1972												
1973												
1974												

[fol. 413]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19086

[Title omitted]

PETITION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY AND PENNSYLVANIA COMPANY FOR LEAVE TO INTERVENE AND FOR DENIAL OF APPLICANT'S SUGGESTION FOR A "COMPARATIVE OR CONSOLIDATED" HEARING AND PROTEST AGAINST THE GRANTING OF THE APPLICATION—November 11, 1955

[fol. 414] Come now Petitioners, The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company, and respectfully represent that they have, and each of them has, an interest in the matters in controversy in the above-entitled proceeding and desire to intervene in and become parties to said proceeding. For grounds of the proposed intervention, Petitioners say:

[fol. 415] I.

Petitioner, The Atchison, Topeka and Santa Fe Railway Company,* is a corporation organized and existing under the laws of Kansas; Petitioner, The Pennsylvania Railroad Company,* is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania; and both said Petitioners are carriers by railroad in interstate commerce. Petitioner, Pennsylvania Company, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and is considered a carrier subject to certain provisions of Part I of the Interstate Commerce Act pursuant to an order in *Wabash Railroad Company Control*, 252 I.C.C. 319 (1942).

II.

The railroad of Petitioner, Santa Fe, connects directly with the line of the Toledo, Peoria & Western Railroad

* Refered to as Santa Fe and Pennsylvania.

Company* at Lomax, Illinois, and also at Eureka, Illinois. The railroad of Petitioner, Pennsylvania, connects directly with the line of the Toledo, Peoria & Western Railroad [fol. 416] Company at Effner, at the Illinois-Indiana state line, and also at Peoria, Illinois. Petitioners have participated and presently participate in the movement of a substantial volume of carload freight traffic, both eastbound and westbound, in conjunction with TP&W, particularly through the said connections at Lomax and Effner.

III.

Acquisition of control by the Minneapolis & St. Louis Railway Company,** a substantial competitor of TP&W, would not be consistent with the public interest and would have a detrimental effect on adequate transportation service to the public, and Petitioners hereby oppose the Application filed herein and request that it be denied.

IV.

In its Application, the M&StL suggests that the Commission conduct a "comparative or consolidated hearing" of the within Application and the Application of Petitioners, dated July 7, 1955, Finance Docket No. 18991. Petitioners [fol. 417] oppose this suggestion for the following reasons:

1. There is not properly before the Commission any issue or factual situation whereby the Commission is called upon to determine whether it would be more desirable in the public interest for control of the TP&W to be acquired by M&StL rather than by Petitioners.

2. The issue pending before the Commission in the Application of Petitioners, Santa Fe and Pennsylvania, F.D. 18991, is whether the transaction therein proposed is consistent with the public interest, not whether such transaction is more desirable than any other transaction relating to the TP&W which has been or may be proposed by others. In proceedings under

* Referred to as TP&W

** Referred to as M&StL

Section 5(2) of the Interstate Commerce Act, the Commission is neither called upon nor authorized to make a "comparative" adjudication of the character suggested by the M&StL.

3. The conduct of a "comparative or consolidated hearing" on F.D. 18991 and F.D. 19086 would tend to [fol. 418] result in an improper blending of unrelated issues and in a confusing record wholly contrary to orderly and proper administrative procedure.

4. Applicant, M&StL, as an intervener in F.D. 18991, is in a position in that proceeding to make such showing as is legally available to it and issues not properly before the Commission in F.D. 18991 should not be the subject of consideration in that proceeding, or in that proceeding in conjunction with any other proceeding, whether by way of a comparative or consolidated hearing or otherwise, nor are Applicant's rights, if any, contingent upon any such "comparative or consolidated hearing."

V.

In their Application, F.D. 18991, dated July 7, 1955, referred to above, Petitioners, Santa Fe and Pennsylvania, seek authority under Section 5(2) of the Interstate Commerce Act to acquire control of TP&W by purchase of its outstanding capital stock pursuant to duly executed contracts with the holders thereof. Petitioners protest the granting of the Application of the M&StL dated October [fol. 419] 12, 1955, F.D. 19086, and in support of such protest state the following grounds:

1. The Application is not based upon any existing "transaction" within the provisions and requirements of Section 5(2) of the Interstate Commerce Act.

2. The Application discloses on its face that Applicant has no "contract or agreement" covering a purchase by it of shares of the capital stock of the TP&W or any "contract or agreement" whereby it now, or at any future time, is assured of a purchase of such shares.

3. The Application is not based upon any showing that the present holders of the capital stock of TP&W have entered into any contract or agreement with M&StL covering a sale of their respective shareholdings of TP&W capital stock or that they are willing to make such a sale to M&StL at any future time.

4. The Application is not based upon a voluntary transaction or proposal of the requisite parties essen- [fol. 420] tial to a proper application.

5. Granting of the Application would have no legal application to, or effect upon, the present holders of the shares of the capital stock of TP&W and hence would be a vain and useless determination.

In further reference to their protest against the granting of the Application herein of M&StL, Petitioners do not request a ruling on said protest in advance of the hearing on said Application but, on the contrary, Petitioners suggest that such ruling be deferred until the conclusion of such hearing in view of the circumstance that the facts underlying such protest will be more fully developed during the course of such hearing.

Wherefore, said Petitioners, Santa Fe and Pennsylvania Railroad and Pennsylvania Company, pray:

(1) For leave to intervene and be treated as parties hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon [fol. 421] brief and at the oral argument, if oral argument is granted;

(2) That the suggestion of Applicant that the Commission conduct a "comparative or consolidated hearing" of the within Application and the Application of Petitioners dated July 7, 1955, F.D. 18991, be denied; and

(3) That following hearing the Commission rule favorably upon the protest of Petitioners against the

granting of the within Application and that said Application be denied.

The Atchison, Topeka and Santa Fe Railway Company, By Starr Thomas, 80 East Jackson Boulevard, Chicago 4, Illinois.

The Pennsylvania Railroad Company and Pennsylvania Company, By Edwin A. Lucas, 1740 Suburban Station Bldg., Philadelphia 4, Pennsylvania.

Their Attorneys.

November 11, 1955.

[fol. 422]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19086

[Title omitted]

REPLY OF THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY TO THE PETITION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY AND PENNSYLVANIA COMPANY FOR DENIAL OF APPLICANT'S SUGGESTION FOR A "COMPARATIVE OR CONSOLIDATED" HEARING AND TO THE PROTEST AGAINST THE GRANTING OF ITS APPLICATION—November 30, 1955

[fol. 423] Comes now the Minneapolis & St. Louis Railway Company, applicant in the subject proceedings, and respectfully requests that the petition for denial of a "comparative or consolidated" hearing and the protest against the granting of the M&StL application, filed herein by the Atchison, Topeka & Santa Fe Railway Company, the Pennsylvania Railroad Company and Pennsylvania Company, be forthwith dismissed.

The petition and the protest set forth no basis in law or in fact upon which they may be granted. The grounds upon which petitioners seek to rely have heretofore been carefully considered and consistently rejected by the Commission. The Commission heretofore has approved an application, similar to that of the M&StL, where it was asserted that

the second applicant for control of the same carrier was willing to make a like contract and pay the same price as [fol. 424] proposed in the first application. Thus, the filing of an application by the M&StL and its request for a joint or comparative hearing are sustained by prior decisions of this Commission. The M&StL submits that its application complies with all requirements and it hereby reiterates its request that the applications in Finance Dockets 18991 and 19086 be set for joint hearing at the earliest date convenient to the Commission.

The M&StL asserts that the granting of the Santa Fe-Pennsylvania petition (1) would be contrary to the public interest, (2) would be inconsistent with prior decisions of this Commission, (3) would lead to conflict and confusion in commerce procedures, and (4) would prolong and delay the determination of the issues in these proceedings. In support whereof, the M&StL shows the following:

I

Consistency with the public interest requires that the applications in Finance Docket 18991 and Finance Docket 19086 be set down for a comparative or consolidated hearing.

As a condition precedent to its approval of an application under Section 5(2) the Commission is expressly required by statute to find that the proposed transaction is "consistent with the public interest." The term "public interest" as defined by the Supreme Court[1] has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency and to appropriate provi- [fol. 425] sion and best use of transportation facilities. As stated by the Commission in *Watson Bros. Transportation Co., Inc.—Purchase—West Coast Fast Freight*, 57 M.C.C. 745 (758), "The phrase 'consistent with the public interest' as used in Section 5 is broad in scope, and the Commission plainly is charged with the obligation of considering all matters of every character affecting the public interest . . . ." Similarly, the National Transportation Policy

[1] *New York Central S. Corp. v. U. S.*, 287 U. S. 12, 25

provides that the Interstate Commerce Act shall be so ad ministered as "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers * * * without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices * * *."

The required findings as to the best use of transportation facilities of the TP&W, the unfair or destructive competi tive practices involved in and resulting from a grant of the Santa Fe-Pennsylvania application and all other considera tions encompassed by "public interest" can be made only after comparative hearings on both applications. Consoli dation of the hearings will aid the development of a full and complete record and expedite the disposition of the issues herein. The applicant submits that the two applica tions not only properly may, but should, in the public interest, be set for joint hearing and be considered and disposed of concurrently.

[fol. 426]

II

Consistency with prior decisions of this Commission requires that the applications in Finance Docket 18991 and Finance Docket 19056 be set for comparative or consolidated hearing.

In Paragraph IV of their petition, the Santa Fe-Pennsyl vania list as their reasons for opposing a joint hearing (1) that there is not properly before the Commission any issue or factual situation whereby the Commission is called upon to determine whether it would be more desirable in the public interest for control of the TP&W to be acquired by the M&StL rather than by the Santa Fe-Pennsylvania, (2) that the issue is whether their application, F.D. 18991, is consistent with the public interest, (3) that a joint hear ing would confuse the record, and (4) that the issues in F.D. 18991 should not be the subject of consideration in con junction with any other proceeding. In substance, peti tioners are asking for consideration of their application prior to and independently of consideration of the M&StL application.

Petitioners in effect argue that they have a right to have their application considered in a vacuum. They in effect assert that private rights supersede the public interest in the best possible transportation system. Both the Commission and Congress have long displayed their great interest in achieving the best possible results from mergers, consolidations and acquisitions of control. As early as the Transportation Act of 1920, Congress decreed that such matters should no longer be effected for private considerations alone and made them subject to approval by the Com- [fol. 427] mission under standards of public interest. In the Transportation Act of 1933, Congress again acted to shore up the Commission's jurisdiction over acquisitions of control. The contention of petitioners that the Commission may not look at alternative applications when an acquisition of control transaction is before it is completely inconsistent with the Congressional history of Section 5. It would permit a "coach-in four" to be driven through that section since if the position urged by petitioners were adopted by the Commission, any private party could block an acquisition of control merely by being the first to file an application with the Commission to acquire control of a particular carrier. No matter how much more in the public interest a second or third application for that same carrier might be, the Commission would have to abstractly and in a vacuum and without consideration of the other application or applications determine whether the first application in and of itself was consistent with the public interest.

It is clear not only from the standpoint of common sense and the legislative history of Section 5 but the Commission's decisions that the position of petitioners must be rejected and the applications of petitioners and the M&St. considered comparatively with the Commission having complete freedom to decide which application will best serve the public interest and be consistent with the requirements of Section 5 and the National Transportation Policy.

Thus, in *Control of Beaver, Meade & E. R. Co.*, 158 I.C.C. 219, the Commission held a comparative hearing on separate [fol. 428] rate applications of the Rock Island and the M-K-T, each of which sought authority to control the same carrier. In this case, the Rock Island entered into a con-

tract to purchase stock and securities of the Beaver, Meade & Englewood Railroad Company, and filed an application with the Commission for authority to control that carrier. The M-K-T intervened in opposition to the Rock Island application and thereafter filed its own application for authority to control the BM&E. Counsel for the Rock Island urged that the two competing applications should be taken up in the order in which presented to the Commission and that a conclusion be reached upon the application of the Rock Island prior to and independently of consideration of the M-K-T application. In rejecting this contention, the Commission said at page 220, "We think that the two applications not only properly may, but should, in the public interest, be considered and disposed of concurrently." In its opinion, the Commission compared the applications and approved control by the M-K-T. At the same time it denied the application of the Rock Island.

Similarly, in *Carolina Coach Company of Va.—Purchase—Richmond—Greyhound*, 38 M.C.C. 347, the Commission again was squarely presented with the problem of two competing applications. In this case, the Richmond Greyhound was required by an order entered in a previous docket to transfer its operating rights between Richmond and Norfolk to another carrier so as to provide competition between those two points. Separate applications were filed by Carolina Coach and Virginia State Lines, each of which sought [fol. 429] authority under Section 5(2) to acquire from Greyhound its operating rights between Richmond and Norfolk. The examiner, in his proposed report, found that the question presented in each application was whether the transaction proposed by it would be consistent with the public interest, and not which of the two transactions (Carolina's or Virginia's application) would be more desirable in the public interest so as to warrant approval of one to the exclusion of the other. The Commission rejected this view of the examiner, stating in unequivocal language, "We do not subscribe to that view."

In *Acquisition of Control by Wabash Railway Co.*, 154 I.C.C. 155, an application for authority to control the Lake Erie & Fort Wayne Railroad was filed by the Wabash. After a hearing on the application had been held, the New

York Central and the Nickel Plate jointly filed for authority to control the same carrier. Even though the hearing on the Wabash application had been held, the Commission in setting the Central-Nickel Plate application for hearing set the Wabash application down for further hearing jointly with that of the Central-Nickel Plate application.

The foregoing decisions of the Commission squarely dispose of the contentions of petitioners. Consistency with the Commission's prior decisions requires that the applications in F.D. 18991 and 19086 be set down for a joint or consolidated hearing. The petition of Santa Fe-Pennsylvania seeking denial of such a hearing should be dismissed.

[fol. 430]

III

Separate hearings would lead to conflict and confusion in Commission procedures.

The Commission has held that where two applications are filed for acquisition of control, it must determine which of the two transactions would be more desirable in the public interest so as to warrant the approval of one to the exclusion of the other.[2] Such a determination can be made only on the record or records on both applications. The simplest and most expeditious procedure would be to assign the applications for joint hearing which will result in only one record.

If separate records are made on the instant applications the parties would have to present testimony in each record whereas in a consolidated or joint hearing the duplicating of testimony and exhibits of the applicants and interveners and the objections on the ground of relevance to the particular application would be minimized. Similarly, the confusion which would otherwise arise in the preparation of briefs, exceptions, protests, petitions for reconsideration, etc., in the references to the two records of the hearings, would be eliminated by consolidation. To avoid all of these difficulties the M&StL urges the Commission to follow its consistent policy in prior proceedings and to forthwith

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[2] *Carolina Coach Co. of Va.—Purchase—Richmond—Greyhound*, 38 M.C.C. 347; *Control of Beaver, M. & E. R. Co.*, 158 I.C.C. 219.

assign the instant applications for a joint or consolidated hearing.

[fol. 431]

IV

Separate hearings would prolong and delay the determinations of the issues in these proceedings.

Separate hearings on each application would merely prolong and delay an ultimate decision. The same examiner would have to hold the hearing on each application and review and compare the separate records and documents filed thereunder, including the separate briefs and exceptions which necessarily would be long and duplicative in nature. For these and the reasons set forth in the previous paragraph it is obvious that separate hearings on each application necessarily would introduce delay. It would also increase the expense of the proceedings to the Commission, to the applicants and to the interveners. For these additional reasons, the M&StL reiterates its request that the applications in Finance Dockets 18991 and 19086 be set for joint or consolidated hearing.

V

The protest is inconsistent with prior decisions of the Commission and should be dismissed.

In Paragraph V, the Santa Fe-Pennsylvania protest the granting of the M&StL application and in support thereof allege that the M&StL offer to purchase is not an existing transaction, that the M&StL does not have a contract or agreement by which it is assured that it can buy the shares of TP&W capital stock, that the application is not based upon a voluntary transaction of the requisite parties essential to a proper application and that as such, the granting of the application would be a vain and useless determination. The contentions of the Santa Fe-Pennsylvania are without merit.

[fol. 432] The Commission was presented with an identical situation in *Control of Beaver, M. & E. R. Co.*, 158

I.C.C. 219. In that case, the Rock Island, like the Santa Fe-Pennsylvania, had a contract to purchase the stock and securities of another carrier. The M-K-T in a separate application, similar to that of the M&StL herein, represented that it was willing to make a like contract and pay the same price for the securities. Following a joint hearing, the Commission approved the application of the M-K-T and authorized it to acquire control in accordance with a proposed contract to be similar in terms to the Rock Island's contract.[3] The application of the Rock Island was denied.

The *BMdE* case squarely disposes of the petitioners' contentions. However, it is significant that the Commission has also reached a similar conclusion in other proceedings. In *Carolina M. Exp. Lines, Inc.—Lease and Purchase—Reed*, 40 M.C.C. 405, for example, the vendor filed a petition requesting that the application of the vendee under Section 5 be dismissed. At the hearing, counsel for the vendor opposed the authority sought by the vendee and indicated that the vendor would not agree to a consummation of the transaction even though it were approved by the Commission. In refusing to dismiss the application, the Commission said at page 407:

> "* * * authority granted under Section 5 is permissive and may or may not be exercised at the election of the parties. Upon the filing of an appropriate application under Section 5 it is our duty to consider whether the proposed transaction, if consummated, would be consistent with the public interest. * * * It is not for us to assume that the authority, if granted, would be futile."[4]

[fol. 433] Thus, there is no requirement that there be an existing or enforceable contract prior to approval of such

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[3] A contract between M-K-T and Beaver Meade stockholders subsequently was approved by the Commission in *Beaver, Meade & Englewood R. Co. Control*, 170 I.C.C. 556.

[4] See also *Watson Bros. Transportation Co.—Purchase—Terminal Warehouse Corp.*, 39 M.C.C. 747; *Watson Bros. Van Lines and Heavy Hauling Co. Purchase*, 45 M.C.C. 709; and *Bridgeways, Inc.—Purchase, Consolidated Freight Co.*, 50 M.C.C. 175.

application under Section 5. Authority granted under this section is permissive only and may or may not be exercised at the election of the parties. It is not for the Commission to assume that the authority, if granted, would be futile, particularly since here the sellers are trustees. If the M&StL demonstrates that the acquisition by it of the TP&W is more in the public interest than an acquisition by the Santa Fe-Pennsylvania, then the M&StL is entitled to have this application approved over that of the Santa Fe-Pennsylvania. The protest sets forth no basis upon which it may be granted either now or at the conclusion of the hearing and therefore should be dismissed.

Conclusion

The petition for denial of a comparative or consolidated hearing and the protest against the granting of the M&StL. application, filed herein by the Atchison, Topeka & Santa Fe Railway Company, the Pennsylvania Railroad Company and Pennsylvania Company, should be forthwith dismissed.

Respectfully submitted,

The Minneapolis & St. Louis Railway Company, By Burton K. Wheeler, Edward K. Wheeler, Richard Musenbrock, Its Attorneys.

[fol. 434] Certificate of Service (omitted in printing).

[fol. 438]

Before the Interstate Commerce Commission

Finance Docket No. 19086

Toledo, Peoria & Western Railroad Company Control

In the Matter of Petition for Leave to Intervene

Present: J. Monroe Johnson, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING INTERVENTION—December 21, 1955.

It appearing, That on October 13, 1955, The Minneapolis & St. Louis Railway Company filed application for authority to acquire control of the Toledo, Peoria & Western Railroad Company through purchase of capital stock;

It further appearing, That on December 8, 1955, Illinois Central Railroad Company filed its petition for leave to intervene alleging that petitioner maintains with the Toledo, Peoria & Western Railroad and The Minneapolis & St. Louis Railway Company through routes and joint rates and interchanges with said carriers a substantial volume of traffic, and requested that, if the application is granted, it be granted subject to the condition that said carriers, and each of them, shall maintain and keep open all routes and channels of trade with petitioner via existing gateways unless and until otherwise authorized by the Commission;

It is ordered, That said Illinois Central Railroad Company be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That consideration of the condition requested by petitioner be deferred pending final determination by the Commission;

And it is further ordered, That a copy of the petition and of this order be served upon the Governors and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Minnesota and South Dakota.

Dated at Washington, D. C., this 21st day of December, A.D. 1955.

By the Commission, Commissioner Johnson.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 461]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19086

[Title omitted]

PETITION OF THE STATE OF ILLINOIS FOR LEAVE TO INTERVENE—January 31, 1956

The Petitioner, the State of Illinois, respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene and become a party to said proceedings and for grounds of proposed intervention says:

1. Petitioner is one of the several sovereign states of the United States.

2. Its interest is in insuring that there are adequate facilities for transportation by railway of the produce of its citizens and provide a source from which they may receive shipments by rail, and more particularly that adequate transportation continues to be provided for points on the Toledo, Peoria & Western west of Peoria.

3. Petitioner's position is in opposition to the relief sought by the applicant, Minneapolis & St. Louis Railway Company.

Wherefore, the State of Illinois prays leave to intervene and be treated as a party thereto with a right to have notice [fol. 462] of and appear at the taking of testimony, produce and cross-examine witnesses and be heard by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Springfield, Illinois, January 31, 1956.

Latham Castle, Attorney General, State of Illinois,
Supreme Court Building, Springfield, Illinois,
Phone: Springfield 4-4871.

John L. Davidson, Jr., First Assistant Attorney General; Harry E. Begley, Special Assistant Attorney General, of Counsel.

[fol. 463] *Duly sworn to by John L. Davidson, Jr., jurat omitted in printing.*

[fol. 465]

BEFORE THE INTERSTATE COMMERCE COMMISSION
Washington, D. C.

Finance Docket No. 19086

[Title omitted]

PETITION OF THE STATE OF MINNESOTA, ET AL., FOR LEAVE TO INTERVENE—January 30, 1956

Comes now petitioners, the State of Minnesota and its Railroad & Warehouse Commission, and respectfully represent that the petitioners have an interest in the matters and issues presented by the application in the above entitled proceeding and desire to intervene in and become parties to that proceeding, and to present evidence in support of the application; and for grounds in support of the proposed intervention petitioners state the following:

I.

That the State of Minnesota is one of the sovereign states of the United States, and its Railroad & Warehouse Commission is one of the departments of the government of such state and is authorized to participate in a proceeding before this Commission involving the adequacy of service by common carriers by railroad operating within [fol. 466] the State of Minnesota and in interstate commerce. Petitioners pray leave to intervene in this proceeding under the rules of practice and regulation promulgated by your Commission in accordance with law. Intervention is sought because petitioners have an interest in this proceeding which is not adequately represented by existing parties and the action of the Commission may bind the petitioners, and for the further reason that petitioners' participation will be in the public interest.

II.

That the applicant, the Minneapolis & St. Louis Railway Company, is a Minnesota corporation, is engaged in transportation in interstate commerce as a common carrier by

railroad, subject to the provisions of the Interstate Commerce Act, has its principal offices in the State of Minnesota, and operates a railroad between Leola, South Dakota, Minneapolis, Minnesota, and Peoria, Illinois.

III.

That the applicant, the Minneapolis & St. Louis Railway Company, seeks to obtain control of the Toledo, Peoria & Western Railroad Company, by purchase of its capital stock, in furtherance of the public interest as declared in the National Transportation Policy, the Clayton Act, and the Sherman Act, in order to improve and enhance its financial and physical condition and increase its ability to serve its shippers within the State of Minnesota and elsewhere along its railroad.

[fol. 467]

IV.

That applicant, the Minneapolis & St. Louis Railway Company, presently has direct interchange connections with the Toledo, Peoria & Western Railroad Company at Peoria, Illinois, and currently interchanges with that railroad carloads originating or destined within the State of Minnesota; and that such applicant also has direct interchange connections and does interchange traffic with the Atchison, Topeka & Santa Fe Railway Company, and has indirect interchange connections with the Pennsylvania Railroad Company via the Toledo, Peoria & Western Railroad Company and other railroads; all of which inures to the benefit of shippers and receivers of carloads within the State of Minnesota.

V.

That the acquisition of control of the Toledo, Peoria & Western Railroad Company, by the purchase of its capital stock by the Atchison, Topeka & Santa Fe Railway Company and the Pennsylvania Railroad Company, or any other railroad company other than the applicant, may prevent the applicant from expanding the territory it serves, from improving and enhancing its financial and physical condition, and would tend to substantially lessen competition and create monopoly and would adversely affect the

public services performed by the applicant over its entire system, including the portion thereof within the State of Minnesota.

[fol. 468]

VI.

That the acquisition by the applicant of control of the Toledo, Peoria & Western Railroad Company, by purchase of its capital stock, is in the public interest.

VII.

Petitioners believe that its intervention in this matter is in the public interest in that the Commission, in passing upon the application herein, would have available to it the facts and argument concerning, among other matters, the effect upon business and industry and the public generally within the State of Minnesota by the granting of the application herein; and that the granting of this petition to intervene will not unduly broaden the issues in this case.

Wherefore, your petitioners request leave to intervene in support of the application and be treated as parties in interest in the above entitled proceeding with the right to have notice of and to appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard through counsel on brief and at oral argument, if oral argument is granted.

Dated at Saint Paul, Minnesota, this 30th day of January, 1956.

State of Minnesota and its Railroad & Warehouse Commission, By: Oliver A. Ossanna, Secretary, Minnesota Railroad & Warehouse Comm., State Office Building, Saint Paul 1, Minnesota.

[fol. 469] Miles Lord, Attorney General; Joseph J. Bright, Assistant Attorney General, Attorneys for Petitioners, 102 State Capitol, Saint Paul 1, Minnesota.

Duly sworn to by Oliver A. Ossanna, jurat omitted in printing.

[fol. 470] Certificate of Service (omitted in printing)

[fol. 471]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19086

[Title omitted]

PETITION OF THE STATE OF SOUTH DAKOTA, ET AL., FOR INTERVENTION—January 16, 1956

Comes now your petitioners, the State of South Dakota and the South Dakota Public Utilities Commission, and respectfully represent that petitioners have an interest in the above-entitled proceedings and desire to intervene in support of the applicant and become a party to said proceedings, and for grounds of intervention alleged:

I.

That the State of South Dakota is one of the sovereign states of the United States and that petitioner South Dakota Public Utilities Commission is one of the Departments of the Government of the State of South Dakota and is authorized and charged with the duty to participate in proceedings before your Honorable Commission involving the adequacy of service by common carriers by railroad operating in the State of South Dakota in interstate commerce. That C. L. "Roy" Doherty, Chris A. Merkle and Fred Lindekugel are the duly elected qualified and acting members of the Commission and collectively constitute the Public Utilities Commission of the State of South Dakota.

II.

That the applicant, The Minneapolis & St. Louis Railway Company, is a common carrier by railroad, operating a segment of rail line in the State of South Dakota of the length of 154 miles serving a number of important cities and towns and the area adjacent thereto in the State of South Dakota.

[fol. 472]

III.

That authorizing The Minneapolis & St. Louis Railway Company to acquire control of the Toledo, Peoria & West-

ern Railroad Company through ownership of its capital stock when effectuated, will be of benefit to said carrier resulting in augmenting and improving its ability and capacity to render more efficient common carrier service over its entire system including that portion thereof located in South Dakota. Interveners allege upon information and belief that the acquisition of the Toledo, Peoria & Western Railroad Company by the Pennsylvania Railroad or The Atchison, Topeka and Santa Fe Railway Company or subsidiaries thereof, will have serious adverse financial and service results to The Minneapolis & St. Louis Railway Company over its entire system including that portion thereof located in South Dakota; and that acquiring control of said railroad by The Minneapolis & St. Louis Railway Company is in the public interest.

IV.

That the granting of this application to intervene will not unduly broaden the issues in this case.

WHEREFORE, your petitioners pray leave to intervene and be treated as parties hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Pierre, South Dakota, this 16th day of January 1956.

Phil Saunders, Attorney General of South Dakota, State Capitol Building, Pierre, South Dakota; C. A. Carr, Rate Expert, Public Utilities Commission, State Capitol Building, Pierre, South Dakota; Herman L. Bode, Counsel for South Dakota Public Utilities Commission, State Capitol Building, Pierre, South Dakota.

[fol. 473] *Duly sworn to by Chris A. Merkle, jurat omitted in printing.*

[fol. 475]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19086

[Title omitted]

PETITION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO INTERVENE—January 5, 1956

Comes now your petitioner, Railway Labor Executives' Association, and respectfully represents that it has an interest in the matter in controversy in the above entitled proceeding, that it desires to intervene in and become a party to said proceeding, and for grounds in support of said petition respectfully shows:

1.

That the petitioner, Railway Labor Executives' Association, is a voluntary unincorporated association, with which are affiliated the following standard international railway labor organizations:

Switchmen's Union of North America
Order of Railroad Telegraphers
American Train Dispatchers' Association
Railway Employes' Department, A. F. of L.
International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America
[fol. 476] Sheet Metal Workers' International Association
International Brotherhood of Electrical Workers
Brotherhood Railway Carmen of America
International Brotherhood of Firemen & Oilers
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood of Railroad Signalmen of America
International Organization Masters, Mates & Pilots of America
National Marine Engineers' Beneficial Association
Hotel & Restaurant Employees' and Bartenders International Union

Railroad Yardmasters of America
Brotherhood of Maintenance of Way Employes
Brotherhood of Sleeping Car Porters
Brotherhood of Locomotive Firemen & Enginemen
Brotherhood of Railroad Trainmen
Order of Railway Conductors and Brakemen

The principal office of the petitioner, Railway Labor Executives' Association, is located at 401 Third Street, N.W., Washington 1, D. C.

2.

That certain of the organizations comprising this petitioner represents employees of the carriers involved for the purpose of collective bargaining and have agreements with said carrier concerning rates of pay, rules, and working conditions.

3.

This application, in part, falls within the provisions of Section 5(2) of the Interstate Commerce Act and is therefore a proposed transaction in which the Commission is obligated by Section 5(2)(f) to give weight to the interests of the carriers' employees in its consideration of the merits of the transaction. The evidence which is to be developed before the Commission may well disclose serious and sub- [fol. 477] stantial adverse effect which will result to certain employees of the involved carriers should the proposed transaction be approved by the Commission. Petitioner has a direct and substantial interest in any terms and conditions which parties to the proceeding may propose for the protection of employee interests, as well as in itself proposing the imposition of terms and conditions which may be required for the protection of the interests of said employees.

4.

That the intervention of this petitioner will not broaden the issues already before the Commission in this proceeding.

Wherefore, your petitioner, in its own behalf and in behalf of the international standard railway labor organizations affiliated with it, together with the individual members of such organizations, prays leave to intervene in this cause and be treated as a party hereto with the right to have notice of and participate in any further proceeding, to appear thereat, to present testimony, to produce and examine witnesses, and to be heard by counsel upon brief or oral argument.

Respectfully submitted,

Clarence M. Mulholland, 741 National Bank Building, Toledo 4, Ohio; Philip L. Hoag, 741 National Bank Building, Toledo 4, Ohio, Attorneys for Petitioner.

Of Counsel: Mulholland, Robie & Hickey, 741 National Bank Building, Toledo 4, Ohio.

[fol. 478] Certificate of Service (omitted in printing).

[fol. 479]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19086

[Title omitted]

PETITION OF BROTHERHOOD OF RAILROAD TRAINMEN FOR LEAVE TO INTERVENE—January 5, 1956

Comes now your petitioner, Brotherhood of Railroad Trainmen, and respectfully represents that it desires to intervene in, and become a party to the above entitled proceeding, and for grounds for the proposed intervention says:

—1—

Your petitioner, Brotherhood of Railroad Trainmen, is a voluntary unincorporated railway labor organization, national in scope, with general offices in the Standard Building, Cleveland 13, Ohio, with membership consisting largely

of the road and yard train service employees of the railroads in the United States.

—2—

Your petitioner has in membership a majority of the train service employees of the Minneapolis and St. Louis Railway Company and of the Toledo, Peoria and Western Railway Company, and represents such employees in collective bargaining procedures with those companies under the provisions of the Railway Labor Act, as amended.

—3—

Any conclusion reached by your Honorable Commission in granting the authority requested by the applicant in the above entitled proceeding may have an adverse affect upon your petitioner's members.

[fol. 480] —4—

For the foregoing reasons your petitioner, Brotherhood of Railroad Trainmen, desires to intervene in this proceeding for the purpose of protecting the welfare of its members as their interests may appear.

Wherefore your petitioner, in its own behalf and in behalf of the members, employees of the above named railway and railroad companies, prays leave to intervene in this proceeding with the right to be treated as a party hereto and have notice of and participate in any proceeding, to appear at such proceedings, to present testimony, to produce and examine witnesses, and to be heard by counsel upon brief or oral argument.

Dated at Cleveland, Ohio, this 5th day of January, 1956.

Respectfully submitted:

By: W. P. Kennedy, President.

Certificate of Service (omitted in printing).

[fol. A] Secretary's Certificate to foregoing transcript (omitted in printing).

[fol. 1]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

In the Matter of:

Application of the ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY and the PENNSYLVANIA COMPANY for authority under Section 5 (2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company through purchase of the capital stock.

Finance Docket No. 19086

In the Matter of:

Application of the MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY for authority under Section 5 (2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company, through ownership of its capital stock.

Transcript of Hearing—February 1, 1956

Pere Marquette Hotel,
Peoria, Illinois.

Met, pursuant to notice, at 9:30 a. m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

R. S. Outlaw, Starr Thomas and Carl E. Bagge, 80 East Jackson Boulevard, Chicago 4, Illinois, appearing for the Atchison, Topeka & Santa Fe Railway Company, applicant.

Edwin A. Lucas, 1740 Suburban Station Building, Phila-
[fol. 2] delphia 4, Pennsylvania, Robert H. Bierma, 752 Union Station, Chicago, Illinois, and Thomas O. Hunter, 718 Commercial Bank Building, Peoria, Illinois, appearing for the Pennsylvania Railroad Company and the Pennsylvania Company, applicants.

Edward K. Wheeler, Burton K. Wheeler, Robert G. Seekes, Eldon S. Olson, 104 Southern Building, Washington, D. C., and Richard Muzenbrack, 111 East Franklin, Minneapolis, Minnesota, appearing for the Minneapolis & St. Louis Railway Company, applicant.

Verle W. Safford, 727 First National Bank Building, appearing for the Peoria Association of Commerce, intervenor.

Max J. Lipkin, City Hall, Peoria, Illinois, appearing for the City of Peoria, intervenor.

Lyman R. Fort, Stronghurst, Illinois, appearing for the Village of Lomax, its president and the Village trustees, intervenors in opposition.

Philip L. Hoag, of the firm of Rolland & Hickey, National Bank Building, Toledo, Ohio, appearing on behalf of the Railway Laborers Executives Association, intervenor, and the Brotherhood of Railroad Trainmen, intervenor.

Fred V. Stiers, 900 First National Bank Building, Peoria, Illinois, appearing for the City of East Peoria, intervenor.

C. V. O'Hern, of the firm of O'Hern, Alloy, O'Hern & Wambacher, 1105 Lehmann Building, Peoria, Illinois, ap-
[fol. 3] pearing for the Central Illinois Light Company, an intervenor.

Paul C. Catton, 912 Central National Bank Building, Peoria, Illinois, appearing for the Peoria Junior Chamber of Commerce, intervenor.

Robert H. Walker, of the firm of Boyd, Walker, Huis-Kamp & Concannon, 609 Blondeau Street, Keokuk, Iowa, appearing for the City of Keokuk, the Keokuk Bridge Commission, the Keokuk Chamber of Commerce and the Hubinger Company, intervenors.

Leon L. Lamet, Warsaw, Illinois, appearing for the City of Warsaw and the Warsaw Chamber of Commerce, intervenors.

John L. Davidson, Jr., First Assistant Attorney General of the State of Illinois, appearing on behalf of the State of Illinois, intervenor.

Martin M. Lucente, 11 South LaSalle Street, Chicago, Illinois, of the firm of Sidley, Austin, Burgess & Smith, appearing for petitioners Elizabeth M. McNear, individually, and as guardian for John H. McNear, Elizabeth H. McNear, the Hanover Bank, and William McDowell Frederic and Commercial National Bank of Peoria, as executors of the estate of Clinton M. McNear, intervenors.

Eaton Adams and M. L. Cassell, 139 West Van Buren Street, Chicago, Illinois, appearing for the Rock Island Railroad, intervenor.

Thomas O. Broker, 3001 Terminal Tower Building, Cleve-
[fol. 4] land, Ohio, appearing for the New York, Chicago & St. Louis Railroad Company, intervenor and petitioner for relief in Docket 18991 and intervenor in 19086.

Eugene S. Davis, 1667 Railway Exchange Building, St. Louis 1, Missouri, appearing for Wabash Railroad Company, intervenor.

Eldon Martin, 547 West Jackson Boulevard, Chicago, Illinois, appearing for Chicago, Burlington & Quincy Railroad Company, intervenor.

Bryce L. Hamilton, 1406 First National Bank Building, Chicago 3, Illinois, appearing for Guy A. Gladson and Wilmington Trust Company, as trustees of the estate of George P. McNear, Jr., intervenors.

Harold E. Spencer, 135 East Eleventh Place, Chicago 5, Illinois, appearing for the Illinois Central Railroad Company, intervenor.

H. O. Thompson, 176 West Adams, Chicago, Illinois, appearing for the Brotherhood of Railroad Trainmen, intervenor.

Herrell Shepherd, 120 South LaSalle Street, Chicago 3, Illinois, appearing for Chicago, Indianapolis & Louisville Railway Company, intervenor.

Edgar Vanneman, Jr., Room 1422, 400 West Madison Street, Chicago 6, Illinois, appearing for the Chicago & Northwestern Railway Company, intervenor.

John W. Adams, 104 St. Francis Street, Mobile, Alabama, [fol. 5] appearing for Gulf, Mobile & Ohio Railroad Company, intervenor.

Charles A. Carr, 305 Capitol Building, Pierre, South Dakota, appearing for the State of South Dakota, intervenor.

John L. Bordes, of the firm of Kirkland, Fleming, Green, Martin & Ellis, 33 North LaSalle Street, Chicago, Illinois, appearing for the United Electric Coal Companies, intervenors.

Blaine Ramsey, Canton State Bank Building, Canton, Illinois, appearing for the Canton Chamber of Commerce and Canton Industries, Inc., intervenor.

Lawrence B. McMunn, 32 North Main Street, Canton, Illinois, appearing for the City of Canton, Illinois, intervenor.

Harold J. Soderberg, Special Assistant Attorney General, Minnesota State Capitol, State of Minnesota, appearing for the State of Minnesota and the Minnesota Railroad and Warehouse Commission, intervenor.

[fol. 8] PROCEEDINGS

Exam. Albus: The hearing will please come to order.

The Upper State Commerce Commission has assigned for hearing at this time and place Finance Dockets Nos. 18991 and 19086, to Toledo, Peoria & Western Railroad Company Control Through Stock Ownership.

The applicants in Finance Docket No. 18991 are, the Atchison, Topeka & Santa Fe Railway Company, the Pennsylvania Railroad Company, and Pennsylvania Company.

And the applicant in 19086 is the Minneapolis & St. Louis Railway.

We will now call for appearances.

In announcing your appearances please indicate for the record whether or not you have been admitted to practice before the Commission.

First of all, who appears for the applicant in 18991, the Atchison, Topeka & Santa Fe Railway Company?

Mr. Thomas: R. S. Outlaw, Starr Thomas and Carl E. Bagge, appearing for the Santa Fe Railway System, address for all three is 80 East Jackson Boulevard, Chicago 4, and all have been admitted to practice before the Commission.

Mr. Lucas: Mr. Examiner, Edwin A. Lucas, Robert H. Bierma and Thomas O. Hunter, appearing for the Pennsylvania Railroad Company and Pennsylvania Company.

Do you wish the addresses, sir?

[fol. 9] Exam. Albus: If you will, please.

Mr. Lucas: Address of Mr. Lucas, 1740 Suburban Station, Philadelphia, Pennsylvania. Mr. Bierma's address is 752 Union Station, Chicago.

Mr. Hunter's address is 718 Commercial Bank Building, Peoria, and all three of us are admitted to practice before the Commission.

Exam. Albus: Thank you very much.

For the applicant Minneapolis & St. Louis.

Mr. Wheeler: Richard Muzenbrack, 111 East Franklin Street, Minneapolis, Minnesota, Burton K. Wheeler, Edward K. Wheeler, Robert G. Seekes, and Eldon S. Olson, 104 Southern Building, Washington, D. C.

Exam. Albus: Mr. Seekes.

Mr. Seekes: We are all admitted to practice before the Commission.

Exam. Albus: Before we proceed with the intervenors I would like to announce upon my leaving Washington I was presented with certain intervening petitions which were received too late for the preparation of an order and service by the Chairman of Division 4, so the record will show at this time the receipt of the following intervening petitions:

First in Finance Docket No. 18991, the petition of the Peoria Junior Chamber of Commerce;

The City of Canton, Illinois;

[fol. 10] Golden Rule Club of the City of LaHarpe, Illinois;

The Railway Laborers Executives Association;

Brotherhood of Railroad Trainmen;

City of Bushnell;

City of Chenoa;

The Village of Gridley;

The Village of Forrest, Illinois;

The City of Fairbury, Illinois;

Central Illinois Light Company;

Elizabeth M. McNear, individually and as guardian for John W. McNear, Elizabeth H. McNear, the Hanover Bank, and William McDowell Frederic, and Commercial National Bank of Peoria, as executors of the Estate of Clinton M. McNear;

Petition of the Wabash Railroad Company.

And in Finance Docket No. 19086:

The State of South Dakota and the South Public Utilities Commission;

The petition of the Railway Laborers Executives Association;

Brotherhood of Railroad Trainmen;

Petition of the Chicago, Rock Island & Pacific Railroad Company;

Petition of New York, Chicago & St. Louis Railroad Company;

And in both applications petition of Guy A. Gladson and Wilmington Trust Company as trustees.

Now we will proceed with the appearances for all in[fol. 11] tervenors, starting on my left.

Mr. Safford: Verle W. Safford, 727 First National Bank Building, appearing for the Peoria Association of Commerce. I am not admitted to practice before the Commission but my application is pending.

Exam. Albus: It will be understood you may participate in this case since the application is pending.

Mr. Lipkin: Max J. Lipkin, corporation counsel, City of Peoria, City Hall. I am admitted to practice before the Commission.

Exam. Albus: Thank you very much, Mr. Lipkin.

Next, please.

Mr. Fort: Lyman R. Fort, Stronghurst, Illinois, representing the Village of Lomax, its president and the Village trustees. I am not admitted to practice before the Commerce Commission.

Exam. Albus: Have you appeared in any of these cases before?

Mr. Fort: No, sir, I have not.

Exam. Albus: It will be understood you may participate in this case but if you want to participate in any others you will make application to the Commission to do so.

Mr. Hoag: Philip L. Hoag of the firm of Rolland and Hickey, National Bank Building, Toledo, Ohio. I am appearing on behalf of the Railway Laborers Executives Association.

Likewise that the record may be straightened away. There has been an intervening petition filed on behalf of [fol. 12] the Brotherhood of Railroad Trainmen. The Brotherhood of Railroad Trainmen are now a member of the Executives Association. I am likewise representing them.

Exam. Albus: Thank you very much, Mr. Hoag.

Mr. Stiers: Fred V. Stiers, 900 First National Bank Building, Peoria, appearing for the City of East Peoria. I am not admitted.

Exam. Albus: Have you appeared in any of these cases before, Mr. Stiers?

Mr. Stiers: No, sir.

Exam. Albus: That is all right, you may participate in this one to its conclusion.

Mr. O'Hern: C. V. O'Hern of the firm of O'Hern, Alloy, O'Hern & Wambacher, 1105 Lehmann Building, Peoria, appearing for the Central Illinois Light Company, an intervenor. I am not admitted before the Commission.

Exam. Albus: Are you a full-time employee of the Central Illinois Light Company?

Mr. O'Hern: No, sir, we are attorneys representing the company.

Exam. Albus: Have you ever appeared in any hearing before?

Mr. O'Hern: Not before this Commission.

Exam. Albus: It may be understood that you may participate in this case but if you are going to practice before the Commission please file an application.

[fol. 13] Mr. Catton: Paul C. Catton, 912 Central National Bank Building, Peoria, representing the Peoria Junior Chamber of Commerce. I am not admitted to practice before the Commission.

Exam. Albus: What's been said with respect to the other gentlemen also applies to you. You have never been before the Commission?

Mr. Catton: No, sir.

Exam. Albus: Thank you.

Mr. Walker: Robert H. Walker of the firm of Boyd, Walker, HuisKamp and Concannon, 609 Blondeau Street, Keokuk, Iowa. I am appearing for the City of Keokuk, the Keokuk Bridge Commission, the Chamber of Commerce and the Hubinger Company. I am registered as a practitioner before this Commission.

Exam. Albus: Thank you, Mr. Walker.

Mr. Lamet: Leon L. Lamet, Warsaw, appearing for the City of Warsaw, Warsaw Chamber of Commerce. I am registered as a practitioner before the Commission.

Exam. Albus: Thank you, Mr. Lamet.

Mr. Davidson: John L. Davidson, Jr., first assistant attorney general of the State of Illinois, appearing on behalf of the State of Illinois.

Exam. Albus: Thank you, Mr. Davidson.

Mr. Davidson: I am not a member of the bar of this Commission.

[fol. 14] Mr. Lucente: Martin M. Lucente, 11 South LaSalle Street. I am with the firm of Sidley, Austin, Burgess & Smith. That is a Chicago address, 11 South LaSalle Street, representing petitioners Elizabeth M. McNear, individually, and as guardian for John H. McNear, Elizabeth H. McNear, the Hanover Bank, and William McDowell Frederic and Commercial National Bank of Peoria, as executors of the estate of Clinton M. McNear. I have a pending application for admission.

Exam. Albus: Thank you very much.

All right, Mr. Adams.

Mr. Cassell: Eaton Adams and M. L. Cassell, 139 West Van Buren Street, Chicago, Illinois, appearing on behalf of

the Rock Island Railroad in both dockets. We are both attorneys and admitted to practice before this Commission.

Exam. Albus: Thank you.

Mr. Broker: Thomas O. Broker, 3001 Terminal Tower Building, Cleveland, appearing for the New York, Chicago & St. Louis Railroad Company, intervenor and petitioner for relief in Docket 18991 and intervenor in 19086.

May I ask a question? You read a list of the parties that had filed petitions for leave to intervene. Are they all authorized to intervene?

Exam. Albus: Yes, they are. They are all received at this time, all the intervening petitions. Incidentally, I have some extra copies of those petitions with me if anyone [fol. 15] cares for them. They will be right here on the witness table.

Mr. Davis, please.

Mr. Davis: Eugene S. Davis, 1667 Railway Exchange Building, St. Louis 1, Missouri, appearing for intervenor Wabash Railroad Company in both dockets.

In Docket 18991 we have been permitted to intervene according to your announcement. We do have a petition for leave to intervene in Docket 19086 which I will present at such appropriate time as you desire. I will present it now or—

Exam. Albus: May we have it at this time. We might as well include it with all the others.

Is this the original petition?

Mr. Davis: The original.

I am an attorney and I am registered to practice before the Commission.

Exam. Albus: Thank you very much, Mr. Davis.

Anybody else?

Mr. Martin: Eldon Martin, 547 West Jackson Boulevard, Chicago, Illinois, appearing in both dockets for Chicago, Burlington & Quincy Railroad Company.

Mr. Examiner, we should present our intervening petitions later or now?

Exam. Albus: As long as you have them there you might as well present them at this time, just the original and one copy, please.

[fol. 16] Mr. Martin: Mr. Examiner, the document which I have just handed to you is entitled in both dockets and is a petition for leave to intervene as well as a petition for inclusion in the transaction under certain circumstances. The substance of the whole document is simply this, if the original applicants, Pennsylvania and Santa Fe, are authorized to acquire the T. P. & W. we do not object and will be satisfied in that event if the conditions are attached to the Commission's approval order in the form of a petition attached to this petition. If, on the other hand, any other railroad, including the applicant in 19086 or any railroad intervenor in either docket, if any railroad other than Santa Fe and Pennsylvania is authorized to acquire an interest in the T. P. & W., then and under those conditions Burlington asks to be included in the transaction to the same extent as any such other railroad.

Now, the petition itself is verified, the statement in support of the petition is likewise verified, and I would like very much if it would be possible to avoid staying around the hearing indefinitely. I am prepared myself to answer any questions concerning our position. If necessary, I can call an executive officer down here from Chicago to answer further questions. I don't think it is, but I would like your co-operation, Mr. Examiner, and the co-operation of others in the room to this extent, that if you do have any questions concerning our position, would you try to get them [fol. 17] to me before tomorrow night.

Is that a reasonable request, Your Honor?

Exam. Albus: Any objection to that request; I see none.

Mr. Wheeler: Mr. Examiner, may I have it read? I didn't hear the last part of his statement.

Exam. Albus: Off the record.

(Discussion off the record.)

[fol. 18] Exam. Albus: On the record. Mr. Hamilton, please.

Mr. Hamilton: Bryce L. Hamilton, 1400 First National Bank Building, Chicago 3, Illinois, appearing in both dockets for Guy A. Gladson and Wilmington Trust Co. as trustees of the estate of George P. McNear, Jr. I am admitted to practice before the Commission.

Exam. Albus: Thank you, Mr. Hamilton.

Mr. Spencer, please.

Mr. Spencer: Harold E. Spencer, 135 East Eleventh Place, Chicago 5, Illinois, appearing in both dockets for the Illinois Central Railroad Company. I am admitted to practice before the Commission.

Exam. Albus: Are there any further appearances?

Mr. Thompson: H. O. Thompson, 176 West Adams Street, Chicago, Illinois, appearing for the Brotherhood of Railroad Trainmen. I am not permitted to practice.

Exam. Albus: You are an officer of the organization?

Mr. Thompson: That is right.

Exam. Albus: Thank you very much, Mr. Thompson.

Mr. Shepherd: J. H. Shepherd, 120 South LaSalle, Chicago 3, Illinois, appearing for Chicago, Indianapolis and Louisville Railway Co. I am admitted to practice.

I might say, Mr. Examiner, that we have filed an intervening petition. Intervention has been allowed in Docket 18991. We would like leave to file within the next day sim-
[fol. 19] ilar petition in Docket 19088.

Exam. Albus: This will be a consolidated hearing. I doubt if that is necessary. You may file it if you care to. The original petition may stand and it may be considered filed in both dockets.

Mr. Vanneman: Edgar Vanneman, Jr., Room 1422, 400 West Madison Street, Chicago 6, Illinois, appearing for the Chicago & Northwestern Railway Co. in both proceedings.

I have an intervening petition I would like to present at this time.

Exam. Albus: May I have the original and one copy, and will you circulate them to anyone who desires them.

Are there any further appearances?

Mr. John W. Adams: John W. Adams, 104 St. Francis Street, Mobile, Alabama, appearing for Gulf, Mobile and Ohio Railroad Co. We are intervenors in 18991 and have a petition for leave to intervene in 19086. I have been admitted to practice.

Exam. Albus: May I have the original, please, of the petition and one copy.

Are there any further appearances?

Mr. Carr: Charles A. Carr, 305 Capitol Building, Pierre,

South Dakota, appearing for the State of South Dakota. I am a registered practitioner.

Mr. Bordes: John L. Bordes, of the firm of Kirkland, [fol. 20] Fleming, Green, Martin & Ellis, 33 North LaSalle Street, Chicago, Illinois, appearing for The United Electric Coal Companies, intervenor. We mailed copies of the intervening petition to Washington, but I am certain that the Examiner did not receive them in the mail, I think on Monday, and we would like at this time to move for intervention, and I have copies with me, but we mailed copies to all parties of record on Monday last.

Exam. Albus: Very well, your intervening petition is received at this time and made a part of the record.

Mr. Bordes: I am a practitioner before the Commission.

Mr. Ramsey: Blaine Ramsey, Canton State Bank Building, Canton, Illinois, appearing for the Canton Chamber of Commerce and Canton Industries, Inc.

Exam. Albus: Are you a member of the bar or the Commission?

Mr. Ramsey: No, sir, I am not a member of the Commission.

Exam. Albus: Have you ever appeared in any of these cases before?

Mr. Ramsey: No, sir.

Exam. Albus: You may appear in this case at this time.

Mr. McMunn: Lawrence B. McMunn, 32 North Main Street, Canton, Illinois, appearing for the City of Canton, Illinois. I am not admitted to practice before this Commission.

Exam. Albus: The same ruling applies to you, Mr. McMunn.

[fol. 21] Mr. Soderberg: Harold J. Soderberg, Special Assistant Attorney General, Minnesota State Capitol, State of Minnesota, appearing for the State of Minnesota and the Minnesota Railroad and Warehouse Commission. We mailed our petition to the Commission on the 30th, I am sure it wasn't received, or apparently, but I have copies here and we would move to intervene.

Exam. Albus: You mailed the original in to the Commission?

Mr. Soderberg: And 15 copies.

Exam. Albus: Thank you very much. Your petition is received in the record at this time.

Are there any further appearances?

(No response.)

Exam. Albus: Apparently not.

COLLOQUY BETWEEN COURT AND COUNSEL

Let the record show that the applications and all exhibits attached thereto are made a part of this record with the understanding that any material fact contained in there is subject to right of full cross-examination.

Are there any preliminary matters to be disposed of before we put on the first witness?

Mr. Davidson: I would like to present the petition of the State of Illinois for leave to intervene.

Exam. Albus: Thank you very much.

Mr. Davidson: In 19086 only.

Exam. Albus: Thank you, Mr. Davidson.

[fol. 22] Mr. Davidson: That is the original.

Exam. Albus: Thank you.

Are there any further petitions to be presented now?

(No response.)

Exam. Albus: Now, Mr. Thomas, do you have a preliminary?

Mr. Broker: Mr. Thomas, excuse me.

The exhibit that is customarily put in by a petitioner seeking a share of control, I would like to file it at this time and to distribute it with the request that if the other parties wish to cross-examine the person who signed this, that they so inform me so that I know whether or not to call him to appear as a witness in this case for cross-examination.

Exam. Albus: Within what time, Mr. Broker? When do you want to be advised?

Mr. Broker: I would like to know about it the same time that Mr. Martin knows.

Exam. Albus: Off the record for a moment.

(Discussion off the record.)

Exam. Albus: On the record.

As a result of the discussion off the record, let the record now show that Exhibit B attached to Mr. Martin's petition for leave to intervene is marked for identification Exhibit H-1 in this hearing, and the similar material on behalf of the Nickel Plate is marked for identification H-2. Incidentally, the prefix "H" is to distinguish the exhibits [fol. 23] filed at this hearing from those attached to the application.

And the material submitted on behalf of the Rock Island is marked for identification Exhibit H-3.

(Intervenor's Exhibits H-1, H-2, and H-3, Mr. Martin, were marked for identification.)

Exam. Albus: And those exhibits are received in the record.

(Intervenor's Exhibits H-1, H-2, and H-3, Mr. Martin, were received in evidence.)

Mr. Cassel: In order that the record be clear on that I would just like to say that we also, that is, the Rock Island, has its information similar to that mentioned by Mr. Broker on behalf of the Nickel Plate which has been tendered to you. I am also distributing it among those present and I should like the same courtesy that has been extended to the Burlington and the Nickel Plate that those who have any questions with regard to it would inform me in the same time.

Exam. Albus: Thank you, Mr. Cassel.

Those exhibits have all been distributed, is that correct?

Mr. Cassel: Yes, sir.

Exam. Albus: Mr. Davis.

Mr. Davis: Mr. Examiner, the Wabash has here in the hotel a similar information, and it will be permitted, of course, to file that at such time as it is convenient?

Exam. Albus: That will be understood, yes, sir, Mr. Davis.

Mr. Thomas, do you have anything further to present be- [fol. 24] fore we proceed with the testimony?

Mr. Thomas: I want to get one thing clear, Mr. Examiner. This is to be a consolidated record in the two applications?

Exam. Albus: That is correct.

Mr. Thomas: Will there be any technical problems, will every intervenor, whichever one he intervened in, be a party to both, will there be any distinction made on that?

Exam. Albus: No, there will not except in the testimony, there will be no separate record made, this will be a consolidated hearing.

Mr. Thomas: I would like to make a suggestion about the order of procedure. It seems to me that this is quite different from the usual application in that you do have not an applicant and opposing parties but you have two applicants, each with an affirmative proposition, and various other parties who are opposing or seeking to participate, as the case may be. It seems to me that it would be appropriate for the Santa Fe and Pennsylvania, who filed first, to open. I suggest that the M. & St. L., which is the other applicant, then present its case, and that the railroads which wish to participate in one or both then follow, and that the railroads which are seeking to protect their interchange business follow after that.

It is also my suggestion that the intervenors who are supporting one or the other of the two major applicants should be permitted to present their testimony after both [fol. 25] of the affirmative proposals of the two major applicants are in so they will have full knowledge of exactly what they are expected to state a position on.

Exam. Albus: We ordinarily have no trouble with the matter of procedures. Your suggestion is very fine, and I heartily concur with it, except for the fact that if anyone is here who desires to testify and has to leave early we will just let them testify any time they are ready in order to be examined and to be somewhere else tomorrow or the day after. That is the only thing we have to—

Mr. Thomas: I think we want to avail ourselves of that opportunity.

Mr. Wheeler: Mr. Albus, I think a more orderly procedure would be for the Santa Fe and Pennsylvania to proceed to put in the testimony in support of their application, and then that all parties who support that application follow in order after them, putting in the affirmative testimony, so that all of the affirmative testimony with respect

to their application will be in one part of the docket, and then we will follow and we will put in our case and those intervenors who support us will follow and put in the affirmative testimony with respect to our application. Then if anybody wants to appear with respect to the joint applications after that, I think that would be an appropriate time to do so. But I do think we ought to have the affirmative cases together.

[fol. 26] Exam. Albus: We don't intend to get in a hassel over procedure. We will proceed with the Santa Fe-Pennsylvania case first, of course.

So if there are no other preliminaries to be disposed of, you may call your first witness.

Mr. Lucas: Mr. Examiner, certain of the material that is to be presented in behalf of the two applicants in Docket 18991 has been the subject of joint preparation so I would like to call simply to authenticate some material that will be referred to by the witnesses of both the Santa and the Pennsylvania to the stand at this time.

Exam. Albus: Very well, Mr. Lucas.

Mr. Lucas: Mr. Clutz.

JOHN JACOB CLUTZ was sworn and testified as follows:

Direct examination.

Mr. Lucas: Mr. Examiner, before addressing a question to the witness may we have received and marked for identification two exhibits, one is entitled "Basic Maps", and the other is entitled "Traffic Data".

Exam Albus: The exhibits marked "Basic Maps" is marked for identification H-4.

(Applicant's Exhibit H-4, Witness Clutz, was marked for identification.)

Exam. Albus: And the "Traffic Data" is marked for iden[fol. 27] tification H-5.

(Applicant's Exhibit H-5, Witness Clutz, was marked for identification.)

By Mr. Lucas:

Q. Will you state your name for the record, please?

A. John Jacob Clutz.

Q. What is your position with the Pennsylvania Railroad Company?

A. Manager research and development.

Q. Both prior to and at the time of filing the application in Docket 18991 and subsequent thereto have you been personally in charge of the preparation of certain material that is embodied in the exhibits that have been marked for identification H-4 and H-5?

A. I have.

Q. And I assume that will be good for other material that will come later in the proceedings, is that correct?

A. That is correct.

Q. Are you familiar with the exhibits that have been marked H-4 and H-5 for identification?

A. I am.

Q. Was the material in those two exhibits prepared under your direction and supervision?

A. It was.

Q. You are familiar with the contents of the exhibits and can explain whatever explanation might be necessary in [fol. 28] connection with them?

A. I am.

OFFERS IN EVIDENCE

Mr. Lucas: Mr. Examiner, I don't know whether they want to cross-examine, but we now offer exhibits H-4 and H-5.

Exam. Albus: Is there any objection to the receipt of exhibits marked for identification H-4 and H-5?

Mr. Broker: Excuse me, Mr. Examiner, is this witness open for cross-examination now or is this just for the purpose of identification?

Mr. Lucas: He is open for cross-examination on the exhibits if there is any.

Exam. Albus: Will Mr. Clutz be available later on today?

Mr. Lucas: At any time throughout the hearing, Mr. Examiner.

Exam. Albus: Very well, I think the opposition should have an opportunity to look them over.

Mr. Lucas: I think that is quite reasonable, yes.

Exam. Albus: Are there any questions on cross-examination now?

Mr. Broker: I have one question I would like to ask.

Mr. Examiner, certainly the information came from the T. P. & W. files while this witness testified that it was prepared under his direction and supervision.

Will some one from the T. P. & W. authenticate this information?

Mr. Lucas: We are prepared to call a witness from the [fol. 29] Toledo, Peoria and Western, if it is necessary, Mr. Examiner.

Exam. Albus: Very well.

Mr. Broker: I don't have any objection.

Exam. Albus: All right.

With the understanding that Mr. Clutz or some other witness will be available to substantiate the testimony in those exhibits Mr. Clutz is now excused temporarily, subject to recall.

(Witness temporarily excused.)

Exam. Albus: Next witness, please.

Mr. Thomas: Before I call the next witness for the Santa Fe presentation I would like to call attention to the petition just filed by the Burlington. Exhibit "A" to that petition sets forth certain proposed conditions which the petitioner seeks to have the Commission impose in any order in this case granting the authority sought—

Exam. Albus: Yes.

Mr. Thomas (continuing) —on behalf of the Santa Fe and Pennsylvania I wish to state that these conditions are entirely acceptable to us.

Further, we have had some discussions with counsel for some of the other intervening railroads, specifically the Illinois Central and the G. M. & O., and we have agreed with them on some additional language which we would suggest could be inserted in place of Condition 6 in Exhibit "A" to the Burlington petition, with Condition 6 [fol. 30] in the Burlington petition becoming Condition 7.

I have given you a copy, Mr. Examiner, I have a copy here for the reporter. It is very brief. I might read that condition.

Exam. Albus: If you will, Mr. Thomas, please. Would this be 6 or 7?

Mr. Thomas: This would be 6 and would move the present 6 down to 7.

Exam. Albus: All right.

Mr. Thomas: "Applicants and each of them shall refrain from closing any existing route or channel of trade with any carrier party to this proceeding on account of their control of the Toledo, Peoria & Western unless and until otherwise authorized by the Commission."

Exam. Albus: Thank you very much, Mr. Examiner.

Mr. Spencer: In connection with the statement made by Mr. Thomas I would wonder if it would be appropriate for me at this time to inquire since the intervention of the Illinois Central is solely for the protection of routes and channels of trade whether or not there is any objection to the imposition of these conditions on the behalf of any other party who is seeking to be included in the transaction. If they could make such a statement at this time, that would remove our necessity of attendance in the Commission.

[fol. 31] Exam. Albus: Are there any objections?

Mr. Cassel: Our position is similar to that of the Santa Fe. We will accept the conditions requested on our participation in the acquisition.

Mr. Broker: Mr. Examiner, speaking for the Nickel Plate these conditions are entirely satisfactory and successful to us as a part owner.

Mr. Wheeler: Mr. Examiner, on behalf of the M. & St. L. I wish to state we are prepared to accept that condition. I also want to state that we have been in communication with the Milwaukee with respect to this matter and have prior to the hearing agreed with them in writing to the acceptance of such condition.

Mr. Martin: Mr. Examiner, I am sort of a conditional party here but to the extent that the conditions may arise which would make us a participant in the application of the property we have approved suggested conditions.

Mr. Davis: Those conditions are acceptable to the Wabash in the event it becomes a participant in the transaction.

Exam. Albus: Does that take care of everyone?

Mr. Spencer: Thank you, Mr. Examiner.

Exam. Albus: You are excused, Mr. Spencer.

Mr. Lucas: Now, we are ready for the first witness, I think.

Mr. Thomas: I have one further statement, Mr. Examiner.

Exam. Albus: All right.

[fol. 32] Mr. Thomas: I am calling three witnesses for the Santa Fe, Mr. Gurley, Mr. Duffey, and Mr. Mahoney.

Mr. Gurley will talk about Santa Fe executive policy in relation to the T. P. & W.

Mr. Duffey will talk about traffic matters, traffic solicitation policy, and industrial policy of the Santa Fe with respect to the T. P. & W.

Mr. Mahoney will talk about service and schedules and such matters.

I thought that if that was announced it would probably shorten some of the cross-examination.

Exam. Albus: That will be helpful. Thank you very much.

Mr. Thomas: I will now call Mr. Gurley.

[fol. 33] Fred G. Gurley was sworn and testified as follows:

Direct examination.

Mr. Thomas: Mr. Examiner, two exhibits have been distributed to the parties.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Mr. Thomas: Mr. Examiner, may the two exhibits which have been distributed be identified for the record. I suggest that the one entitled "Comparisons of Certain Selected Financial Items" be identified as H-6.

Exam. Albus: It may be so marked for identification.

(Applicant's Exhibit No. H-6, Witness Gurley, was marked for identification.)

Mr. Thomas: And the one which is a copy of agreement between the Santa Fe and Elizabeth McNear be marked as H-7.

Exam. Albus: It may be marked for identification as Exhibit H-7.

(Applicant's Exhibit No. H-7, Witness Gurley, was marked for identification.)

By Mr. Thomas:

Q. Will you state your full name and address for the record?

A. Fred E. Gurley, 80 East Jackson, Chicago, Illinois.

Q. What position do you hold with the Santa Fe Railway?

[fol. 34] A. I am President and Chairman of the Executive Committee.

Q. What other positions have you held with the Santa?

A. I was vice-president for five years.

Q. What was your railroad experience prior to that time, generally?

A. I was associated with Eldon Martin of the Burlington for longer than either one of us like to mention.

Q. What general field were you in during those years?

A. On the Burlington, entirely in the operating department, in various capacities, including assistant vice-president.

Q. Mr. Gurley, what are the objectives of the Santa Fe in seeking authority to obtain joint control of the T. P. & W.?

A. I was asked about that same question by a Peoria newspaper reporter on the telephone on May 27, 1955, not many hours after we had entered into an agreement to purchase 97 per cent of the stock, which as a practical matter gave us control of 100 per cent of the stock. I told him our purpose was to perpetuate the T. P. & W. as an independent railroad, and to build it up. I told him we would retain Mr. Coulter as President—I thought he had done a fine job. That was our purpose when we had con-

tractual control of all of the stock. We always took that position about the T. P. & W. That's the way it is today. We have never equivocated.

Our agreement with the Pennsylvania is shown as Exhibit 7-D of the application in this case. It is appropriate to [fol. 35] call attention especially to Section 3 of that agreement.

While I think Section 3 is easy to understand, I want to make it abundantly clear that our purpose is to help the T. P. & W. It is not our purpose to divert any traffic away from the T. P. & W. route. We believe in that route—we believe that it is in the public interest and in our own selfish interest to continue a strong independent organization under management through a Board of Directors sensitive to the business interests of the area served by the T. P. & W. We are convinced that these purposes are best served by the joint ownership of T. P. & W. by Santa Fe and Pennsylvania under the conditions of our agreement.

I should add that this opinion was formed after a careful appraisal of the particular circumstances incident to the T. P. & W. This appraisal was made over a period of several years—it was not a hurried one. I will have more to say about that later in my testimony.

Q. Will you please give us a brief appraisal and general expression of your opinion about the T. P. & W.? What kind of a railroad is it?

A. As a preliminary to my answer to that question, I think it is fair to say that a railroad is made up of three principal parts: First, management and personnel; second, the physical plant; and, third, its financial structure.

Now, it is also fair to say that if a railroad has good [fol. 36] management over a reasonable period of time, the chances are that the physical plant and the financial structure will be all right. The T. P. & W. is doing all right in all of these three particulars. The management of T.P. & W. is good. It is young and forward looking.

The five principal officers serving under Mr. Coulter range in age from the 38-year-old Chief Engineer to two gentlemen who head respectively the Operating Department and the Traffic Department, both of whom are 46

Each of these five officers has a competent background and the youth and energy which their age suggests.

My observations are that the esprit de corps is excellent. The organization is cooperative and works well together. It is a good team. If we are successful in our application, it would be my purpose through friendly counsel on the Board of Directors to help the team along in its efforts to achieve still better results. We think that we could exercise a watchfulness and bring to the Board a viewpoint of constructive suggestions which would be helpful. Certainly we would try to be helpful and we would not hinder or harass.

This is an appropriate place to say that, while constructive suggestions from a Board should be helpful, too many viewpoints can be bothersome and "too many cooks can spoil the broth". This is a strong reason why the control of T. P. & W. should be only two railroads.

[fol. 37] Q. What have you to say about the physical plan of the T. P. and W.?

A. I have been over the entire property and the physical plant is good. In forming this opinion I have had the benefit of discussions with Santa Fe officers who are familiar with the property in addition to my own personal observations.

The T. P. & W. is a good line for expedited freight train movement. Starting at Effner, the grade line for the first 125 miles is very good, indeed. There is no grade worthy of the name against westbound traffic, and against eastbound traffic there is only one moderate grade immediately east of Peoria. For the some 80 miles west of MP 125 the grade line is undulating. Against westward traffic there are three so-called "hard pulls" of about 1½ miles in length, but with diesel locomotives they are not difficult. Against eastward traffic there is only one hard pull, which is at the crossing of the Spoon River.

Perhaps a simple way to describe the gradient characteristics is to say that three-unit diesel locomotives are now pulling trains of 5,000 tons or better over these so-called "hard pulls" and that is a pretty good trainload to be moved with a three-unit diesel locomotive. The T. P. & W. is completely dieselized.

The headquarters of the T. P. & W., of course, are at Peoria. Their General Office Building is an excellent one. The up-to-date International Business Machines used in the Accounting Department provide necessary information [fol. 38] with a minimum of time and cost. I think everyone will agree that the equipment is up to date and that the entire setup represents a well organized office.

The locomotive shop is in good physical condition, well equipped with proper tools for the efficient and economical repairs of their diesel locomotives. Their locomotives are equipped for radio communication.

Q. Will you comment on their track and roadbed?

A. I would classify their track conditions as good. They have purchased nothing except treated ties for some 21 years. Their ballast conditions are quite all right. They have been pursuing a well-developed program of rail renewal. Beginning in 1953 they adopted a very modern plan of welding their rail in long continuous strips rather than following the time-honored method of fastening rail ends with angle bars.

I think it is fair to say that their program of improving their rail conditions is not yet complete, but I hasten to add that it is moving along and the situation is "well in hand". Their 1956 program contemplates laying 10 miles of 115-pound welded rail. I am personally quite satisfied with their rail condition and program.

For some years they have employed a pressure grouting method of stabilizing the roadbed. This is an example of modern procedure. Also in keeping with modern procedure they are equipped with multiple track tamping outfits and [fol. 39] other power tools in the track maintenance work. Some of their track maintenance forces follow the desirable system of using highway vehicles for moving to and from work. In fact, their entire operating and maintenance administration is top-flight and quite in keeping with what should be expected of the managerial force, concerning which I testified a few moments ago.

Q. What of their sales force?

A. Their traffic soliciting organization gives every indication of being excellent, but I have not had an opportunity to acquaint myself with the off-line force.

Q. What is the financial condition of the T. P. & W.?

A. Exhibit H-6 has been prepared from information shown in Form A, Annual Reports to the Interstate Commerce Commission for the year 1954, to show salient features of their financial situation. The complete reports for all of the railroads are on file with the I. C. C., but I thought this would help in supporting the statement that the T. P. & W. is in good financial shape. Believing that there should be some way to have comparisons available with which to measure their financial situation, I decided to make comparisons between the T. P. & W. and the three Western railroads involved in the case. The three Western railroads are: M. & St. L., Rock Island and Santa Fe.

I would now like to address myself to line 3 of Exhibit H-6, which is the ratio between funded debt and operating revenues. We have made the calculation, and it is self-[fol. 40] explanatory on the exhibit how it was done. I call attention to the fact that the ratio on the T. P. & W. is 26, the M. & St. L. 38, the Rock Island 52, the Santa Fe 37. From a rating standpoint the T. P. & W. would rate number one in that comparison.

I call attention to line 5, which shows the ratio between net current assets and operating revenues. T. P. & W. point— I overlooked it awhile ago, if I may correct that, that 26 should have a decimal point in front of it—decimal point 15, M. & St. L. .13, Rock Island .14, Santa Fe .19. The rating in that regard would go to Santa Fe.

I call attention to line 14, which shows the number of times net railway operating income covers fixed charges and contingent charges before income taxes. The T. P. & W. 18.5, M. & St. L. 10.4, Rock Island 7.6, Santa Fe 11.5. The rating in that instance goes to the T. P. & W.

On line 15 we show the same information after federal income taxes. Perhaps the most significant item is line 14 because the charges are deductible for federal income taxes and do come ahead of taxes.

I will call attention now to line 17. The ratio between operating revenues and total compensation, there the T. P. & W. .36, M. & St. L. .52, Rock Island .47, Santa Fe. .47. The number one rating in that regard would go to T. P. & W.

Finally I call attention to line 18, the per cent of operating revenue carried through to net railway operating income [fol. 41] before federal income taxes. The T. P. & W. is 19.5 per cent, the M. & St. L. 13.9 per cent, the Rock Island 12.8 per cent, the Santa Fe 17.9. The number one rating there goes to the T. P. & W.

Q. Mr. Gurley, will you describe the early relations between the Santa Fe and the T. P. & W.?

A. The early relations between the T. P. & W. and the Santa Fe at Lomax began when the T. P. & W. on February 15, 1927, filed an application for a certificate that the present and future public convenience and necessity required the construction of a connection between T. P. & W. and Santa Fe at Lomax. This application was identified as Finance Docket 6127 by the Interstate Commerce Commission and decision was rendered April 7, 1927.

I now quote two excerpts from the decision. The first is and I now quote:

"No objection to the granting of the application has been presented to us."

That is the end of that quotation.

The second quotation reads as follows. "The applicant represents that this connection will provide shorter routes between points on its line and points on the Santa Fe; that the distance from Peoria, Illinois, to Kansas City, Missouri, would be from forty-nine to seventy-four miles shorter than by its railroad and its present connections; and that by means of this connection its line would form part of [fol. 41-A] short routes between Pittsburgh, Pennsylvania, and Kansas City, which would avoid the Chicago and St. Louis terminals. The number of cars to be moved over the connecting track is estimated at 15 a day in 1927, increasing to 60 a day in 1931 and thereafter.

"It is claimed that the route to be afforded by the proposed connecting track will permit of longer hauls to the applicant and the Santa Fe, and will eliminate one or more intermediate carriers. It is urged that the proposed construction will aid in sustaining that part of the applicant's railroad west of Peoria."

End of the quotation.

I should add too the connection at Lomax was made in August 1927.

Q. Will you outline the circumstances which lead to your decision to seek authority to acquire control of the T. P. & W.?

A. In 1947, shortly after the sudden death of Mr. McNear, I had several discussions with our traffic department people about the T. P. & W. It was my opinion then that due to McNear's death the time was bound to come when ownership of the T. P. & W. would change hands and I wanted to know what, in the light of the circumstances of the times, this prospect suggested we ought to do.

Mr. Grogan was then our Traffic Vice-President and he had been a member of the traffic staff when the Lomax gateway was opened some 20 years previously. Grogan and I had discussions with various Santa Fe Traffic Department [fol. 42] officers. These discussions and considerations carried on for a couple of years.

The opinions were unanimous that if it were not for the T. P. and W. we could lose business to the St. Louis Gateway or to other gateways short of Illinois junction points. I became thoroughly convinced that the T. P. & W. was well established in the minds of shippers and others and that we enjoyed hauls on freight east of Kansas City that we would have lost except for the T. P. & W. I had some conversations with Mr. Franklin, the president of the Pennsylvania or he was either president or executive vice-president, at that time about joint acquisition by the Santa Fe and Pennsylvania.

Of course, I had in mind at that time certain discussions about the T. P. & W. in the spring of 1942. This was during the early days of World War II. The T. P. & W. was involved in serious labor troubles. The government functioning through the Office of Defense Transportation took over the T. P. & W. in March 1942, but both before and after the takeover Messrs. Eastman and Boatner of the Office of Defense Transportation discussed with me the possibilities of Santa Fe and Pennsylvania taking it over rather than operating the T. P. & W. through a federal manager. My position was that our country was at war

and we would do almost anything the Office of Defense Transportation wanted us to do.

Despite that feeling on my part, however, I was conscious of the fact that the Office of Defense Transportation had some property right questions to consider which in-
[fol. 43] cluded settlements of a labor dispute on some basis that might prove to be unsatisfactory to the owners and this caused me to be a little cautious, although I never backed away completely from the position I have just described. Under all the circumstances at that time, however, it suited me all right when they concluded to carry on with the federal manager.

This was the first time my attention was focused upon the possibility of Santa Fe and Pennsylvania taking over the T. P. & W. At that time Mr. Paul Hastings was our Traffic Vice-President. I well remember our discussions in 1942 about the future of the T. P. & W. As a result of all those discussions both with Hastings and others, I formed the opinion that following a period of government control the T. P. & W. would probably go back to McNear, but I also formed the opinion that, if it should pass out of McNear's hands, Santa Fe should buy into it and buying into it with the Pennsylvania looked like a logical thing to do.

During the considerations Grogan and I were giving to the questions in 1947-1949, Mr. Coulter came to the T. P. & W. and under his administration our relations with the T. P. & W. continued on the same friendly basis as under Mr. McNear.

Q. What was the immediate background of the proposal now before the Commission?

A. In 1954 I heard some rumors or gossip to the general effect that the trustees of the McNear estate were consid-
[fol. 44] ering the sale of the T. P. & W. In the fall of 1954 I asked one of the trustees, Mr. Gladson, if that was true and he said it was. He said the trustees had received an offer but that they did not think it was attractive. I told him that if the trustees got to the point where they were seriously considering the sale of the T. P. & W. that we would want an opportunity to buy. Mr. Gladson said he would keep that in mind.

Shortly after this I met Mr. Symes, who was then president of the Pennsylvania. I told him about my conversation with Gladson and that I thought it was something that would bear watching. We left it that way at the time.

On March 15, 1955, I had an engagement to meet the trustees of the T. P. & W. and a representative of The Hanover Bank but one of the trustees failed to show up due to illness and the conversation was with one of the trustees and a representative of The Hanover Bank. They asked me if we were interested in purchasing the stock of the T. P. & W. I told them yes, that we were interested.

It was clear to me that they were interested in a sale and that more specific discussions were imminent. Although several of our officers were rather familiar with the T. P. & W. and, in fact, had acted as advisors to the T. P. & W. in inspections and decisions about the physical property, and even though I was reasonably familiar with it myself, nevertheless, following the discussions of March 15 I arranged for an inspection of the property.

[fol. 45] The inspection was made the latter part of March by Mr. John Reed of our executive staff. Mr. Reed is a graduate of the Sheffield School at Yale. He had experience with Santa Fe in the engineering organization and other assignments including the position of Division Superintendent before occupying his present position.

Shortly after this meeting of March 15, they, that is, the trustees of The Hanover Bank, called upon the Pennsylvania.

Subsequently, on April 15, 1955, there was a meeting between Vice-President Marsh of the Santa Fe and Vice-President Bevan of the Pennsylvania and representatives of the trustees. At this time certain understandings were reached about Santa Fe purchasing 26 per cent of the stock of the T. P. & W. and Pennsylvania purchasing a like amount.

A duplicate of the Santa Fe letter, dated April 15, 1955, pertaining to the discussion and agreement is identified as Exhibit 7-F of the application.

It is well to point out that under the plan whereby the trustee was to sell 52 per cent of the stock to Santa Fe and Pennsylvania, they reduced the concentration of the

T. P. & W. stock in the trust. Yet, they and the Hanover Bank would continue to hold large blocks of the stock.

The proposed plan of ownership and operation, therefore, contemplated 52 per cent of ownership by these two [fol. 46] railroads whose transportation interests did not conflict. With two large outside holdings, as well as some small holdings by various members of the McNear family and by Mr. Coulter, we had a workable setup for a continued independent T. P. & W.

Q. Was their plan satisfactory to you?

A. For my part, the plan was not entirely satisfactory from the standpoint of stock ownership although it was acceptable. We had no formal agreements with either Hanover or the trustees about any further sale of stock, but I felt rather strongly that if there was a further sale, we would be able to make the purchase.

Later there were discussions looking to action about the Purchase Agreement mentioned in the third paragraph of Exhibit 7-F.

Q. That is 7-F of the application?

A. Third paragraph of Exhibit 7-F of the application, yes, I thank you.

But on the afternoon of May 25, 1955, the co-trustees came to my office and advised me that on advice of counsel the co-trustees did not consider there was an enforceable agreement in effect with Santa Fe and Pennsylvania.

In the light of that, they expressed a desire to meet with Mr. Symes and me. I had some telephone conversations and it was arranged that the co-trustees would meet with Mr. Symes and me on Friday, May 27, in Washington.

[fol. 47] At 3:30 p.m. on May 26, 1955, while the Santa Fe Board of Directors was in session at its regular monthly meeting, I was asked to excuse myself from the meeting to respond to a telephone call from Mr. Chinn of the Wilmington Trust Company. He told me that the trustees had an offer from Mr. Heineman, representing the M. & St. L., to purchase all of the T. P. & W. stock held by the trustees for $133.33 per share, which offer would expire at 5 o'clock p.m. that afternoon.

Mr. Chinn said that the trustees had decided that, despite the fact that they had had an engagement with Mr. Symes

and me the next day in Washington, under all the circumstances then existing they would sell the stock at $133.33 per share before 5 o'clock unless there was a higher offer. I made them a higher offer, i.e., $135 a share, which they accepted. This acceptance is reflected in an agreement identified as Exhibit 7 of the application.

Q. What arrangements were made for the purchase of the remainder of the stock?

A. Very shortly thereafter we contracted for the purchase of the stock held by the Hanover Bank, which agreement is identified as Exhibit 7-A of the application. Later we entered into purchase agreements under which we are to purchase all of the remaining shares of stock of the T. P. & W. Copies of these agreements are in the application, with one exception, which is reproduced as Exhibit H-7 in this case.

[fol. 48] So it was that Santa Fe entered into contracts to purchase all of the shares of stock of the T. P. & W. and there were no commitments on our part to sell any of the stock to any other railroad. We were under the obligation to appraise the situation which was getting a little complex by that time and to try to decide what was the logical and right thing for us to do.

Q. Will you describe the alternatives which you considered at that time?

A. First, we gave serious consideration to going it alone. It had the virtue of single control which has its attractions. It would insure the authority to act as well as the obligation to act. We gave consideration to voluntarily including other railroads in the ownership. I had discussions with the chief executive officers of the Nickel Plate, Rock Island, M. & St. L. and the Burlington about joint ownership.

All of these discussions did not relate to the same identical plan of joint ownership, but they all included considerations of joint ownership. We also had discussions with our friends of the Pennsylvania.

My considered opinion after all of these discussions was that when everything had been evaluated as carefully as I was capable of doing the ownership of the T. P. & W. on

the basis of the plan covered by the application of the Santa Fe and the Pennsylvania in this case was the proper and logical course to follow. We notified the Nickel Plate, Rock [fol. 49] Island, M. & St. L., and the Burlington on June 28 of our decision.

Q. What was the basis for this decision?

A. I was convinced then and I am convinced now that the T. P. & W. route should be continued, supported, and improved. I was convinced then and I am convinced now that this accomplishment is impossible with a diluted ownership. A dilated ownership brings to the board men with conflicting interests. That brings on delays in decision and it produces a situation where, due to the dilution in ownership, the stimulant which comes from financial benefits in a venture are pretty well lost. I want to emphasize the adverse effect of such dilution.

Mr. Duffy, our Traffic Vice-President, is to follow me on the stand and he will testify as to what our purposes are about placing the Lomax gateway on a solicitation parity with Chicago if our application is approved. He will testify about our purposes with reference to placing the area served by the T. P. & W. on a parity with communities served by the Santa Fe with reference to the location of industries.

Q. Is the approval of your proposal for joint ownership with the Pennsylvania essential to these purposes?

A. It is. All of this is based upon the belief we will be successful in our efforts to be a 50-50 owner of the T. P. & W. When one is a 50-50 owner and receives 50 per cent of the benefits that flow from the operation of a property, the concept is one thing, but, if contrary to our strong [fol. 50] views, we might face a question of dilution, then we have an entirely changed situation.

While we are discussing the interests and obligations of a 50 per cent owner, it is an appropriate place to take a position on the record with reference to the supply of freight cars.

An adequate freight car supply is very important. Unfortunately, there have been freight car shortages throughout the country, and I think we must admit that the railroads in their entirety do not own enough freight cars.

There have been differences of opinions as to how many freight cars each railroad should own.

There has never been a time when the Santa Fe failed to meet the suggestions or recommendations made by the officers of the Association of American Railroads. Generally, we have gone beyond their recommendations.

I think it is fair to say that Santa Fe's joint ownership in T. P. & W. adds substaatially to the car supply available for T. P. & W. shippers. We would place the T. P. & W. on a parity with the Santa Fe itself. In other words, T. P. & W. shippers would be treated on a parity with shippers located on the Santa Fe.

It is fair to add that the T. P. & W. today does not own as many cars as the A. A. R. study group recommended. The T. P. & W. officials do not seem to agree with the A. A. R. study group, but my inclinations at the moment are more in favor of the A. A. R. study group. Certainly, my purpose would be to have either the T. P. & W. own the [fol. 51] cars which they ought to have or for Santa Fe and Pennsylvania between them to add to their ownership sufficiently to take care of the T. P. & W. It is an obligation which we would meet in full.

Earlier I quoted from Finance Docket 6127 about the position of the applicant in 1927 that the connection between T. P. & W. and Santa Fe at Lomax would aid in sustaining that part of the T. P. & W. west of Peoria. Addressing myself now to that, I call attention to the fact that the west end of the railroad serves Keokuk, Warsaw, La Harpe, Bushnell, Canton, Cuba, and other communities. As things stand today, the traffic moving over the west end of the T. P. & W. through the Lomax gateway is the greatest single underwriting influence of continued good service to all the communities served by the west end of the T. P. & W.

Continuing now with my considerations as to what we sought to do when we had contractual control of the T. P. & W. stock. Of course, people in the railroad business have general knowledge of the flow of traffic through various gateways and between the different railroads. Throughout the years the president or the federal manager, as the case may be, of the T. P. & W. has shown me copies of

T. P. & W. reports which reflect the interchange with other railroads and, therefore, I have had that general knowledge over a period of time.

It was not, however, until after we had made the contracts about the purchase of the T. P. & W. stock and had a contract in connection with necessary applications to the Interstate Commerce Commission under which those from whom we were purchasing the stock pledged themselves that they would—and I now quote from the contract—"in all reasonable ways, cooperate with Santa Fe in the prosecution of such application and the assembly of data pertinent to its presentation and consideration", that I had opportunity to get precise financial figures showing the revenues accruing to the T. P. & W. by reason of interchange at (a) Lomax, and (b) Effner.

Q. Will you turn to Exhibit H-5 and comment on the data to which you have just referred?

A. I would like to call attention first to page 6 of Exhibit H-5. Page 6 is a so-called pie chart which shows in the upper section the percentage of cars interchanged by the T. P. & W. with Santa Fe and P. R. R. as compared with all other interchange. The bottom section reflects the revenue. The comparisons are made for the 12 months ended June 30, 1954, and for the 12 months ended June 30, 1955.

The pie charts are rather self-explanatory but there is 72 per cent of the cars in one year, 70 per cent in the next year, of all the P and W interchange, interchange at these two places.

I think I need not belabor the pie chart, it is rather self-explanatory.

Exam. Albus: Yes, the exhibit will speak for itself.

A. An appraisal of the revenues accruing to the T. P. and W. by reason of the interchanges at (a) Lomax, and (b) [fol. 53] Effner, strongly supported the belief that the T. P. & W. should be owned and controlled by the Santa Fe and Pennsylvania.

I became thoroughly convinced and I am thoroughly now that the public interest as well as our own selfish interest was best served by a joint ownership on the part of the

Pennsylvania and Santa Fe. It was and is my opinion that this provides something quite important which is akin to the so-called checks and balances of our federal government.

By Mr. Thomas:

Q. Can you illustrate this point by referring again to Exhibit H-5?

A. Yes, I would like to call attention to page 16 of the Exhibit H-5, captioned "Road Haul Interchange of the Pennsylvania Railroad and The Atchison, Topeka and Santa Fe Railway with the Toledo, Peoria & Western Railroad.

In explanation of the influences I have identified as checks I have in mind that when you examine this statement showing the business interchanged between the Santa Fe and Eastern railroads through the T. P. & W. you will observe in the right-hand statement on page 16:

Line 1, the Pennsylvania.
Line 2, the Nickel Plate.
Line 3, the New York Central.

Now, the Santa Fe is greatly interested in the traffic moving to and from the Nickel Plate. With the strong interest we have in the Nickel Plate interchange, I am [fol. 54] thoroughly convinced that we would never permit the Pennsylvania to do anything detrimental to that traffic, but I do say we wouldn't let them do it, even if they did want to do so. These same considerations apply, of course, to the traffic reflected on Line 3 going to the New York Central.

When you examine the interchange between the Pennsylvania and the Western railroads through the T. P. & W., you will observe in the left-hand statement:

Line 1, the Santa Fe.
Line 2, the Burlington,
Line 3, the M. & S. L.,
Line 4, the Milwaukee,
Line 5, the Rock Island.

The Pennsylvania is just as much interested in the proper service and proper treatment of these other Western connections as Santa Fe is of the service to and from Nickel Plate and I am thoroughly convinced that the Pennsylvania as a 50-50 owner would never permit Santa Fe to do anything to the detriment of these other Western railroads with which the Pennsylvania, in the very nature of things, wants to be on good terms, and so it seemed to me that these checks and balances provide the selfish interests which are essential to the underwriting of public interests.

Exam. Albus: Let the record show a 10-minute recess. Please observe the no smoking sign in the hearing room.

(Short recess.)

[fol. 55] Exam. Albus: The hearing will please come to order.

Are there any additional appearances to be made at this time?

(No response.)

Exam. Albus: Apparently not.

We will continue with the direct examination of Mr. Gurley.

Mr. Thomas: May I go off the record, please, for a minute.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

By Mr. Thomas:

Q. Will you continue, please, Mr. Gurley.

A. Then, in addition to all of that, there is the pledge we have made about the Board of Directors being so composed that the numerical majority will consist of businessmen along the TP&W who are sensitive to the business interests of the community.

Q. What are some of the other reasons why you did not

wish to take in the interested railroads who sought to become partners with you?

A. The maps in Exhibit 4, captioned "Basic Maps", illustrate some of the other reasons why I felt that the full potentialities of the TP&W would not be realized if the opposing railroads were taken in as partners.

I would first like to discuss the M&StL and call your [fol. 56] attention to page 4 of Exhibit H-4. A glance at page 4 shows that the M&StL now has a line into Peoria and necessarily short hauls the TP&W on much of the traffic it interchanges with it.

I do not know what position the M&StL will take on the record, but I do know that in the past they have either favored or advocated the discontinuance of service on the western section of the TP&W.

I would like to discuss now the Rock Island—see page 5 of Exhibit H-4. It will be observed that, although the Rock Island reaches Keokuk on the west end of the TP&W with a branch line, it enters Peoria from two directions and competes directly with the TP&W on traffic between Keokuk and Peoria. As I see it, therefore, the Rock Island, like the M&StL, would have little interest in developing the west end of the TP&W.

As I understood the Rock Island's position in June 1955, both orally and in writing, they did not like the idea of Santa Fe being in Peoria either directly or through ownership in the TP&W unless the Rock Island itself was a part owner of the TP&W.

I call attention also to the fact that the Rock Island serves St. Louis, and therefore has a lesser interest in the route via the TP&W than the Santa Fe, which does not serve St. Louis.

[fol. 57] Q. What have you to say about the Nickel Plate?

A. The relationship of the Nickel Plate and the TP&W is illustrated on page 7 of Exhibit H-4. It will be observed that the Nickel Plate is competitive with the entire east end of the TP&W just as the M&St.L is on the west end and would have no economic incentive to develop that part of the line between Effner and Peoria.

Q. Will you comment further on your reasons for joining with the Pennsylvania.

A. I would like to turn now to page 13 and call attention to Column 4 and observe Lines 4, 6 and 7—no, I beg your pardon. I got a little bit mixed up in looking at that exhibit. Let me state that over again—no, I am right. (Continuing) —observe Lines 4, 6 and 7. You will see that the TP&W gross revenue accruing by reason of interchange with these three railroads, i.e., Nickel Plate, Rock Island and M&StL is substantially lower than the TP&W revenues resulting from interchange with the Pennsylvania and Santa Fe.

Turn now to Page 2 of Exhibit H-4 and observe that the Pennsylvania on the east and Santa Fe on the west end provide a natural through route for the movement of east-west traffic. It is approximately 68 miles from Logansport to Lomax via the TP&W than via Chicago.

With page 2 of Exhibit H-4 in front of us, let us also examine Page 8 of Exhibit H-5, which is a statement show- [fol. 58] ing the relationship of interchange via Pennsylvania and Santa Fe to the total TP&W carload traffic from 1924 to and including 1955.

In examining Page 8, it is well to keep in mind that the TP&W is essentially a bridge line between the East and the West and it is a very important bridge line, especially in the handling of transcontinental freight.

The data and chart on Pages 2 and 4 of Exhibit H-5—

Q. (Interrupting) I think that is "3", Mr. Gurley, "3 and 4".

A. I misspoke, it is 3 and 4, I beg your pardon—(continuing) pages 3 and 4 of Exhibit 4 shows that this bridge traffic produces better than two-thirds of the total revenues of the TP&W.

Its broad benefits, that is, broad benefits of the TP&W, to shippers and to the national transportation plant lie in its worth-while contribution to the movement of bridge traffic. It is a so-called middle route through Peoria, forming a connection between the East and West without necessitating the interchange of traffic to and from the Santa Fe at Chicago or Kansas City. Chicago and Kansas City are the most perplexing and expensive of the interchange points in Santa Fe territory.

Q. How about the interchange with the TP&W?

A. The interchange between Pennsylvania and TP&W at Effner is what is known as a "corn field" interchange. The interchange at Lomax between the TP&W and the Santa Fe is simplicity itself and has all the expedition and the [fol. 59] economy implicit in that type of an interchange.

Q. Will you describe the growth of the interchange between the Santa Fe and the T. P. & W.?

A. As I stated earlier, the connection between Santa Fe and TP&W at Lomax was established in August 1927. Please note in the center section of Page 8 of Exhibit H-5, and note the interchange of cars between the Santa Fe and the TP&W.

The year 1928 was the first full year of that new source of business for the TP&W. From the last column of this page you will observe that the total cars handled by the TP&W were in 1928 were 67,957.

In 1955, down at the bottom of the page, this increased to 118,956, or approximately a 75 per cent increase.

From column 5 you will observe the cars that were interchanged between the Santa Fe and TP&W, in 1928 were 7,264.

In 1955 this increased to 34,735, or approximately a 378 per cent increase.

This shows what a tremendous part the connecting service of the Santa Fe has played in the development of the TP&W since the opening of the Lomax gateway in 1927. I would like to add this has taken place under the traffic solicitation policy Mr. Duffy will describe. He will discuss also the solicitation policy we propose under our application. That traffic solicitation policy, which he will outline, has executive approval.

It was in the light of all of the foregoing considerations [fol. 60] that we voluntarily entered into an agreement with the Pennsylvania which is covered by Item 7-D of the application in this case.

Q. Does that conclude your testimony, Mr. Gurley?
A. Yes.

Mr. Thomas: I want to offer exhibits H-6 and H-7.
Exam. Albus: Wait until after cross-examination.
Is there any cross-examination of Mr. Gurley?

Mr. Wheeler: Yes, sir.

Exam. Albus: Mr. Wheeler.

Mr. Wheeler: Mr. Examiner, I would like to state at the outset while I would undertake to do some cross-examination now, Mr. Gurley has put in a mass of material now, exhibits and so on, which will make it impossible for me to complete it now. I will go forward as expeditiously as I can now but I may want to recall him.

Exam. Albus: Very well.

Cross Examination.

By Mr. Edward Wheeler:

Q. Mr. Gurley, as I listened to your testimony it appeared to me to outline in considerable detail the reasons why the interests of the Toledo, Peoria and Western would be certified by an acquisition of the railroad by the Santa Fe. I fail to hear, however, reasons which impelled, you may say several usual reasons which impelled or did impel, the Santa Fe to invest $6,000,000 in the stock of the TP&W. [fol. 61] Could you state those reasons, please?

A. I don't believe I could state them much better than I did. I am sorry you didn't understand me. I was trying to tell you why we did that.

Q. So that all the reasons which led to your purchase are set forth in your testimony?

A. Well, perhaps they could be supplemented. They were the belief, as I said, that we have also considered that route of the TP&W be a complementary to us, adds to our traffic, and obtains traffic which we would otherwise not obtain. I tried to say that.

Q. Well, Mr. Gurley, as I understand you now, you are proposing a complete operation of the TP&W, that is, the same operation that exists will exist after your application?

A. We will certainly obtain a complete and independent operation, yes, sir.

Q. How will the TP&W be more complementary to the Santa Fe operation traffic-wise under acquisition than it is at the present time?

A. Well, of course you will get your better traffic testi-

mony from Mr. Duffy, but it will come largely from putting the TP&W on a parity with the Chicago gateway.

Q. There is nothing in the situation at the present time, is there, Mr. Gurley, which would prevent you or the Santa Fe from putting the TP&W on a parity with the Chicago gateway now?

[fol. 62] A. We would have the authority so to do, we won't have the interests, though.

Q. What do you mean "interest"?

A. Well, I meant that while we have got along on a very friendly basis with the TP&W we have favored our long-haul traffic, and when we have the 50-50 interest in it we propose we would have a financial interest which is separate and apart and goes beyond what we have now. That is very evident to me.

Q. So that it would be, it's that economic interest which makes the difference between the condition it now appertains and would appertain if the Commission approved authority for the Santa Fe to acquire control of the TP&W?

A. Oh, yes, I think economic influence is rather strong.

Q. You do?

A. Yes.

Q. Do you think that is generally true in the operation of the railroads?

A. It is pretty true of human nature, I think.

Q. Now, Mr. Gurley, the purposes set forth on Page 1 of your written statement don't seem to have to do with the economics of the situation and therefore I assume would apply whether or not your application was approved?

A. It would not. This whole thing is predicated upon the approval of the application. I could have no purposes about operating this railroad unless I am in on it.

[fol. 63] Q. You say here, for instance, getting into a little more detail, you told the reporter your purpose was to perpetuate the TP&W as an independent railroad. The TP&W is independent at the present time, is it not?

A. Yes.

Q. So even assuming it would be independent under your control that status would not be changed, would it?

A. I said we intended to perpetuate it.

Q. I am just running down here some of the other purposes you stated here.

Mr. Gurley, on this Section 3, this is an agreement between you and the Pennsylvania, is it not?

A. That is correct.

Q. And the agreement states "Not for the benefit of others not a party to the agreement." When was this agreement first entered into, and I am thinking now in terms of, I believe you said you first had a contractor, or believed you had a contract with the trustee on April 15?

A. Yes, that March letter of April 15.

Q. Now, at that time or prior to that, had you and the Pennsylvania agreed on these conditions?

A. No.

Q. What was your general understanding with the Pennsylvania with respect to the conditions that would pertain at that time?

A. Well, under that time those things were to be worked [fol. 64] out as of the date of April 15 those things had not been worked out.

Q. You had no understanding with the Pennsylvania that you were entering into a partnership with as to the operation of the property?

A. Oh, yes, we had a general understanding.

Q. What was that general understanding?

A. Just about what we have here.

Q. This, in other words, is substantially a reduction to writing of the general principles that you—

A. Oh, I think that would be a fair characterization. This is certainly in much more detail, but I think it is reducing to detail the general thoughts of it.

Q. You state here, returning to your testimony, we believe that it is in our selfish interest to continue a strong, independent organization under management through a board of directors sensitive to the business interest of the area served by the TP&W?

Exam. Albus: What page is that quotation from, please?

Mr. Wheeler: Page 1.

Exam. Albus: Thank you.

By Mr. Edward Wheeler:

Q. Do you believe that the railroads generally are sensitive to the business interests served by their operation?

A. Well, I would hope they were.

Q. And the Santa Fe would fall in that category, would it not?

[fol. 65] A. It would try to, surely.

Q. Mr. Gurley, you concluded that paragraph by stating that your purposes would be best served by joint ownership of the TP&W by the Santa Fe and Pennsylvania. Now, elsewhere throughout your testimony you indicate, you talked about too many cooks spoiling the broth and so forth, you made other statements which indicated that single ownership would be preferable to dual ownership or multiple ownership, why did you—

Mr. Thomas: Let me object to that. The question doesn't state what Mr. Gurley testified to. He did not state that single ownership would be preferable to dual ownership.

Exam. Albus: The record will show what he stated.

The objection is overruled.

What is the question?

(Question read.)

By Mr. Wheeler:

Q. Why did you sell part of your contract to the Pennsylvania?

A. Well, Mr. Wheeler, I think that when you examine any particular situation you must examine it as a particular situation and you cannot generalize. As I said in my direct testimony, going along had certain attraction, but for my judgment, and my judgment was a very sincere one and arrived at pretty carefully, I thought in view of the number of cars interchanged with the Pennsylvania, I thought in view of that situation which for want of a better way I attempted to describe as the checks and balances, that the [fol. 66] two railroads could get along in a very satisfactory manner, and I thought that the peculiarities or whatever you choose to call it of the TP&W or the particular

peculiarities of the TP&W warranted a dual control rather than a single control. It is a question of judgment.

Exam. Albus: When you speak of cars interchange with Pennsylvania, whom do you mean?

The Witness: TP&W.

Exam. Albus: TP&W?

The Witness: TP&W.

Exam. Albus: Thank you.

By Mr. Wheeler:

Q. Mr. Gurley, you have indicated that you are quite familiar with the general history of the TP&W. Are you aware of the fact that the TP&W went into bankruptcy in dual ownership in which Pennsylvania was one of the dual owners?

A. I have some familiarity of that history, yes.

Q. Didn't that give you pause in taking the Pennsylvania into partnership with you in this case?

A. It caused an examination, I wouldn't say pause, it took an examination of it.

Mr. Broker: We can't hear the answers. Would repeat that answer, please.

(Answer read.)

By Mr. Wheeler:

Q. And that examination led you to what conclusion? [fol. 67] A. The examination led me to the conclusion to do what we did do. In other words, putting it as nicely as I know how, an examination of that relation prior to '26 or '27 didn't frighten me to the future at all. I thought the future was something to be faced and handled in its own way.

Q. You didn't think past performance was any indication or would deter you in the particularities of this situation to which you referred for dual ownership?

A. It did not deter me at all.

Q. You are aware that the Pennsylvania, of course, as you have pointed out was at that time, as it is today, a

connecting carrier and had a large interchange traffic with the TP&W, are you not?

A. I don't know that I do apprehend that question. I really didn't quite catch the implication.

Will you read the question.

Exam. Albus: The reporter will read the question, please.

(Question read.)

By Mr. Wheeler:

Q. Speaking of at the time of the bankruptcy or immediately prior thereto.

A. Well, I knew they were a connection at Effner as they are now. I do not have in my mind too much of the flow of traffic between the TP&W and the Pennsylvania & W. at Effner in those early days. As far back as I have any actual car count it is reflected on page 8. Some of the years [fol. 68] prior to that, no, I do not have a numerical car count in mind.

Q. Were you aware or did you seek to discover before determining to go into this transaction the extent of the interchange between the Burlington, Chicago, Burlington and Quincy and the TP&W during the course, during ownership of the TP&W with Pennsylvania?

A. No, I did not get that numerically. Of course, historically, as you probably know, contemporaneously with the opening of the Lomax gateway the TP&W discontinued its joint operation from Lomax to Burlington where it connected with the Burlington Railroad, I knew that.

Q. Why was that?

A. Well, that decision was entirely a TP&W decision.

Q. Was it a condition imposed by the Santa Fe for—

A. (Interrupting) Oh, no, no.

Q. (Continuing) —for not objecting to the opening of the Lomax gateway?

A. No.

Q. Are you certain of that fact?

A. Well, I think I am, Mr. Wheeler, I was not here. Under the discussions I have had with the so-called old-timers.

Q. Did you check the Santa Fe files to determine whether or not there were any memoranda relating to that—

A. (Interrupting) I saw nothing of that kind.

Q. Did you check I asked you.

[fol. 69] A. Yes, the best I could, but I saw nothing of that kind.

Q. Did you become aware of the fact that the Burlington at that time was the largest interchanger of traffic with the TP&W at the Lomax gateway or the gateway near Lomax?

A. I would gravely doubt the accuracy of that statement.

Q. Did you investigate to determine whether it was during the course of its ownership of TP&W?

A. The interchange between the Burlington and TP&W at Lomax was the largest they had?

Q. At that gateway.

A. Oh, at that gateway. Well, if there was a connection between the Burlington and the TP&W at Lomax in those early years it would have to be—because it would be the only one, there was no other railroad there.

Q. Further in your testimony, page 2 of your written statement, there occurs the statement "We think that we could exercise a watchfulness and bring to the Board a viewpoint of constructive suggestions that would be helpful." Would you please give me an example of what you had in mind there?

A. Well, I don't know that I need to find the precise language to answer your question nor neither do I know that I have any particular point in mind. I was merely trying to indicate there that we think that our being on the Board would produce a watchfulness and constructive criticism of operations on a broad and general basis. I have no particular thing to which I am pointing at the [fol. 70] moment.

Q. I gather from your previous statement that you believe that two cooks in this situation won't spoil the broth. Do you believe that there is a magic in two?

A. I don't know that I would say there is any magic in two, but I say that two would not spoil the broth because of the peculiarities of this particular railroad. I was con-

vinced that two was better than one, and I am equally convinced you should not go beyond two. That is as clearly as I can tell you about my opinion.

Q. I don't believe you previously stated that two was better than one. I think you stated that the Pennsylvania and Santa Fe was better than the Santa Fe alone, is that not correct?

A. Well, I hope we are not getting to a play on words. I thought that the two in this particular instance was better than either one of the two or any other one. Does that answer you?

Q. Yes, sir. And that derived, as I recall, from this series of checks and balances, is that correct?

A. That is a pretty important part of it.

Q. Why should the Santa Fe want a check on the operation of the lines of the TP&W west of Peoria?

A. The reason that we would want that is that we were convinced that in response to meeting this test, this intangible what you call it public interest that our interests [fol. 71] of checks and balances and that sort would be helpful in the public interest and that's the reason we look upon it as favorably as we do.

Q. It is a check, then, upon the possible excesses of the Santa Fe against the public interest in the operating the line west of Peoria—

A. (Interrupting) Of course I don't think.

Q. May I finish the question?

Exam. Albus: Finish the question, please.

(Question read.)

By Mr. Wheeler (continuing):

Q. —that you think of the partnership of the Pennsylvania would prevent.

A. I don't know whether I thoroughly understand that question, it got a little involved, but I will make you an affirmative answer to it, that I thought it was a good thing.

Q. On the bottom of page 2 of your testimony you state that the TP&W is a good line for expedited freight traffic movement. That condition will not be changed, as I understand it, by the approval of your application, will it?

A. Well, the TP&W is a good line for expedited freight movement and it would not be harmed by our application. As I said earlier, we think we could make a contribution to improving what is already a good situation.

Q. May I have a direct answer to my question now, please?

(Question read.)

By Mr. Wheeler:

Q. I would like a yes or no answer and then you may [fol. 72] explain any time you wish, Mr. Gurley.

Exam. Albus: Read the answer.

(Question and answer read.)

Exam. Albus: Next question, please.

By Mr. Wheeler:

Q. Mr. Gurley, is it proper to conclude from your testimony that, when there are two competing applicants for control of a given railroad the applicant having the greatest exchange of traffic with that railroad should be preferred?

A. Well, I think I'd answer that by saying that is pretty nearly yes, there might be some qualifications but I think the answer is yes.

Q. Why do you so state?

A. I think that the railroads which historically have an interchange or relation with another railroad like the TP&W and whose interchange has produced the condition which is now, TP&W in its present state, more than anything else, I think those are very powerful influences and should have favorable consideration.

Q. Mr. Gurley, doesn't that necessarily lead to the conclusion that in any contest between a large railroad and a small railroad for control of a third railroad that the large one will always prevail?

A. I started to say, if I make this, I started to say, set other things being equal, I would never get to the point quite as you do it that the little railroad is to be choked off [fol. 73] by the big railroad, no, I don't take that position

at all. I tried to say to you, Mr. Wheeler, on two or three occasions, and I would like to repeat now I have not attempted here to testify about any general philosophy of any railroads, I have tried to direct myself to the particular question before the Commission right now.

Q. Well, necessarily of course, Mr. Gurley, the Commission in deciding cases on a case by case basis lays down a policy which if it becomes important becomes a precedent for future action by the Commission, so that I would be therefore interested in whether or not you would agree or disagree that the amount of interchange between the acquired and acquiring road should determine whether or not or should be determinative of who gets authority to control the acquired property.

A. I simply cannot answer that question except by saying this, it would be worthy of very serious consideration in the particular case then being considered. I could not go beyond that. I wouldn't know how to go beyond that.

Q. Now, would your statement be the same whether the interchange, the existing interchange was the result of the efforts of the acquiring carrier—of the acquired carrier rather than those of the acquiring carrier?

A. I cannot answer your question.

Q. Well, let's take this specific case, assume with me that the interchange existing between the Santa Fe and [fol. 74] the Pennsylvania is largely due, and the TP&W, is largely due to the solicitation efforts of the TP&W, do you then think that the existence of that large interchange is a basis for the Santa Fe being preferred in an acquisition of control case, the Santa Fe-Pennsylvania case?

A. If I understand your question correctly, and I think I do, the answer is yes.

Q. Now, at page 8 of your statement you state "I do not know what position the M. & St. L. will take on the record but I do know that in the past they have either favored or advocated the discontinuance of service on the western section of the TP&W." Mr. Gurley, did you hear my earlier statement on the record this morning?

A. No, I did not.

Q. With respect to the preservation of existing routes.

A. Oh, I heard that, yes, I heard that.

Q. Would you consider the Lomax to Peoria run an existing route?

A. Well, yes, I would say that affirmatively. I don't think that answers quite the question, I say I don't know what will be on the record, because I could shift on that, of course, but—

Q. (Interrupting) Mr. Gurley, you could shift on any, the Santa Fe could shift on any policy you have enumerated here this morning, could it not?

A. Yes, we could all do that under the provisions of [fol. 75] going to the Interstate Commerce Commission.

Q. Yes.

A. I have no quarrel with you, Mr. Wheeler. I said I didn't know what position you would take on the record I should say that if I had been probably a little mentally alert I would have said except what you said here this morning because I just didn't connect it up at the time. I would not try to say you said anything improper.

Q. Mr. Gurley, can you give me the basis for this statement that you have made here, that I have read to you?

A. The basis of which statement?

Q. The one that I read to you that you do know that in the past they either favored or advocated the discontinuance of service on the western section of the TP&W. Who ever made that statement or advocated that on behalf of the M. & St. L.?

A. I don't think there is any question about their having advocated it. Do you want me to talk names and things like that to you?

Q. Yes, sir.

A. Well, Mr. Heineman would be the first fellow I would talk about. The first time I ever met Mr. Heineman, we had a very pleasant talk. He was talking about his plans of the M. & St. L. and the T. P. & W., and he said that he felt that he had erred in not having discussions with the Santa Fe earlier, that he thought there were opportunities [fol. 76] to discuss with us consolidations with the reference to the interchange of traffic, and my interpretation of that was that when we consolidated any change of traffic now going to T.P.&W. and M. & St. L. it pretty well means the Nemo gateway. Secondly, I hate to bring Mr. Heine-

man's name into this, but you are forcing me to do it, the next time I saw Mr. Heineman we were talking about this very question, and he said that Devans had advocated taking up the west end of the T.P.&W., or let me reconstruct that, abandoning it, I guess, may be the word that was used, and he, Heineman, had talked with Coulter about it. Coulter had cautioned Heineman that that wouldn't work out and that's about as two personal conversations as I believe I can give you.

I have general knowledge coming to me what you might classify as hearsay stuff but nevertheless you form opinions about it.

Q. But that is the only direct information you had from an officer of the, or director of the M. & St. L. with respect to abandonment of the T. P. & W. line west of Peoria?

A. You narrow that to an officer—or director of the M St. L.?

Q. Yes, sir.

A. Then I would say to narrow it that way the answer to your question is yes.

Q. Mr. Gurley, you state on page 8 of your written testimony that because M. & St. L. has a connection from the west at Peoria and the Rock Island also enters Peoria and competes with the T.P.&.W. on traffic between Keokuk and [fol. 77] Peoria, those roads would have little interest in developing the west end of the T.P.&.W. Did you have that situation in mind when you took the Pennsylvania into partnership with you?

A. Yes.

Q. You are aware, are you not, that the Pennsylvania ha a line running up to Peoria, are you not?

A. Yes, I am somewhat familiar with it.

Q. And that's competitive with the Effner-Peoria-T.P. &W. run, is it not?

A. Well, perhaps you had better ask that of the Pennsylvania. I think you will find there is not much competition to it.

Q. In other words, your determination in that respect was based on your belief that there was not much competition between the Pennsylvania, the Pennsylvania's route

coming into Peoria and the Pennsylvania-T. P. & W. route from Loganspport to Peoria?

A. Yes, that's right.

Q. Now, supposing it turned out that there was substantial competition between those two routes, would you seek to amend your application and make—

A. (Interrupting) If I found there was substantial competition there I would first be surprised. I don't know what I'd do after that.

Exam. Albus: Finish the question, please.

The Witness: I beg your pardon.

(Question read.)

[fol. 78] By Mr. Wheeler (continuing):

Q. — and make it an application by the Santa Fe alone rather than the Santa Fe with the Pennsylvania?

A. I will let my answer stand.

Q. You don't know what you'd do?

A. I said I would first be greatly surprised.

Q. Yes, sir.

A. And being in that frame of mind I don't know how to even kind of think about the next one.

Q. Now, Mr. Gurley, don't you compete with the entire route of the T. P. & W. by your Chicago run at the present time?

A. Well, I think it is fair to say that the Santa Fe as well as the other railroads have a Chicago gateway in which that can be argued. As I say, Mr. Duffy is going to discuss that with you more thoroughly.

Q. I am limiting it to this point now as to conflict of interests that you have indicated might exist between the Rock Island and the M. & St. L. via the western end of the line?

A. I have stated as clearly as I can state that if we are a 50-50 owner of the T. P & W. that Lomax gateway acts on a parity with Chicago for solicitation. I don't believe I can state it any clearer.

Q. Now, isn't the Pennsylvania a competitor with the T. P. & W. route through Chicago?

A. The Pennsylvania, of course, moves business through [fol. 79] Chicago as well as through Effner-Lomax, and you may argue that point, that it is a competitive route, the rates are open.

Q. I would like your opinion, I don't want what we can argue unless I can assume from you that when you say it can be argued that it is competitive or it isn't.

A. I don't think there is any question but what there is a certain degree of competition running all through these routes, running all through all of this thing—

Q. (Interrupting) That is, through the Midcontinent area here?

A. Well, all through this M. & St. L., I mean this T. P. & W. situation, but I am a Santa Fe witness and I am trying to tell you what our purposes are on the record for the administration of the T. P. & W. under the circumstances for which we have made application. That's about as far as the president of the Santa Fe can go.

Q. I would agree with you, Mr. Gurley, except until I read your testimony here where you made some references as to what the Rock Island and the M. & St. L. would do, and since you were willing to discuss the competitive effect of their routes I thought it perhaps would be material to get your views with respect to those of the Santa Fe and Pennsylvania, but I will drop that for the moment.

I would, however, like to ask you whether or not the route of the Wabash connecting with you at Kansas City and going through over the Hannibal Bridge and through [fol. 80] Decatur to Logansport is not competitive with the route, Santa Fe, Lomax, Peoria, Effner, Pennsylvania?

A. Well, it is an open route.

Q. Is that a yes or no answer, Mr. Gurley, I don't understand.

A. Well, I hardly know, while it is an open route, it is there as a physical matter, when you examine what moves there you have to strain pretty much to call it competition, but nevertheless I will agree that there is a route there and it is physically a competitive route.

Q. And the St. Louis gateway, I assume, would also be a competitive route?

A. I think that is correct.

Q. Are you familiar with the conditions under which the Pennsylvania acquired control of the Wabash?

A. No, I am not.

Q. Did you take into account in determining to take Pennsylvania into partnership with you or sell them 50 per cent of this deal that they had control of the Wabash?

A. Oh, I was quite aware of that.

Q. Refer briefly to Page 9 of your written statement, Mr. Gurley. None of the facts set forth on that page would change, would they, on approval of your application from the conditions that now exist?

A. I think the physical conditions I described there would remain constant. That is fairly what you

[fol. 81] Q. (Interrupting) Yes, sir. The same would be true, would it not, if the Commission granted the application of the M. & St. L., would it not?

A. No, I think the physical conditions would remain constant. You see, on Page 9 I have something just a little different than physical conditions, that is the reason I make that distinction. I think we are together on it all right.

Q. Supposing the application of the M. & St. L. is granted, Mr. Gurley, would you change your present solicitation policy with respect to the use of the T. P. & W. route?

A. Well, under proper conditions arrangements with the M. & St. L. I would say no.

Q. You would not take a hostile or discriminatory attitude toward the use of that route, would you?

A. No, we would not do that as long as the M. & St. L. played ball with us we'd play ball with them.

Q. Mr. Gurley, do you have in front of you your application there?

A. Yes, I think so.

Q. Refer to Page 31 and Exhibit 7.

A. Yes, sir.

Q. Look particularly at the second paragraph thereof and tell me why the Santa Fe decided to sell all the stock—decided to buy all the stock held by the trustees instead of the 52 per cent you and the Pennsylvania through you had bought on April 15, 1955.

[fol. 82] A. Well, I doubt that I can do any better than that I did on my direct testimony. We were told that it would be sold unless the bid was above 133.33, as I said in my direct, so we purchased it.

Q. Previously, I am referring specifically now to the fact that you had previously negotiated for 52 per cent, that is, with the Pennsylvania.

That is, you to buy 26 per cent and the Pennsylvania to buy 26 per cent, and now, according to this, you concluded to buy 100 per cent of the holdings of the McNear estate. Why did you change your approach to this problem in that regard?

A. Well, I changed it, again, as I said on direct, when I found an actual situation on the part of the trustees that they were going to sell it to someone else at 133.33. I don't know how better to state it. That is the reason I did what I did.

Q. I see. Were you told the name of the prospective buyer by the trustees or did you know?

A. Well, I knew and I think in the telephone conversation also the name was mentioned.

Q. What was that name?

A. Well, I don't know. It was either M. & St. L. or Mr. Heineman, it was clear, there is no equivocation.

Exam. Albus: That is, as of April 15, 1955?

The Witness: Now, wait a minute. I thought he was [fol. 83] directing my attention to what I did on May 26, that is what I thought I was addressing myself to.

Exam. Albus: Very well.

All right, sir.

By Mr. Wheeler:

Q. On March 15, when the trustees came to see you, did they tell you at that time that they were also going to see Mr. Heineman for the M. & St. L. with respect to the sale of this—

A. (Interrupting) That is, they were going to see Mr. Heineman subsequent to seeing me on March 15?

Q. On the same day with respect to the sale of the stock of the T. P. & W.

A. If my memory serves correctly that was never mentioned that day.

Q. Now, Mr. Gurley, referring now to Section 1 of Exhibit 7—

A. Of the application?

Q. Yes, sir, which runs over on Page 42. Can you tell me why you agreed to pay the trustees of the McNear estate an additional sum of $35 a share in settlement of the dispute regarding the legally binding effect of the letter of April 15, addressed by Santa Fe to the Wilmington Trust, and accepted by it, when it would appear that any liability arising out of that letter was incurred by the Wilmington Trust rather than by the Santa Fe?

A. I think you are going to have to read that question to [fol. 84] me because I don't believe I retained the question as you went along.

Exam. Albus: Read the question, please.

(Question read as follows:

"Question: Can you tell me why you agreed to pay the trustees of the McNear estate an additional sum of $35 a share in settlement of the dispute regarding the legally binding effect of the letter of April 15, addressed by Santa Fe to the Wilmington Trust, and accepted by it, when it would appear that any liability arising out of that letter was incurred by the Wilmington Trust rather than by the Santa Fe?")

A. I think the answer to that question is that we did that because we thought that that was the only way in which we could obtain the stock.

By Mr. Wheeler:

Q. Why would you specifically state in the agreement that the consideration for paying $35 for an extra $35 for the 23,400 shares that you thought you had previously bought was in settlement of a dispute with Wilmington Trust, when if there was any dispute or any liability that liability was on the part of Wilmington, not on your part?

A. Well, I am not so sure, and I don't know that I can answer your question precisely, but I will state it again, we

entered into this agreement with Wilmington Trust to buy all of the stock at $135 because of our judgment at the time that if we expected to get the stock we would have to take [fol. 85] that action, and the formal language to which you address yourself was in the furtherance of that verbal understanding and verbal deal I made.

Q. In other words, in your conversation on May 26 with the Wilmington Trust you agreed to pay $35 a share or $819,000 in consideration of a claim that you had against Wilmington Trust, is that correct?

A. I don't know whether that is correct or not. We agreed—there is no question about our agreeing to pay the money, and there isn't any question but what we stand ready to do that, and there is no question why we did it. The precise question that you raise is, I suppose, why couldn't we have written this agreement in some other way. That's about what I get out of it.

Q. My question is why did you write it in the way you did. There must have been some purpose for it. I would like to know the purpose.

A. I don't know that I can answer that. I suspect that it could have been written some other way. I don't know particularly why.

Exam. Albus: That is a complete answer, he doesn't know.

By Mr. Wheeler:

Q. Mr. Gurley, were you aware that the Pennsylvania was alleging that it still had a contract and a valid contract with Wilmington for 23,400 shares arising out of its letter with the Wilmington Trust of April 15?

A. Yes, sir.

Q. Didn't this have a bearing on that claim by Penns[fol. 86] vania and tied directly into it?

A. I don't know. I really don't know.

Q. Well, Mr. Gurley, let me see if I can refresh your recollection a little. The Pennsylvania would appear by reason of the April 15 letter to the Wilmington Trust, believed it was entitled to receive 23,400 shares of the T. P. & W. stock from Wilmington Trust for $100 a share, is that not correct?

A. That is my understanding of their position.

Q. Now, that is the same amount which is referred to in this particular section of your agreement, is it not?

A. I think that is correct.

Q. Your agreement on May 26 was to pay $135 a share, correct?

A. That is correct.

Q. As to all of it, including the 23,000 shares you had an agreement with the Wilmington Trust, or including the 23,400 shares covered by the letter of April 15 with Wilmington Trust?

A. That is correct.

Q. Who would know, who in the Santa Fe would know, why this provision was inserted in this agreement since you do not?

A. Well, the language is the language of the lawyer who drew the agreement, and I don't know whether you and I are getting together here or not. I know why I moved. I am not so particularly clear, as I said to you, as to the precise language used to carry out the agreement.

Q. Mr. Gurley, let me ask you this, did you understand [fol. 87] that this provision or that in making your arrangement with the Wilmington Trust, or the trustees, you were seeking to prevent prejudicing any claim that the Pensylvania might have under their letter of April 15 against Wilmington?

A. I don't think I was trying to prejudice one way or the other. I was buying this stock because of the opinion I had, opinion that we all had in the Santa Fe, that except for that chances of our getting it were not good.

Q. When was your first negotiation with the Pennsylvania Railroad regarding the purchase of the T. P. & W. stock?

A. You mean the original 25 per cent deal?

Q. Yes, sir.

A. I think that was April 15 was the first meeting.

Q. You had had no prior conversations with-

A. (Interrupting) Oh, oh, yes, we had had some prior conversations.

Q. Did you initiate those conversations or did the Pennsylvania initiate them?

A. I think I did. I think I did. I am pretty clear I did—yes, I am quite clear I did.

Q. And that was on receipt of information by you from the trustees that the M. & St. L. was interested, had notified them of interest in buying the stock in the T. P. & W., is that correct?

A. No, that isn't correct. No, that isn't correct.

[fol. 88] Q. Will you make a correct statement on it?

A. Yes. First, that took place with reference to my interest in acquiring stock of the T. P. & W. is when I asked Mr. Gladson to meet with me in 1954. The next step was when the gentlemen came to my office on May—

Q. (Interrupting) Pardon me, may I interrupt as you go along. At that time, at the time you talked with Mr. Gladson in 1954, were you aware that the M. & St. L. was willing to buy the stock?

A. I don't know when it was. My memory doesn't serve me correctly as to when the M. & St. L. came into my knowledge of this affair.

Q. Now, Mr.—

A. (Interrupting) It was along about that same time with Gladson. Whether it was just before or just afterwards, my memory just doesn't serve me on it.

Q. Let me ask you this, you referred in your testimony to some rumors and some gossips.

A. Yes.

Q. By rumor or gossip did you have the impression that the M. & St. L. was trying to purchase the stock at that time?

A. No, the rumors or gossip was merely that the trustees were considering diversification, were considering selling.

Q. So that that conversation would have taken place after the trustees became interested in selling?

A. I think that must be so, yes, because the gossip, so-

[fol. 89] called, that came to me through financial circles was that the trustees were considering that diversification.

Q. Do you know whether or not prior to that time Mr. Symes or any other officer or employees of the Pennsylvania had talked to anyone with respect to the purchase of the T. P. & W. stock from the trustees of the McNear estate?

A. I don't know a thing about that.

Q. You said, then, after you had this conversation with Mr. Gladson, you were about to relate a second step in the process?

A. I was merely going to say the next step was the March 15 call to my office, which I described in my direct.

Q. So that you jumped from sometime in 1954 to March 15, '55, with no other conversations on your part or on the part of other officers or directors of the Santa Fe with respect to the purchase of this stock, is that correct?

A. Well, not quite. You see, I testified on direct that I had a conversation with Mr. Symes following my conversation with Mr. Gladson in which I told Symes about my conversation with Gladson, and told Symes that Gladson had promised to keep in mind the request I made about wanting to buy the T. P. & W. Other than that conversation with Mr. Symes I think the next conversation that I had about the question was when I was asked for an appointment to meet the gentlemen.

Q. During that interval, that is, between your conversation with Mr. Gladson, and March 15, '55, did Mr. Symes [fol. 90] conduct any negotiation, or any other officer of the Pennsylvania conduct negotiations with the Wilmington Trust?

A. Not to my knowledge.

Q. What was the gist of your conversation with Mr Symes after your talk with Gladson?

A. Well, it was very brief. I told Mr. Symes of my conversation with Mr. Gladson, and I said, "As you probably know, it is something that Clem and Frank and I have talked about in the past and something that might be quite proper for the Santa Fe and the Pennsylvania to buy." And Jim said, indicated, I couldn't recall, he knew something about it and I said, "Well, I am sure we will hear something from Gladson or the trustees." That's about all there was to the conversation.

Q. He didn't evidence any great interest in the purchase of the stock?

A. No, he didn't evidence any great interest, and frankly I didn't evidence any great interest because it was not entirely clear to me what the trustees were going to do. The

impression I had they were arguing among themselves or debating among themselves whether to diversify or whether they were not. It was not anything to get excited about.

Q. And the fact that Gladson at that time, according to your testimony, said that they had received an offer didn't interest you one way or the other, is that correct?

A. I didn't say that at all. I told him I was interested in
fol. 91 | buying. If they were interested in selling I wanted to buy and I hoped that before they made up their minds to sell to anyone they would have another discussion with us.

Q. Now, on March 15 did you make this engagement for that date with the trustees?

A. Did I initiate it?

Q. Yes, sir.

A. No, they initiated it.

Q. The trustees?

A. Yes.

Q. Which one did you receive a call from?

A. I don't recall who I received a call from. The gentlemen who came were Mr. Bancroft and Mr. Kelly. I have forgotten who made the contact.

Q. It was either one of those two gentlemen, then, who called you and asked you for this March 15 appointment?

A. I think that is correct.

Exam. Albus: Let the record show a recess until 2 o'clock.

(Whereupon, at 12:30 p. m., a recess was taken until 2 o'clock of the same day.)

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fol. 92 AFTERNOON SESSION 2 p. m.

Exam. Albus: The hearing will please come to order. I understand there is an intervening petition to be submitted at this time. Let the record show the petition of the State of Minnesota and its Railroad and Warehouse Commission is received at this time.

We will continue with the cross-examination of Mr. Gurley.

Mr. Wheeler, please.
Mr. Edward K. Wheeler: Off the record.
Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.
You may proceed.

FRED G. GURLEY resumed his testimony as follows:

Cross Examination (Continuing).

By Mr. Edward K. Wheeler:

Q. Mr. Gurley, I have had placed upon an easel a map of the United States showing in red the lines of the Santa Fe and the Pennsylvania, and in a dotted red line the line of the Wabash. That same map shows in green ink the route of the TP&W, and in blue ink the route of the M&StL. Directing your attention to this map, I ask you whether or not the route of the Santa Fe-Pennsylvania through Chicago is not competitive with the route of the Santa Fe-TP&W-Pennsylvania, as shown on that map.

[fol. 93] A. The map so shows.

Q. I will ask you the same question with respect to the route of the Santa Fe, Kansas City, Wabash, Logansport, Pennsylvania. Is that not competitive with the Santa Fe-TP&W-Pennsylvania route?

A. I answered you a while ago that the map so shows and I will make the same answer, I will make that same answer.

Q. And the same would be true with respect to the St. Louis gateway, would it not?

A. I'd say the map shows the competitive route there, yes.

Q. Now, Mr. Gurley, you indicated this morning in answer to a question that the Wabash route between Logansport and Kansas City you considered either unimportant or that the traffic hauled over that line was of a different character than that that moved over the Santa Fe-Penn-

sylvania route via Chicago and the Santa Fe-TP&W-Pennsylvania route by Peoria. Will you please explain that.

A. Well, I mean this, that the traffic through Logansport on the Wabash is, as you say, a different traffic flow than that that comes over the TP&W. I meant also, if I followed your question this morning correctly, you were referring to the competition at Logansport, Pennsylvania, that I didn't consider it significant competition, and I will still say that, even after having looking, after having looked, at this map.

Q. Now, in connection with this, what is different about [fol. 94] the flow of traffic as between, say, the Santa Fe and the Pennsylvania via the Wabash than the flow of traffic of the Santa Fe-Pennsylvania via the TP&W?

A. The difference is in the historic facts.

Q. Well, to what do you refer?

A. Well, I refer to this, that you show, the map shows that there is a route from Logansport to Kansas City via the Wabash, the map shows that there is a connection at Logansport between the Pennsylvania and the Wabash as well as a connection from the Pennsylvania onto its own line out to Effner. I am saying that the historic flow, which you will hear about later, shows that the traffic moves through the TP&W and not over the Wabash.

Q. Well, isn't this the main line of the Wabash, this route between Kansas City and Logansport?

A. Yes, sir.

Q. Do you mean to indicate that there is a much greater traffic flow over the TP&W than over the Wabash?

A. I mean to say this, that the traffic coming into Logansport from the East on the Pennsylvania and which insofar as the map indicates could move out of Logansport either on the Wabash to Kansas City or to Effner, the TP&W to Lomax to Kansas City moves over the latter route.

Q. Moves over the latter route?

A. Yes, sir.

Q. You mean, then, as I understand, that traffic originat- [fol. 95] ing on the Pennsylvania, and let us say destined for points in Texas via the Santa Fe, in all instances, moves over the TP&W rather than over the Wabash, is that correct?

A. I would not say in all instances, but because that would be every car, but I would say preponderantly, very heavily so, all out of this world so, TP&W.

Q. And would that be true as against St. Louis, that the TP&W—

A. (Interrupting) Where is this traffic coming from, Mr. Wheeler?

Q. This is traffic moving from origins on the Pennsylvania Railroad to destinations in the Southwest over the Pennsylvania and the Santa Fe. Now, I want to know—first of all, I ask you whether or not some of that traffic didn't move over the Wabash as well as over the TP&W. I understood you to say very little.

A. That is correct.

Q. I now ask you the same question with respect to St. Louis.

A. And the same answer, very little.

Q. What is the predonderant movement from the Pennsylvania origins to the Southwest, what route does most of that traffic follow, is it through the TP&W?

A. Well, the Pennsylvania can answer that better than I, but by and large the Pennsylvania's route to the Southwest is their own line into St. Louis, I think.

Q. I thought you just said that the preponderance moves from the Southwest to the Pennsylvania destinations over the TP&W.

[fol. 96] A. Wait a minute. You were asking a while ago about traffic coming from Pennsylvania into Logansport and I was addressing myself as to that traffic, as to what went out over the Wabash or what came over the TP&W, and what I am saying is the great bulk of it goes TP&W and Effner.

Now, I should say that you are asking a Santa Fe man a lot of Pennsylvania questions, if I may state that opinion.

Q. Do you have any definite information as to the character—do you have any information which indicates that the character of the traffic moving over the Wabash between Kansas City and Logansport is any different than the character of the traffic moving over the Santa Fe-Pennsylvania route via Chicago, the Santa Fe-Pennsylvania via TP&W or the Santa Fe-Wabash-Pennsylvania via St. Louis?

A. Any difference in the character of the traffic, that is the question, is it?

Q. Correct.

A. That is a little difficult question to answer as to what we mean by "character". There's traffic which moves out of the Detroit area over the Wabash which goes on the Wabash, you might say, all the way to the Missouri River at Kansas City. Whether that is a difference in character or not, I don't know. Generally speaking, railroad traffic has the same characteristic, I suppose, in a broad sense.

Q. Going eastbound from the West and Southwest, on [fol. 97] the traffic going over the Santa Fe, for the moment, is there a difference between the traffic that you interchange with the Wabash at Kansas City for eastern destinations and that that you carry through to Chicago to deliver to the Pennsylvania for eastern destinations?

A. No, I think, if I understand, the character would be about the same.

Q. But isn't that route a directly competing route to eastern destinations with your Chicago route?

A. What route is that, now, again?

Q. The Wabash route.

A. The Wabash east of Kansas City is a competitive route with us on certain traffic east of there, surely.

Q. And it would be competitive with the TP&W, would it not?

A. The route of the Wabash east of Kansas City, being a competitive route of the Santa Fe, would by that very nature be competitive with the route that would bring the traffic to a place where the TP&W could get it. The answer to your question, I think, is a yes, but it has to be kind of explained a bit.

Q. Mr. Gurley, are you familiar with the nature of that Wabash track between Kansas City and Logansport?

A. Part of it.

Q. Is it a good mainline track?

A. Yes, it is a good railroad.

Q. Mr. Gurley, I believe you indicated this morning, I [fol. 98] believe you stated that you solicit the long haul on the Santa Fe, which would take you to Chicago, isn't that correct?

A. That is correct.

Q. And you also stated that you would put the Lomax gateway on a parity with Chicago?

A. That is correct.

Q. I am not clear in my own mind what you mean by "parity".

A. Well, if you would be willing to do so, I would suggest that you hold that question for a man whose technique is solicitation and whose connection is justification, but making you as good an answer as I can, in our solicitation you evidence a willingness, in our solicitation with the shipper, to take it either place, no preference.

Q. You have a different policy now, I gather?

A. That is correct.

Q. What effect, Mr. Gurley, will this solicitation for Lomax on a parity with Chicago have on the effect of the number of employees in your Chicago yard?

A. I have never made a study of it to see what it would mean. I have never made that study.

Q. Do you believe that the effect may be to substantially decrease the amount of traffic off the Santa Fe that moves through Chicago?

A. It is very difficult to talk about the word "substantial". I think it is fair to say the policy will increase the [fol. 99] flow through Lomax and will correspondingly decrease the flow through Chicago. I have not studied it enough to express opinion on the word "substantial". It would have the effect I have just described.

Q. Have you made any estimates with respect to the number of cars that might be diverted by change in your solicitation?

A. No, I have not.

Q. Has anyone in your organization?

A. I think not. Mr. Duffy can answer you, but I think the answer is no.

Q. Have you made any estimates as to the amount of revenue you would lose, the Santa Fe would lose, by this type of of solicitation?

A. We don't figure we will lose any. I would like to say to you again we do not consider the TP&W to be competitive in the sense of effect upon our revenues. We consider the TP&W to be complementary to our revenues.

Q. Well, you are familiar with the fact, are you not, that you get the greatest percent of divisions by hauling traffic to Chicago rather than to Lomax, are you not?

A. Oh, I am quite familiar with that, and I am also quite familiar with the general nature of our business and, as I said earlier and on my direct testimony, we believe that, our experience convinces us that, we get business by reason of the TP&W which we would not get except for it, so that, [fol. 100] as a business proposition, the question is not so much a division at Lomax or a division at Chicago but the total volume of business you haul over your railroad west of Lomax.

Q. Mr. Gurley, maybe I misunderstand you, but I thought you indicated that at the present time you solicit via Chicago, the point to which you get the greatest division, and do not solicit Lomax as against Chicago and that you were going to change your solicitation from that, so that you would solicit Lomax on a parity with Chicago. Now, is that correct?

A. I think that is correct.

Q. Now, to the extent that you divert traffic by your solicitation which presently moves via Chicago to Lomax, have you made an estimate as to the amount of revenue that you will lose by so doing?

A. No, sir.

Q. Didn't you think that was pertinent to the decision you arrived at to put Lomax on a parity solicitationwise with Chicago?

A. Well, I made the decision and I didn't make the setting.

Q. How do you believe those answers jibe with your earlier statement that the economics of the situation usually governed railway policy?

A. I don't know how many times I must tell you that we look upon the advantages of the TP&W in bringing us business to offset whatever would be the net of the differ- [fol. 101] ence between Lomax and Chicago. There is not only the divisions, there is the cost of handling and the participation in it. I repeat, when you wrap it all up as a business appraisal, our business appraisals cause us to take the action we have. There is no equivocation about

what our business appraisal has produced, has produced in our own mind.

Mr. Wheeler: May I have the answer read, please.

(The last answer was read by the reporter.)

Mr. Thomas: Mr. Examiner, I stated when I called my first witness that we were going to have three witnesses, that Mr. Duffy would handle the traffic solicitation policy. Much of what is being discussed now will be covered in his direct testimony. I just suggest that it might be speedier to limit that.

Exam. Albus: I would suggest that if Mr. Duffy could answer these questions better Mr. Gurley would just announce so.

Mr. Thomas: I didn't mean to infer that Mr. Gurley isn't answering them to my satisfaction. It is a matter of the detail that Mr. Gurley has covered.

By Mr. Wheeler:

Q. You said in your last answer that it was the cost of handling, as I understood it, involved in your consideration.

A. That is right.

Q. What is that, Mr. Gurley?

A. Well, there is the cost of handling business from [fol. 102] Lomax to Chicago, there is a cost of handling business from Lomax to Effner, there is a cost of handling business in Chicago terminal, there is the cost of handling it through Peoria, there are a lot of those factors that enter into it, so I say that you have to appraise the best you can what you think about it and what you are willing to do. That is what I meant by it.

Q. Are any of those costs going to be changed by reason of your—if you acquire control of the TP&W?

A. Well, I think the answer to that is yes. I am not sure it is. I am not sure I understand it. My answer is yes, as I understand it.

Q. Would the cost of handling traffic, a car through Chicago, be changed?

A. Well, the cost of handling a car through Chicago would be eliminated if it didn't go through Chicago. That

is the reason I said it was difficult for me to follow your question.

Q. But, Mr. Gurley, the cost of handling a car through Chicago, if it goes through, would be the same before or after acquisition, would it not?

A. Oh, I think that is correct.

Q. The cost of handling cars through Peoria will be the same, will it not?

A. Yes. Of course, always with the modification that volume may affect costs to some extent, but by and large [fol. 103] the answer to the question is yes.

Q. The same thing would be true with respect to the expense of carrying a car from Lomax to Chicago as against Lomax to Effner, would it not?

A. I think that is right.

Q. Mr. Gurley, if you believe, as you state, that you will increase your traffic by soliciting for the Lomax gateway, why haven't you done so in the past?

A. Because with a non-ownership position, we favored the traffic over the line of which we did have—I will reconstruct that. In a non-ownership position of the TP&W, we favored the long haul on our own railroad more than we would with the ownership position of the TP&W.

Q. Isn't, therefore, the difference with that of that that will redound to you from your ownership of 50 per cent of the TP&W stock?

A. Read that to me.

(The last question was read.)

A. Yes, that will be there, there will be that difference.

Q. And that is the reason that you decide, in the event you acquire control, that it will be to your economic interest to solicit traffic to Lomax on a parity with Chicago?

A. Yes, we are willing to accept that.

Q. Just to be doubly clear on this one point, Mr. Gurley, I would like to ask you another question along the same [fol. 104] line. Your solicitation policy, the change in your solicitation policy, is made because you will, as a 50 per cent owner in the TP&W, receive 50 per cent of the revenues from traffic going over that road if you are permitted to control it?

A. I think the answer to that is yes, that is the influencing factor, we will be in an ownership position.

Q. Mr. Gurley, have you any plans with respect to passenger traffic on the TP&W?

A. No, we have not.

Q. Mr. Gurley, returning now to Exhibit 7, your application, at pages 41 and 42, let me ask you, did you or did the Board of Directors of the Santa Fe believe you were liable to the Wilmington Trust for anything more than $2,340,000 as a result of the April fifteenth letter with Wilmington Trust?

A. I don't know that we did.

Q. I am not clear whether that is a yes or no answer, Mr. Gurley.

Exam. Albus: The answer may stand.

By Mr. Wheeler:

Q. Did you have an opinion with respect to liability of the Santa Fe in excess of $2,340,000 as a result of the April 15 letter with Wilmington Trust?

A. No.

Q. Did you discuss the question of your liability or that of the Pennsylvania with any officer or director of the Pennsylvania?

[fol. 105] A. No.

Q. Did any member of your staff, legal staff or otherwise, have such discussions?

A. Let's see if we understand each other. That we discussed with the Pennsylvania our obligations to the trustees?

Q. Yes, sir.

A. No, sir.

Q. Did you have any discussions with the Pennsylvania with respect to the liability of the Wilmington Trust to deliver to you and to the Pennsylvania 23,400 shares of stock at a hundred dollars a share?

A. Yes. We had discussions on that subject. That is a little difficult question.

Q. What was the nature of those discussions?

A. Are you inquiring now as to the nature of the discussions as to the obligations of the trustees?

Q. Yes, sir.

A. Yes, we had such discussions.

Q. Will you tell me what those discussions were?

A. Well, they related to the enforceability of the April 15 letter from Mr. Marsh.

Q. When were these discussions, Mr. Gurley?

A. I couldn't place a precise date on them but they occurred in the latter part of May. They occurred with what might be characterized as increased concentration on May 25 and 26.

[fol. 106] Q. What was the conclusion, what was your conclusion, as a result of those discussions?

A. I took a dim view of getting the stock by reason of the April 15 letter.

Q. Did the Pennsylvania share that view with you in their expressions to you?

A. I think not.

Q. Did they indicate to you what course of action they were going to pursue with respect to the stock or with respect to obtaining that stock with respect to the April 15 letter?

A. No, I don't think they ever did. They have reserved, as you will observe from the contract, certain reservations made, but so far as I know that is all I know about whatever their plans may be.

Q. Did they tell you that they were unwilling to at that time pay a higher amount than $100 for stock of the TP&W?

A. No, I don't know that they ever put it that way. They took a different view than we did about the enforceability of the April 15 letter.

Q. What was to be the purpose of the conference that you say was scheduled for Washington on May 27?

A. I never found out.

Q. Who called that conference?

A. As I testified on my direct, on the afternoon, late in the afternoon of May 25, just before I was going to the [fol. 107] train to go to New York, the trustees came by my office and gave me the information concerning which I testified on direct. They said in the light of that notice they would like to meet with Mr. Symes and me for further discussion. I arranged as quickly as I could for the meeting

on May 27. I knew Mr. Symes and I would both be at Washington on that date at a meeting of the board of directors of the Association of American Railroads. Time was short. I did not have any conversation with the trustees except just about what I have indicated. It was a very brief conversation. The time, as I say, was very short.

Q. You referred to a notice. What notice was that, Mr. Gurley?

A. I don't believe I understand your word "notice".

Mr. Wheeler: Read the previous answer.

(The previous answer was read.)

A. The notice I referred to was the advice that they did not consider there was an enforceable agreement between us.

Q. That was the first notice that the Santa Fe had had received from any of the trustees that that was an unenforceable contract?

A. That was the first notice we had from the trustees. We heard information that you could call gossip or second-hand or something of that sort that the trustees were giving consideration to taking that position. We heard that from [fol. 108] quite a few circles from around Chicago, but that was the only direct advice from the trustees.

Q. Did you get any such advice from the Pennsylvania?

A. No, no.

Q. Now refer to Section 2 of Exhibit 7 to your application and tell me why it contains the statement: "if, in the opinion of counsel for Santa Fe, Trustees are able to deliver good title to such shares and if, in the opinion of counsel for Trustees, Trustees will not incur liability to others by reason of such sale and delivery".

A. I think perhaps I should take time now to explain something about this agreement of May 26 which has not been developed and which may help clear up a few questions you are asking me. On May 26 I was in New York, the conversations I had with Mr. Chinn were in New York. I had conversations on the phone with our general counsel in Chicago. I made the decisions that I have described—those were mine. I told the general counsel to put them into effect with a contract which I would like to have written

during the evening and signed by one of our vice-presidents who was qualified under our rules of procedure to sign such a contract. We had a clear understanding as to what was to be done. We did not discuss the precise language. I did not see the precise language for some two days. That is the reason I said to you this morning I didn't know why certain language was used. I suspect you can always [fol. 109] write a contract more than one way. The contract accomplished that which I wished accomplished.

Q. Then it is conceivable, and I thank you for that clarification, it is conceivable, then, that your general counsel may have had conversations with the Pennsylvania and/or the trustees with respect to the terms of this agreement?

A. There can be no doubt that he had conversations with the trustees, because it was quite something to work out over the telephone, no question about that. I don't know about the Pennsylvania.

Q. Mr. Gurley, that is one aspect of this I don't quite understand. On April 18 you and the Pennsylvania were going it together as partners and along comes May 26 and you buy the whole thing up on your own solely without consultation with them or anything of the kind.

A. Oh, that isn't quite correct. I didn't say that. I said that the Pennsylvania took a different view than we of the enforceability of the April 15 letter, and it was their taking one view and I taking the other which produced the situation where I bought all the stock.

Q. I see. But for that, the Pennsylvania might have bought directly instead of subsequently entering into a contract with you?

A. I think that is a correct statement.

Q. Were you at any time informed by the trustee or the [fol. 110] Pennsylvania in connection with these negotiations that the M&StL had been guaranteed the right to meet any competing bid for this stock.

A. I never heard that statement before right now.

Q. Now, did you discuss with Pennsylvania the price that you would offer for the TP&W stock?

A. You mean on May 28?

Q. Well, almost anytime.

A. That is the only day it was.

Q. Well, I just don't want to limit it to that date.

Mr. Thomas: Mr. Examiner, couldn't that question be clarified? I am not clear whether he means did they discuss the price when they worked out the arrangement on April 15. I think it ought to be specific enough so that we can be sure that he understands it.

By Mr. Wheeler:

Q. Well, let's start on April 15, then. Did you discuss the price with the Pennsylvania?

A. Well, the meeting on April 15, as I thought I testified on direct, was a meeting in which Mr. Bevins of the Pennsylvania and Mr. Marsh were present with representatives of the trustees. There was that discussion. They were all there at the same time. On May 26 I made the offer of one hundred thirty-five without any discussion with the Pennsylvania as to what offer I would make.

Q. Had you made up your own mind in any way as [fol. 111] how high a price you would pay?

A. I never found it necessary to consider above one hundred thirty-five.

Q. Do you know whether Mr. Marsh or any other officer of the Santa Fe had any discussions subsequent to April 15?

A. No. I think there were only the two times, really, April 15 and May 25, and I handled May 25 myself.

Mr. Thomas: I think that is May 26, Mr. Gurley.

The Witness: It is May 26, correct. I correct it.

Exam. Albus: Very well, correct it.

By Mr. Wheeler:

Q. When was the last signature signed, the last signature affixed to the agreements that are contained or attached to your application?

A. You mean with the McNear family?

Q. And the Hanover Bank.

A. Well, the agreement with the McNear family was signed sometime later, I don't know. The Hanover Bank was the same day as the trustees, I think. The exhibits would speak for themselves on that, Mr. Wheeler.

Q. Had you had any discussions with the Pennsylvania with respect to the buying of this additional stock as against the 52 per cent that you earlier were jointly interested in?

The Witness: Read that.

(The last question was read.)

A. Frankly, I don't understand it. I had conversations [fol. 112] with the Pennsylvania about it on May 26 in the afternoon.

Q. What was the substance of those conversations?

A. That I had decided not to stand on the enforceability of the letter, what did they want to do, they wanted to stand on it, and I went ahead and acted on my own.

Q. There was no discussion, then, with respect to the amount of the stock that you would buy?

A. I think I made it quite clear I was going to buy it all. I don't think I missed on that.

Q. With whom were your conversations on May 26, with the Pennsylvania?

A. Mr. Symes.

Q. Is he in agreement with this change to buy all instead of to buy 52 per cent?

A. Well, that particular question was never posed.

Q. Was he in agreement with your buying the stock?

A. He had no objection to it. He was going to stand on the enforceability of the letter.

Q. Mr. Gurley, has the Santa Fe had any other discussions with the Pennsylvania regarding the purchase of stock in any other railroad?

A. Yes.

Q. When were those discussions?

A. Well, I don't recall precisely. It would show up with the sale of the Illinois Northern five or six years ago when [fol. 113] that railroad was purchased.

Q. Any more recent than that?

A. No.

Q. Have you discussed any reciprocal arrangements with the Pennsylvania on routing of traffic if and when you get control of the TP&W?

A. I have not.

Q. Has anybody connected with the Santa Fe?

A. Not that I know of. I don't know, understand, what you mean by "reciprocal interchange of traffic". I frankly don't understand the phrase.

Q. Well, had there been any agreements with respect to the routing of traffic by the Pennsylvania over the TP&W in the event that your application is approved?

A. I think not. Of course, you understand the traffic is routed, not so much by the railroads but by the shippers, you understand that.

Q. No, sir. I thought there was testimony to the contrary in your St. Louis gateway case by Santa Fe witnesses.

A. Might have been talking about the influence of the Santa Fe solicitation.

Q. Yes, sir.

A. But that would be all.

Exam. Albus: We are not going to try the St. Louis gateway case today. We have our hands full as it is.

[fol. 114] By Mr. Wheeler:

Q. Well, has there been any arrangement or agreement or discussion between the Santa Fe and the Pennsylvania with respect to influencing the routing of traffic over the TP&W in the event that your application is approved?

A. I think it is fair to say we have had conversations as to what we might do. We have had more conversations, oddly enough, about what we might do with empty refrigerator cars than anything else. But there has been no agreements or anything of the sort where routing of traffic over the TP&W has been discussed.

Q. Mr. Gurley, could you tell me what percentage of eastbound traffic ever goes on through Lomax over the TP&W and what percentage goes through Chicago?

A. More goes through Chicago. I don't have the precise figures in mind, but of course more goes through Chicago than through Lomax.

Q. By a very substantial margin?

A. Yes, I think that is correct.

Q. Mr. Gurley, does the Santa Fe own any large blocks of stock in carriers outside of the Santa Fe system?

A. No, except we own some stock in a bus company.

Q. But no other railroads?

A. Oh! Yes, we own stock in the Kansas City Terminal, we own stock in the Belt Railway of Chicago, we own stock in a little short line out in California. There might be some [fol. 115] other terminal companies, but that is about all. There are some other terminal companies.

Q. Yes, but outside of terminal companies, the answer would be no.

A. That is correct.

Q. Mr. Gurley, what is the occupation of Mr. Thomas Lamont who is shown as a director of the Santa Fe?

A. He is a banker in New York.

Q. With what banking institution?

A. J. P. Morgan & Company.

Q. Is any officer or director of the Santa Fe in any way connected with the DuPont Company or any of its affiliates or subsidiaries?

A. Is any officer of the Santa Fe connected with the DuPont Company?

Q. Yes. Officer or director.

A. Well, I don't think so. None comes to mind.

Q. You have listed in your application as holding a large block of your stock, one of the large blocks, Mac & Co. That is a nominee, is it not?

A. Yes, that is a nominee.

Q. For whom is that company the nominee?

A. I don't recall.

Q. Who would have that information?

A. I would have it as much as anyone, except I don't have [fol. 116] it in my mind. If it is important and you want it, I will give it to you a little later.

Q. I wonder if you could turn us that information with respect to the nominees shown on page 9 of your application, for the record.

Mr. Thomas: Mr. Wheeler, do you mean all the nominees?

Mr. Wheeler: Yes.

A. I have page 9 in front of me. Mac and Co. of course is related to the Mellon thing. But if you are asking me

for the beneficial stockholders through these nominee accounts, I can't tell you, if that is your question.

By Mr. Wheeler:

Q. You don't have that information?

A. I certainly do not.

Q. What about Shaw & Co.? You have never been told with respect to that?

A. Well, are you talking now about Shaw & Co. in their relation with Morgan or are you talking about who Shaw has this stock for as being a beneficial owner. The latter is what I said I don't know.

Q. What is the former?

A. My recollection is that Shaw & Co. is associated with Morgan. But I must confess that if you want me to—if you will ask me now what you want on page 9, I should be glad to give you all the information that I have available to me on it, which I don't have in my mind at the moment.

[fol. 117] Q. All right, if you will do that.

A. What is it you want?

Q. I would like what information you have with respect to the nominees you have shown on that page.

A. Well, maybe we can get together off the record and find out a little clearer what you want. Frankly, I don't know at the moment.

Q. All right. Do you have any relation with the Mellon National Bank or does the railroad, rather, as a depositor, trustee, transfer agent or anything like that?

A. No.

Q. I believe you show a Mr. Cleveland as a director.

A. That is correct.

Q. Could you tell me his other occupation?

A. He is Chairman of the Board of the Guarantee Trust of New York.

Q. Mr. Gurley, I am not clear from these documents in your application what would happen under the following circumstances. Suppose the Pennsylvania Railroad is able to obtain—when I say "Pennsylvania Railroad", I want to include the Pennsylvania Company because I am never quite clear which is which in this deal—supposing they are able to obtain under the April 15 agreement with

Wilmington Trust, 23,400 shares of the TP&W at $100 a share, what effect would that have on your agreement to sell them 50 per cent of the stock bought by you?

[fol. 118] Mr. Thomas: I wonder if I shouldn't object to that. The contract is written there and it is a legal question as to the interpretation of the contract, it seems to me.

Exam. Albus: I think so, too, but I will permit Mr. Gurley to answer, if he has an answer.

A. Well, let's see if I can put this in layman's language, businessmen's language. If they should succeed in what you describe, they would buy that amount of stock at the hundred dollars a share rather than the one thirty-five. They would pay a hundred thirty-five for the balance, we would pay the one thirty-five for all we get.

By Mr. Wheeler:

Q. Mr. Gurley, turn to Exhibit H-5 for a moment.
A. What page, Mr. Wheeler?
Q. Page 5, the third footnote.
A. The third footnote?
Q. Yes, sir. Now compare that footnote with the note on page 11. Can you tell me why there is a difference in those, why there is a difference in the information shown?
A. The answer to your question, so far as I am concerned, is no.

Mr. Thomas: Mr. Clutz is the man under whose supervision these exhibits were prepared and he can answer that question.

By Mr. Wheeler:

Q. Turn again to page 5, Mr. Gurley, and you will notice there under the first column traffic bridge between AT&SF and PRR, Item C is between Eureka and Effner and [fol. 119] Eureka and Peoria. Will you tell me what the significance of Eureka, the town of Eureka, is in that exhibit.

A. I am trying to find a map here to help me answer that. If you will turn to Exhibit 6, a map, Exhibit 6 of the application, I think I can answer you more clearly.

Q. Yes, sir. I have it.

A. We interchange a little business at Eureka with the TP&W.

Q. Where would that traffic originate?

A. Why, mostly north of Ancona. Do you find Ancona up there?

Q. Yes, sir.

A. Mostly north of there.

Q. Mr. Gurley, do you route any traffic or is any traffic routed over the Santa Fe to Ancona, Ancona to Eureka and then east on the TP&W?

A. Yes, some of it would do that, I think. Are you implying or addressing yourself, does transcontinental traffic come over to Ancona and then back down to Eureka, is that your question?

Q. I didn't want to limit it to transcontinental.

A. There is a difference between the traffic north of Ancona, that is what I am talking about. I am not implying that the traffic comes across from Lomax to Ancona.

Q. I am not clear now. Does any traffic move over your lines north of Lomax to Ancona, from Ancona to Eureka, and thence west to the TP&W?

[fol. 120] A. It would be very unusual and a very rare case. I suppose in the course of a year something of that sort might happen, but it would be a strange situation. Oh, wait a minute. I beg your pardon. There would be some of that for Pekin.

Q. For what, did you say?

A. For Pekin. If you will look at the map there, that would be the only way we could get into Pekin on our line.

Q. Mr. Gurley, refer to page 6 of Exhibit H-5. You have there in the third line "Percent of Interline Traffic". And correct in believing that that should include bridge traffic and not just interline traffic?

Mr. Thomas: Bridge traffic is interline traffic, Mr. Wheeler.

A. Yes, they are synonymous expressions.

Mr. Thomas: I think it will clarify things here if I just point out, all bridge traffic is interline traffic by its very nature. All interline traffic isn't bridge traffic.

Exam. Albus: That is understood.

By Mr. Wheeler:

Q. Now refer to the third column on page 5, under the heading "Cars". Would not those items 17.6 per cent and 39.78 per cent include traffic handled by the M&StL?

A. Mr. Wheeler, I just don't follow. Where are we now? What column are you referring to?

Q. Page 5.

A. Yes, page 5.

[fol. 121] Q. You see, the year ended—column 4.

A. All right.

Q. Do you see those two percentage figures?

A. Twelve eighty-three and seventeen naught six and thirty-nine.

Q. Referring to the 17 and the 39, wouldn't they include traffic handled by the M&StL?

A. I think the answer to that is yes, but I think you had better get that from the man who compiled these figures. I am not sure of my answer on that, Mr. Wheeler. I wouldn't want to be bound by it.

Exam. Albus: What is your answer, Mr. Clutz?

Mr. Clutz: Yes, sir.

Mr. Wheeler: I didn't hear.

The Witness: He said the same thing.

Mr. Thomas: Mr. Examiner, I am afraid we are going to get in a little confusion. This is traffic of the TP&W interchanged with the other roads. The traffic that the TP&W interchanges with the Santa Fe is not likely to move via the M&StL, the traffic moved by the Pennsylvania would include traffic moved by the M&StL.

Mr. Broker: This statement by Mr. Thomas isn't accepted necessarily as a statement of fact, is it, this explanation that he just gave?

Exam. Albus: No. He gave his explanation. You can [fol. 122] bring that out in cross-examination, too.

By Mr. Wheeler:

Q. Mr. Gurley, you are familiar with the Nemo gateway to the TP&W?

A. Reasonably well.

Q. That connects the bridge between your lines and the TP&W through Nemo via the M&StL., is that not correct?

A. That is right.

Q. What is your policy presently with respect to the routing of traffic via the Lomax gateway versus Nemo gateway?

A. Well, it is the same.

Q. Do you have a policy of neutrality as between the two?

A. That is right.

Q. If you acquire control of the TP&W, what will your policy be?

A. It will be the same between those two gateways.

Q. Then Nemo will go on a parity with Chicago, too, then?

A. Then, no, no, no. Now, that isn't what I said. I said we were going to place Lomax on a parity with Chicago. We are going to place Lomax and Nemo on a parity, one with the other, and here again I think you will get along much better with the man who has devoted his life to that solicitation business, Mr. Duffy. He is here to testify on that question.

Mr. Wheeler: I have no further questions.

[fol. 123] Exam. Albus: Mr. Cassell?

Mr. Cassell: Please.

Cross examination.

By Mr. Cassell:

Q. I believe in some of the answers you gave to questions with Mr. Wheeler you said that the Pennsylvania Railroad was quite content and insistent, in fact, in going ahead with its contract for 26 per cent, it would have completed, it felt it had a salaried contract with the trustees.

A. Oh, I don't know that I said quite that. I said they have taken the position they have here, I don't know what they are going to do, that is, if you and I are together.

Q. Well, the Pennsylvania, what I mean to say is as far as you know and your information is that the Pennsylvania

were perfectly willing to go ahead with and complete their contract for 26 per cent?

A. Oh, yes.

Q. If nothing else had interfered?

A. Oh, yes, I think that is so and so would we.

Q. That is my next question. If you thought you had a valid and enforceable contract, you would have gone ahead with your 26 per cent?

A. Yes. We would not have backed away from the April 15 plan.

Q. And at the time you were negotiating with the trustees for your 26 per cent you knew also that the Rock Island had negotiations for a companion 26 per cent, didn't you? [fol. 124] A. No, sir, I did not. I understood that Mr. Farrington went to Mr. Gladson to talk to him about acquiring some interest of it. I think that came up, oh, sometime in about the middle of May.

Q. You didn't know at any time in April or early May of the Rock Island?

A. Of course I wouldn't be too sure of my memory of the precise date. My recollection of it is about the middle of May. It could have been earlier than that. I wouldn't argue with you about that.

Q. It was prior to the time that you entered into the negotiations for the entire stock, wasn't it?

A. Oh, yes.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

By Mr. Cassell:

Q. Mr. Gurley, you made a number of trips to and from Peoria recently, did you not, after this application was underway?

A. Oh, I don't know whether you would call it a number, but I have been here, oh, three or four times, I think.

Q. I have a newspaper report which appeared in the Peoria Journal Star for May 28, 1955, in which I read the following: "Gurley said the Santa Fe will not have any more of a by-pass around Chicago by acquiring the

[fol. 125] T. P. & W. than it has now." You said, "The Santa Fe routes some of its freight on the T. P. & W. tracks now and will continue in about the same amount." Was that a reasonably accurate statement of what you said to the reporter of the Peoria Journal Star on May 28 or thereabouts?

A. I wasn't here at that time. I had this telephone conversation. I was at Washington and was asked to step out of a meeting and asked to respond to this fellow at Peoria and he asked me some questions. I don't recall ever having read the article to which you refer.

Q. That is right, you were in Washington to which it states, is that a reasonably accurate statement of what you said to the reporter?

A. I don't recall much about it. Except the principal thing I recall about it, the thing he seemed to be interested in, what I thought he was interested in, what were we going to do about Russell Coulter, that is the principal thing I recall about the conversation.

Q. Specifically in regard to the statement I will repeat it to you to refresh your recollection. "The Santa Fe will not have any more of a by-pass around Chicago by acquiring the T. P. & W. than it has now." Do you recall that?

A. No, I don't think that would be a correct statement we talked about. I don't recall that at all. I don't mean to say he didn't get right. It is one of those things I don't remember.

Q. "He said the Santa Fe routes some of its freight on [fol. 126] the T. P. & W. tracks now and will continue in about the same amount." Do you remember any such statement as that?

A. No, I don't, and you see, there again you get into the question of Santa Fe routes. As you well know the Santa Fe does not route, neither does the Rock Island, you respect the routing of a shipper.

Q. On July 9—there are quite a lot of articles about this case in the newspapers—

A. My word yes.

Q. (Continuing) —not only in Peoria—there appeared an article in the Peoria Journal Star, and which, among other things, it said, "To the question of whether Peoria

is soon to realize it's long cherished hope of being located on a transcontinental railroad line with direct passenger service to both coasts, both railroad presidents were affable but adamant.

"'Careful consideration,' they said almost in unison, 'will be given to passenger service if the I. C. C. application is approved.'" Do you recall making such a statement?

A. Yes, I remember that conversation. It was held right outside of the door. They asked Mr. Symes and me about the passenger service and would we give it careful consideration. We said we would. I also added it would be unfair if I lead you to believe we had passenger service in mind.

Q. There was a following statement, I am just taking them one at a time, "But both were positive in asserting [fol. 127] that routing of passenger trains through here over the T. P & W. tracks from the Pennsylvania terminal at Effner, Indiana, and onto the Santa Fe at Lomax, Illinois, appears to be—" and then I quote—"I am quoting throughout from the article but this is an inner quote purporting to be from one of you—" 'impractical in the intermediate future.'"

A. I would think that would be a fair appraisal of it. I wouldn't hanker with you on the words.

Q. This not only got into the newspapers here in Peoria and along the line but it also got into the magazine "Trains" edited by David P. Morgan up in Milwaukee, and the same conversation appears in that magazine as appears in the Keokuk Gate City on November 15, 1955, and I am quoting now from the November 15 write-up of the Gate City which is identical, has the same language in it as the magazine "Trains", and this purports to be a quote from an interview with you. "What about transcontinental passenger trains operated via Peoria?". And then the answer purporting to be from you, "'That would be a major job—it would be cruel to hold out any hope now,' said Gurley." Do you remember making any such statement as that?

A. Well, when was that supposed to have been made?

Q. That was on or about November 15 that it appeared in the paper and presumably was made shortly before then.

A. Well, I don't recall making any statements at that time, but I don't get the drift of your question, but I have [fol. 128] never taken the position that we were contemplating passenger service through Peoria and I don't take that position now. Maybe that will clear up what you are working on.

Q. I am just wondering if your expressions of yourself are reasonably accurately reported in the press.

A. I believe I have answered you pretty well.

Q. Is that a reasonably accurate statement?

A. I don't remember making the statement as you quoted at all. In fact, I confess I have not attempted to keep track of what I have said in precise words.

Q. I would assume that is so. But you wouldn't quarrel, would you—

A. (Interrupting) I have no quarrel with what is there at all, even though I don't know whether it is quite accurate, but I haven't any quarrel with you.

Q. Then there followed another sentence purporting to be in the same interview, "Is the much-wanted line up to snuff?" And the reply appearing to be from you said, "'The T. P. & W. is in damned good shape,' affirmed Gurley." Is that a reasonably accurate statement?

A. Yes, I use language like that.

Q. I wasn't so much concerned about the explicative as I was about the other information, Mr. Gurley. You would agree to the rest of it, too, as well as your language?

A. Yes, that is all right.

[fol. 129] Q. Not only were there straight news articles but there were also editorials, more than one, one of them and I have in front of me here, it appeared in the Peoria Journal Star for December 30 1955 these things are getting closer to current dates— among other things the editorial said, "The advantage to Peoria and all shippers on the T. P. & W. of being situated on such a transcontinental route are quite attractive." That is, it was referring to the route of the T. P. & W. in-between the Santa Fe and Pennsylvania. Is that a correct characterization, is that going to be a transcontinental route?

A. Well, I don't know quite how to answer your questions. I don't recall ever having seen that editorial. It is

not my appraisal, it is not my statement.

Q. It doesn't purport to be, Mr. Gurley. I am just wondering if that is an accurate statement.

A. Again, I haven't any quarrel with it. I don't know what it is all about. I am glad they feel kindly towards us.

Q. I think that is apparent.

Mr. Thomas: May I ask, Mr. Cassell, that reference to a transcontinental route didn't have anything to do with passenger service, did it?

Mr. Cassell: That particular one did not.

By Mr. Cassell:

Q. Mr. Gurley, I was much interested in one of the statements you made this morning in answer to Mr. Wheeler's question and again this afternoon, that you considered that [fol. 130] the route of the Pennsylvania, which it now has and as appears more specifically on your Exhibit 4 on page 2, showing a route into Peoria from the east, you said that route was not competitive with the T. P. & W., isn't that right?

A. That route of the Pennsylvania down through Hersey City or Hervey City?

Q. Hervey City, yes.

A. That doesn't look very competitive to me.

Q. Yet in your prepared testimony on page 8, I believe it is, yes, on page 8, when you came to discuss the Rock Island, you said that the Rock Island was competitive with the T. P. & W. for traffic between Keokuk and Peoria.

Referring to this same exhibit again on page 5 where the Rock Island appears, how would traffic have to move to get from Keokuk to Peoria via the Rock Island?

A. From Keokuk itself or through the Keokuk Gateway? Are you originating a car at Keokuk you mean?

Q. Yes, you said it was a competitive route with the P. & W. between Keokuk and Peoria so it would have to originate in Keokuk and get over to Peoria. How would you think that traffic would move?

A. That particular traffic would run over to Eldon.

Q. That is a backhaul, isn't it?

A. That particular thing. Maybe I didn't phrase it well. I was addressing myself—

[fol. 131] Q. (Interrupting) Would you like to withdraw it?

A. If you will allow me to continue, I will try to answer. I was addressing myself, whether I phrased it with accuracy or not, more to traffic passing through Eldon over your other route through Peoria rather than some shipment that originated at Keokuk itself. My judgment wouldn't be there would be such a tremendous amount originated at Keokuk. I think there would be more come through there.

Q. Any traffic coming through Keokuk to Peoria would have to be routed over the T. P. & W., wouldn't it?

A. That is right.

Q. It isn't competitive, it is complementary to the T. P. & W., isn't it?

A. No, no, I am trying to say that the traffic over the Rock Island competitive with the T. P. & W. can come from points west of Eldon down around your north line there, following the Mississippi River there where the line cuts off at Silvis.

Q. So that you think that the route which you mentioned would be through Eldon and up through Silvis and then back down on either one of those lines into Peoria?

A. That is what I was trying to point out, yes, sir.

Q. Do you think that route is any superior to that of the Pennsylvania that you first mentioned?

A. Yes, I would think so.

[fol. 132] Q. The Santa Fe has a route into Peoria today, too, doesn't it?

A. Not that I know of.

Q. Don't you have a line of railroad down into Pekin?

A. Oh, yes.

Q. And isn't Pekin in the Peoria switching district?

A. Well, it may be.

Q. But you don't consider, then, that you are competitive into Peoria today?

A. No. We have to come in here over the P. & P. U., I think it is.

Q. At any rate, as far as the Santa Fe is concerned it doesn't consider that it has a service route or a competitive route into Peoria at the present time?

A. Oh, no, we don't have any route into Peoria.

Exam. Albus: Let the record show a 10 minute recess.

(Short recess.)

Exam. Albus: The hearing will please come to order. We will continue with the cross-examination of Mr. Gurley.

By Mr. Cassell:

Q. Mr. Gurley, you have referred to the fact that you thought that with the ownership as you have contemplated that the Pennsylvania would act as a check on the Santa Fe and the Santa Fe as a check on the Pennsylvania, is that right?

A. That is right.

Q. That is, you think that the Pennsylvania would be a check on you as to what you might do in discriminating as against various gateways on the west end?

fol. 133] A. I think that influence is very definitely there.

Q. Would it make any difference to the Santa Fe as to whether a car went out—I mean as to the Pennsylvania—as to whether a car went out through Lomax or Keokuk?

A. No; I don't know that it would.

Q. Well, the Santa Fe wouldn't be much of a check on that, then, would it—the Pennsylvania? I beg your pardon.

A. You've got me confused.

Q. The Pennsylvania would afford no check on the routing on Keokuk versus Lomax, would it?

A. Why, certainly not, they wouldn't have anything to do with that. That isn't what I said at all. I addressed myself that they'd check the service.

Q. Well, then, you don't believe the Pennsylvania would be effective, then, as a check on the Santa Fe as to its neutrality on various gateways, is that right?

A. No, sir. I say I think they will be.

Q. Well, then, we come back again. My question was as to whether the Pennsylvania would have any interest as to whether traffic moved via Lomax or via Keokuk.

A. I would think not.

Q. Then they have no interest in being a check on the neutrality on those two gateways, have they?

A. Your premise is entirely wrong.

[fol. 134] Q. How?

A. I never said that the Pennsylvania would have any interest in routing of the traffic. I think they would be greatly interested in the service given the shipments.

Q. Well, providing that all the traffic was moving via the Pennsylvania, it doesn't care which route or what the service is so long as it gets the traffic, does it?

A. I think the Pennsylvania is greatly interested in the service that it gets, very much so.

Q. But, at any rate, you didn't mean to imply, then, that the Pennsylvania was any check on the Santa Fe as to neutrality as against gateways on routing?

A. I don't know that I can improve upon what I said. The Santa Fe and the Pennsylvania, in my opinion, would be very watchful upon anything that we might do that would interfere with the traffic to the T. P. & W., the Pennsylvania, on the one hand, and the Santa Fe with its western connections on the other. The routing would be something which would be done by the shipper. The service would be given by the railroad.

Q. Don't you have a traffic department to influence the routing of shipments?

A. Oh, yes, they certainly influence.

Q. Aren't they effective?

A. Why, sometimes not as much as I'd like, but reasonably so.

Q. And the T. P. & W. has a solicitation force, too, doesn't it?

[fol. 135] A. Yes, sir.

Q. And it is effective in securing traffic, is it not?

A. That is correct.

Q. In fact, you said that the traffic which it now enjoys through the Lomax Gateway is primarily through its efforts, is it not?

A. I think that is correct.

Q. The Rock Island is a competitor of the Santa Fe between Kansas City and Chicago, isn't it?

A. That's correct.

Q. In fact, it is competitive, highly competitive, with the Santa Fe throughout its entire system, isn't it?

A. By and large, I think that is correct, between the cities, you know by and large.

Q. On a general over-all basis?

A. That is right.

Q. Santa Fe has the short line between Kansas City and Chicago, doesn't it?

A. I think that is correct.

Q. And as you said in answer to Mr. Wheeler, as traffic moves through the Chicago Gateway it's competitive with the T. P. & W. today?

A. That's right.

Q. And it competes with the Rock Island?

A. That's right.

Q. Now, the Santa Fe doesn't enjoy any revenue on [fol. 136] traffic that moves through Keokuk, does it?

Mr. Thomas: You mean today, Mr. Cassell?

Mr. Cassell: Today.

By Mr. Cassell:

Q. Unless it may have been a participating carrier west of Kansas City?

A. With that addition I can say yes.

Q. So the Keokuk and Lomax Gateways are competitive?

A. Yes, I think that is correct.

Q. Wouldn't you think that in your system of checks and balances that in order to assure neutrality that the Rock Island would be a good check on the Santa Fe and the Santa Fe on the Rock Island, Keokuk versus Lomax?

A. No, I don't think so. I have stated my position and I will repeat it, that I think when you evaluate the entire situation, you add up the benefits and advantages and this and that and the other, then you get into this diluted ownership—

Q. (Interrupting) I didn't ask about that, Mr. Gurley, if you don't mind. I was just asking about the checks and balances. Wouldn't the Santa Fe be a check on the Rock Island and the Rock Island on the Santa Fe as to the neutrality of those two gateways?

A. Well, I don't know about that. I think each of us would strive for our own gateway, of course, and to that extent we may say yes.

Q. And the two railroads would by checkmating each other keep the T. P. & W. neutral as to both gateways?

[fol. 137] A. Yes, we will say that the more people you get in the more neutral you become.

Q. Mr. Gurley, on your prepared testimony on page 2, you said that "this is an appropriate place to say that while constructive suggestions from a board should be helpful, too many viewpoints can be bothersome and 'too many cooks can spoil the broth.'" From that I take it, then, that you would have only two points of view, that is, of the Santa Fe and the Pennsylvania, if your acquisition is approved in its present form?

A. We would have only the viewpoints of those two railroads on the board if this application is approved, yes, sir.

Q. How many directors were you going to have?

A. Eleven, I think it was.

Q. And how many directors was the Santa Fe going to put on?

A. Two.

Q. And the Pennsylvania?

A. Two.

Q. That is four. What becomes of the viewpoint of all those other directors, are they the same as the Santa Fe and Pennsylvania?

A. No, oh, no.

Q. How many cooks do you have then?

A. You will have 11 directors under the plan we speak of. There would be two railroads represented on the board, six outside business people, and the viewpoints of the two [fol. 138] railroads would be the viewpoints of non-competitive railroads, end to end railroad, it might be called, for a lack of a better way to express it, you would have the viewpoint of the independent businessmen on there.

Q. You have some independent businessmen on your own Board of Directors, don't you?

A. Yes, sir.

Q. So there is nothing unusual about that, is there?

A. No, sir.

Q. That is quite common in the railroad industry?

A. Very good.

Q. If another railroad were cut in on the ownership and the Board of Directors would remain constant, and there doesn't seem to be any proposal here to change the board on the part of anybody, the new participant would just put its directors on in addition to yours in place of one of those directors you call independent, wouldn't they?

A. There has not only been no proposal here to change it, there has been no proposal to do it, either. I have no idea what would happen if all you railroads got in on it.

Q. Suppose it did remain constant as at the present time, the same number of directors, you would merely institute a director or two directors for the additional railroad or railroads, as the case may be, and you'd have the same number of directors, wouldn't you?

[fol. 139] A. If I follow what you mean, that you would take two of these independent businessmen off and put two railroad men on, is that what you mean?

Q. Two additional railroad men, yes.

A. That is what I would think would not be a good board.

Q. But you would still have just the same number of viewpoints, wouldn't you?

A. As I said, you would come to the table with conflicting interests, and, of course, I think there being no argument about that.

Q. You mean you would have two lines that were in competition on the board?

A. That is correct.

Q. One of the statements you made in a reply to a question of Mr. Wheeler's, while you had been discussing some other things, you did say that you had conversations with the Pennsylvania as to what you might do with them as to refrigerator cars. Would you mind telling what that discussion was with regard to empty refrigerator cars?

A. It was a tentative discussion as to whether refrigerator cars westbound, S. R. D.'s particularly, how advantageous it would be to bring them over the T. P. & W. rather than through Chicago. It was never run out to anything other than a tentative discussion.

Q. So in your tentative discussion, at least, you were con-
[fol. 140] sidering using the T. P. & W. for the return movement of the empties?

A. Yes, that was given consideration. There is some timesaving in it.

[fol. 141] Q. The Santa Fe does not have to buy into the TP&W nor to preserve any of the present routes, does it?

A. I don't know.

Q. Well, assuming that the TP&W is to remain neutral, you have no reason to believe that any of the routing is going to be changed, is it?

A. Well, of course, I don't know whether the TP&W is going to remain neutral or what is going to happen. I don't know how to answer your question.

Q. Was your motive in buying the—you can answer this, I believe—was your motive in buying the TP&W, buying into control, in order to preserve present routes and gateways?

A. I don't know that the preservation of existing routes and gateways would necessarily be the number one consideration, but certainly the preservation of existing routes and channels was an implicit part of our plan.

Q. You had no intimation, did you, that the TP&W was going to change any of the routes and gateways, did you?

A. I had no intimation one way or the other what would happen to the TP&W if the trustees decided to sell it.

Q. Are there any burdensome leases to which the Santa Fe is subjected to at the present time that you would be able to do away with if this acquisition is approved?

A. Why, I can't think of any.

Q. And I think in this connection it is rather obvious the [fol. 142] Santa Fe isn't losing any money at the present time or incurring any financial stress that will be carried by this purchase, isn't it?

A. If we don't need cure, we need assistance.

Q. Just like everybody else, you'd like more money, you never have enough?

A. I guess that is right.

Q. The Santa Fe is more fortunate than some of the others, isn't it?

A. I don't know. I showed you some figures this morning where we weren't doing as well as some of the others.

Q. Is the Santa Fe losing any money on any particular operation that will be cured as a result of this acquisition?

A. Well, we are operating at a profit, of course. I don't know that this will change any loss that we may have into a profit. I am not certain I apprehend your question.

Q. I mean you don't have any operating problem in the way of bridges or bad trackage or routes that you are going to eliminate by virtue of this?

A. No, the principal thing it would do would be the Chicago congestion.

Q. Now, the T. P. & W. has never been a part of the Santa Fe System, either as a subsidiary or otherwise, has it?

A. I think that is correct.

Q. The territories served by the T. P. & W. has never been [fol. 143] Santa Fe territory, has it?

A. Well, if by Santa Fe territory you mean the Santa Fe tariffs have been in there as a direct application, the answer, of course, to that is no.

Q. You don't have any line of railroad that operates across the state of Illinois serving the same towns that T. P. & W. does, do you.

A. By and large that is correct. We do get together at Eureka over here but by and large the answer is no.

Q. You only touch at the common point of Lomax and Eureka?

A. I think that is correct.

Q. And then where you go out on down to Pekin and some little junction point, it isn't a habited point, it is just a junction, isn't that correct?

A. I think that is correct.

Q. And the Santa Fe is in no way operating in any shape or form the T. P. & W. today, is it?

A. No, sir.

Q. The T. P. & W. is efficiently operated today, isn't it?

A. I think so. I think they get along all right.

Q. Do you approve of their policies?

A. By and large, yes.

Q. It isn't a subsidiary that you are unifying into your system, is it?

A. No, it is not proposed to do that.

[fol. 144] Q. Not only is the T. P. & W. being operated profitably today, but so far as you can foresee it can con-

tinue to be operated profitably separate from the Pennsylvania and the Santa Fe, couldn't it?

A. Oh, I think under good management it could, yes. I think it demonstrated that.

Q. Is there any need in the T. P. & W. today to have the backing of the Santa Fe or the Pennsylvania to keep it solvent?

A. Well, it stayed solvent without the ownership of the Pennsylvania and the Santa Fe. But if you are saying, could they get along without the backing, I don't think they could get along without the backing of the Santa Fe and backing—

Q. (Interrupting) I mean your financial backing as it will be available to it as a result of its transaction. They are getting along all right today on their own, aren't they?

A. They are getting along all right. When you use the word backing and financial backing I think the Santa Fe and Pennsylvania are pretty good backers for that T. P. & W.

Q. I think they would be for anybody. There is no sign of the T. P. & W. deteriorating, is there?

A. I don't think so.

Q. As a matter of fact, it has been improving?

A. I think so. It must be improving.

Q. Haven't its properties at the present time been sufficient for handling of its traffic?

[fol. 145] A. Reasonably so. I think you can always make some improvements here and there.

Q. Your own railroad, which is one of the best in the country, isn't completely improved, is it?

A. No, sir, and probably never will be.

Q. As a matter of fact, the present properties and management are capable of handling any foreseeable traffic, aren't they?

A. I think that is correct.

Q. There is no need for any particular additions and betterments that they can't cope with, is there?

A. I don't know of any.

Q. Are there any additional facilities that will be made available to the T. P. & W. as a result of this purchase which they couldn't otherwise acquire or obtain by themselves?

A. I think there are some advantages that would accrue to them in a purchase in things of that kind, certain things, certain terms, which they would have under this application of the Pennsylvania and Santa Fe. I think that certain benefits would accrue to them.

Q. I am not sure that I understood part of your answer. Do you mean to say that you are going to have joint purchases with the T. P. & W.?

A. I don't know what we would do about joint purchases. I don't anticipate that. I do find where you have a community of interest that there is a benefit flows in purchases. [fol. 146] Q. How is that?

A. Why, it just works that way.

Q. I don't know about those things. Would you explain to me a little more, please?

A. Well, I have the general idea that when you are purchasing from people in the volume that the Pennsylvania and Santa Fe purchases that you may get a little more favorable consideration than when you are purchasing in the T. P. & W. quantities. I could be wrong about that, but I have that general opinion the way purchases work.

Q. If the T. P. & W. continued to operate apart from the Pennsylvania and the Santa Fe, do you think any of its existing services would be in danger? A. Assuming continued friendly relations between Pennsylvania and Santa Fe and T. P. & W. I would think not.

Q. Do you think that the inclusion of the Rock Island would endanger any of its present services?

A. I don't know. I think inclusion of the Rock Island, it is the undesirable thing I have called dilution.

Q. How would that endanger the services of the T. P. & W.?

A. Just the same as the dead hand of neutrality is apt to endanger any company.

Q. Then if the Rock Island were substituted for the Santa Fe, would that be all right, then?

A. It would be all right from the standpoint of avoiding [fol. 147] the dilution.

Q. And would preserve the railroad all right then?

A. Not so well, of course.

Q. I thought the Pennsylvania was the standard railroad of—

A. Well, Jim and I argue about that a little.

[fol. 148] Q. Is there any danger of bad relations between the T. P. & W. or the T. P. & W. and the Santa Fe or the Pennsylvania if this purchase is not approved?

A. I really couldn't answer that.

Q. Assuming present management?

A. Well, I just can't answer that.

Q. You don't know any reason for it?

A. No. I wouldn't look forward to it but it should not be disregarded.

Q. That is the same hazard you have with any railroad at any time, no one can foretell, but so far as you can see there is no imminent danger, is there?

A. I don't see anything of the line you mentioned, no, I don't see it.

Q. All right. Now, under your proposal this is to be a completely independent operation, is that right?

A. Yes, that's what we propose.

Q. With a completely separate operating force?

A. Correct.

Q. Then there won't be any operating economies, will there?

A. There will be only such operating economies as the suggestion that the Pennsylvania and Santa Fe might bring to the management as I pointed out. If we are going to lay off a president or vice-president or something, the answer is no.

Q. The only economies they will make are the efficiencies [fol. 149] they will make themselves, isn't that right?

A. No, that isn't what I have in mind. I think there are some economies that can come in the consolidation that are not in the present-day operation, although I tried to say this morning we have made no specific study along that line, rather we believe that it's a good going road. We believe we can help it go along and make it a little better.

Q. That is merely by giving them ideas, isn't that right?

A. That might be one way to characterize it.

Q. If they just had the experience you have had they might think of it themselves?

A. They might think of it themselves. We might get some

ideas from them. They don't run all one way, you know. I don't take that position.

Q. Then, of course, you intend to keep the present management, is that right?

A. Yes, sir.

Q. And it's to be independent of any particular influence of its owners?

A. Well, I don't know as you can quite put it that way. It's to be operated as an independent railroad. That's about as good a way as I know how to put it.

Q. You mean it will continue to have a separate corporate existence?

[fol. 150] A. A separate corporate existence, separate soliciting forces, free to solicit and handle its business to its best advantages.

Q. But I am not sure that I understand you. The Santa Fe and the Pennsylvania directors, are they to exercise any influence on the management?

A. I would think so.

Q. Is it necessary to acquire the T. P. & W. to continue any present operating agreements?

A. What do you mean "operating agreements"?

Q. Well, trackage rights or anything of that kind.

A. I think not.

Q. Well, the inclusion of the Rock Island, then, wouldn't affect any of your operating agreements as far as you can see or anything of that kind, would it?

A. I know of no operating agreements of the kind you are talking about at all, really.

Q. You don't have any burdensome trackage agreements with the T. P. & W. today, do you?

A. Any burdensome trackage agreements?

Q. Yes.

A. No.

Q. Are any trackage agreements contemplated as a result of this purchase?

A. Oh, I don't know that there are. They might come but there are none contemplated.

[fol. 151] Q. Where would they come?

A. I don't know. I say there is none contemplated.

Q. Well, can you foresee any?

A. Oh, you could foresee as you look towards the expedition of transportation and making some assumptions of what you might be able to work out with labor organizations and things of that kind, you could see some sense, I think, in running crews to Shopton rather than stopping at Lomax. I think those things will shape up as something worth exploring, but that's about all one could say now because you'd have to feel your around to see what you could do.

Q. Well, inclusion of the Rock Island at the present time that wouldn't make any difference as far as the operating agreements are concerned or arrangements, would it?

A. I would not be too sure about that.

Q. Why wouldn't you?

A. Well, I don't think you would be too enthused about some advantages coming through the interchange between Shopton and Effner, that is, beneficial to the Santa Fe. I don't think you would come to any conclusion like that.

Q. How about similar ones to Keokuk, would you be enthused about those?

A. What would you have in mind? You have asked me, let's turn it around.

Exam. Albus: You just answer him, he will ask the [fol. 172] The Witness: Well, I guess you are right about that.

A. Well, frankly, I don't know what you have in mind at Keokuk.

By Mr. Cassell:

Q. I don't know what you have in mind at Lomax either. But there were advantages which you said there might be at Lomax, if there were similar advantages at Keokuk wouldn't you get them with the same enthusiasm that you think the Rock Island would at Lomax?

A. Possibly would.

Q. As a matter of fact, you would?

A. Possibly. That is where I say we get into this conflicting viewpoint.

Q. Are any particular changes in service which is now being provided by the T. P. & W. contemplated by the Santa Fe and Pennsylvania if this—

A. No, I think we have no particular changes in mind, not at the moment.

Q. I can't see, then, if the Rock Island came in with the same position you have as to preserving the neutrality and the independence of the T. P. & W. what difference it would make, if the Rock Island came in. Would it make a difference?

A. Why, I think it would. I have said before I think people in the company are apt to stop good forward looking movements. Now, you asked me what I have in mind to do. I haven't made up my mind what to do or what to advise to do if we get control.

Q. You don't think the Rock Island would be progessive, [fol. 153] then, and the Santa Fe would?

A. I didn't say that.

Exam. Albus: No, I don't think he said that.

By Mr. Cassell:

Q. This is to be continued as a separate unit, there won't be any accounting economies, will there?

A. We haven't planned any.

Q. Well, do you think there will be?

A. I say we hadn't planned any. That represents my thinking.

Q. Do you suppose you will get around to that?

A. I don't know.

Q. Now, I take it from your previous answers that since the T. P. & W. is to be left in its present form there won't be any transportation available to the area served by the T. P. & W. that isn't presently available, isn't that right?

A. I think that's right. We are not proposing any extensions of the T. P. & W.

Q. So that whatever service they have today they will have tomorrow?

A. That is correct, they will serve the same territory.

Q. And from the same reasons you have given before you don't have any plans for eliminating duplicating departments or organizations?

A. We do not.

Q. So there is no economy, then, to be derived from the proposal?

A. We are not proposing any changes in any economies [fol. 153-A] other than the ones that would come gradually from what we believe would be some improvement in the administrative level.

Q. There isn't any possibility of any joint use of any stations anywhere, is there, sir?

A. None come to my mind now.

Q. Will the proposed acquisition eliminate any duplication of capital?

A. I don't see any.

Q. I am sorry if I keep repeating it, but couldn't you leave the T. P. & W. alone with the Rock Island just as well as you leave it alone with the Santa Fe and Pennsylvania?

A. In so far as the duplication of capital is concerned, I think the answer is yes.

Q. The same is true of the services and the—

A. (Interrupting) Well, now, of course, I don't agree with that.

Q. I meant services to the public.

A. I say I don't agree with that.

Q. Wouldn't you under your system of checks and balances and the votes which you were exercise preserve any service which the Rock Island might wish to eliminate?

A. I think the answer to that is no.

Q. You wouldn't?

A. No, I think not.

Q. Why wouldn't you?

A. Well, because you now get into the same, the same as [fol. 154] I have been discussing a while ago, you get into what I consider to be the effects of a railroad such as this on the so-called dilution of ownership.

Q. You would have the same number of directors and votes available to you as the Rock Island, wouldn't you?

A. And the Rock Island would have the same as we.

Q. So if the Rock Island made any proposal you didn't like, you could neutralize it, couldn't you?

A. And the Rock Island could do the same and I don't like this neutralization business.

Q. Will there be any savings in per diem or car mileage charges as a result of this?

A. Oh, I hadn't contemplated that would be much of a factor. Conceivably this movement of cars through here rather than through Chicago to make contribution to that. I have not prepared any estimates on it.

Q. Are your public relations to be handled jointly in the future?

A. No, I have no desire to take over any department of the T. P. & W.

Q. Is the proposal to give the towns served by the T. P. & W. a trunkline service they don't have today?

A. No, I don't know of any plans of a trunkline. I don't know just what that expression would mean. We do not anticipate running Santa Fe trains over the T. P. & W. if you are identifying us as a trunkline as distinguished from the T. P. & W.

[fol. 155] Q. Well, then, the service over the T. P. & W. is going to remain much as it is today.

A. It is going to remain T. P. & W. service.

Q. Then in so far as any one man have had the idea that new trunkline service was to come in as a result of this acquisition, they were misinformed, is that right?

A. No, I don't know whether that is right or not. I don't know whether anyone has such an impression and I don't know how—

Q. (Interrupting) If they did have that impression, they would be misinformed?

A. Not necessarily. They might have misinterpreted it, there is a sharp difference there, you know. Are you implying—pardon me, go ahead.

Q. I am not questioning anyone's veracity or anything. But I am misinformed, in the state of mistaken, shall we say, they are mistaken if they had that impression.

Mr. Thomas: Isn't this pretty much in the nature of assumptions?

Exam. Albus: Do you understand the question, Mr. Gurley?

The Witness: I understand the language, but I don't understand what it means.

By Mr. Cassell:

Q. I sure don't understand your answer, then.

Exam. Albus: Reframe the question, then.

By Mr. Cassell:

Q. If any of the people who are currently being served—first of all, you answered me there was going to be [fol. 156] no new trunkline service, I understood you correctly on that, didn't I?

A. There is going to be no change in the fact that all the service over the T. P. & W. will be given as T. P. & W. service. Now, whether you call that trunkline service or not, I don't know.

Q. But it's the same service they've got today?

A. It may be, but it will be an improved service, but it will be given by the T. P. & W.

Q. Is there any reason why the T. P. & W. with its own resources could give the same improvements?

A. I know of no reason why they couldn't.

Q. So so far as the acquisition is concerned, if it is approved, the service will remain T. P. & W. service just as if is today?

A. It will remain T. P. & W. service. It may not be the same as today.

Q. Well, of course, as you have said, they may make improvements of their own?

A. Certainly they may.

Q. And any that might be made would be of the kind they could make themselves?

A. I should think so. I don't question their ability to do it.

Q. If, although I know you don't like this dilution idea, but isn't it possible that the Rock Island might be able to contribute some ideas to the furtherance of the T. P. & W. system if it were—

[fol. 157] A. (Interrupting) The Rock Island is a very good railroad, I don't doubt that.

Q. But couldn't we contribute to the beneficial ideas for the T. P. & W.?

A. Well, I will say that I think you could make some good suggestions, of course, you are a capable outfit, but I still get back, you just don't want too many suggestions on one property.

Q. Has that always been your opinion, Mr. Gurley?

A. I don't recall ever having had another one.

Q. You have had other opinions but I mean about this particular matter?

A. I am addressing myself to that.

Q. Will there be any single line rates if this acquisition is approved?

A. I think not, but direct that to Duffy, if you don't mind, it is a little more down his technical line than mine.

Q. All right. Would the shippers presently served by the T. P. & W. have access to any markets that are not now accessible to them as a result of this purchase?

A. No, I would think not.

Q. I think the finances of the T. P. & W. at the present time are sufficiently strong that it could survive any foreseeable disaster, such as a bad wreck or a fire or a washout [fol. 158] and continue in operation, aren't they?

A. Well, I doubt that they could afford to carry on without some insurance.

Q. Insurance, did you say?

A. Yes.

Q. That is available to them, isn't it?

A. Oh, truly.

Q. They don't need the Santa Fe or the Pennsylvania in order to procure insurance, do they?

A. I think not.

Q. Well, you eliminate or the Pennsylvania so far as you know eliminate any services as a result of this acquisition?

A. No, we don't plan on eliminating any services.

Q. Will there be the obviation of any capital expenditures so far as you know now as a result of this acquisition?

A. I know of none.

Q. Have you been experiencing any particular delays at interchange points that this will eliminate?

A. No, we have been very well treated, very well handled I think, as I said earlier, that there are some prospects of this through crew business, but I must repeat that you can't be too sure of yourself on that.

Q. There will not be available to the shipping public any more direct routes as the result of this acquisition than exists today, will there?

[fol. 159] A. That is correct.

Q. Do you plan to retain the present corporate machinery in so far as the charter and by-laws of the T. P & W. are concerned?

A. No, not entirely. We intend to keep the same corporate structure but the matter of the Board of Directors will require some changes in their by-laws. Whether it requires a change in their charter, frankly, I don't know, but it would require, I am sure, a change in their by-laws.

[fol. 160] Q. Would there be any change—the only changes you would make, then, I take it, are as to—what kind of changes would be required?

A. Well, I don't know. We looked into it. I think that you can not make the board of directors under the present by-laws of the T. P. & W. under this proposal we have to 2216. I think that takes a change in the by-laws.

Q. So that's the only change you have in mind?

A. That is the only thing I have in mind now. That is the only thing I have encountered as we have gone along with this.

Q. You don't perceive the need of anything else?

A. No, I do not.

Q. Now, you don't need the T. P. & W. ownership that you contemplate in order to place the Santa Fe or the Pennsylvania on a parity in any way with the Rock Island, do you?

Mr. Thomas: This is rather cumulative. I object to it. We have gone into this so much.

Exam. Albus: The objection is overruled.

Answer the question, please.

Read the question, please.

(Question read.)

A. Well, I don't know quite how to answer that. The

Pennsylvania and the Santa Fe are both good railroads, and so is the Rock Island. I should think that all of us would be able to get along pretty well together. I don't [fol. 161] know quite what you mean by entirety?

By Mr. Cassell:

Q. I meant as competitors, you aren't suffering any disability today as against the Rock Island that will be cured as a result of this, are you?

A. Oh, I don't think so. The Rock Island is our competitor but we don't have any quarrel with that.

Q. You have no particular disadvantage against the Rock Island where you need to fit this in in order to cure it, do you?

A. We hadn't approached it at that level of mind. I think the answer is no.

Q. Is yes what?

A. I say I think the answer to your question is no.

Q. You don't need it.

A. Well, I still don't understand quite what we are talking about.

Q. For instance, you have the short line between Kansas City and Chicago today, don't you?

A. That is right.

Q. You are considerably shorter than the Rock Island?

A. That is right.

Q. So you don't need it to help out on that score?

A. Oh, no, it wouldn't affect that movement at all.

Q. Nor are there any other operating conditions or traffic conditions where you are at a disadvantage as against the Rock Island today that this will enable you to meet? [fol. 162] A. Well, I don't know how to answer that, really.

Q. You would serve here in Peoria and we would come into Peoria in a sense as a half owner, so to that extent we would be improved and improve our parity, if that is the way to phrase it?

A. I want to make it clear the Santa Fe doesn't come into Peoria, but we would have an interest in a railroad in Peoria.

Q. Now, this is in a sense repetitive, but I want to be sure about it. The action isn't necessary to standardize the T. P. & W. or to effect grades and curvatures to make it a satisfactory part of a through line, is it?

A. I don't think so.

Q. You don't need the T. P. & W. in order to avoid any relocations, do you?

A. No, I don't know whether it can be done, no.

Q. Is the T. P. & W. facing any financing which it needs your control in order to facilitate?

A. No, I think the T. P. & W. should be able to finance any improvements which I know about.

Q. At the present time you do not contemplate and the purchase is not made for the purpose of reducing any transportation costs, is it?

A. I think the answer to that is no. I keep repeating that exception of what might work out on the crew business.

Q. The Santa Fe did not build east of Kansas City until I believe the year was 1888, isn't that right?

[fol. 163] A. '87 or '88.

Q. And wasn't it the last major trunk line railroad to make a Chicago entrance?

A. I think that is correct.

Q. And it was similarly the last line to make an extension or complete its trackage between Chicago and Kansas City?

A. I think that's right with the possible exception of the Great Western. I am not so clear about my memory on that.

Q. Robert A. Robinson was your chief engineer at the time you made your eastern extension from Kansas City to Chicago, is that right?

A. I don't know.

Q. From your general knowledge it is a fact, isn't it, that all of the major cities presently in existence between Chicago and Kansas City were in existence at the time you extended eastward. Now, I have in mind such towns as Peoria and, well, Fort Madison, Streeter, Galesburg, Keokuk, Joliet, all of those towns were in existence at the time your railroad extended east from Kansas City, weren't they?

A. I think that is correct.

Q. As a matter of fact, these river towns such as Keokuk, Fort Madison and Peoria are some of the oldest towns in the Middle West, aren't they?

A. They have been here quite a while, I will agree with you on that.

[fol. 164] Q. And a town like Peoria was a very important town back in those days, around 1887 and '88?

A. It is a pretty important town yet.

Q. I have conceived that, but I mean even in those days it was—

A. (Interrupting) I think so.

Q. In fact, one of the early days it was one of the big towns in the Middle West, wasn't it?

A. I think that is right.

Q. I have here a book which is entitled "Santa Fe, The Railroad that built an Empire" and was written by James Marshall and published by Random House and copyrighted in 1945. On page 202 I find a statement to the effect that even today the line which you built east from Kansas City gives the Santa Fe the shortest and fastest route between the Missouri River and Lake Michigan. That is a correct statement, isn't it?

A. Yes, the shortest route. I don't know that it is any faster than the new line of the Burlington.

Q. Now, this is one of the other statements I find in there, on the same page, and I am quoting now, "Robinson took a ruler and drew a straight line between Kansas City and Chicago. That was what he wanted, and he almost got it by warning all of his locators not to plan any curves they couldn't account for." That is pretty well how the railroad was built, isn't it, it is a very straight railroad and you get your short line?

A. I would say there is a bit of romancing in that lan-[fol. 165] guage when it comes to certain curves.

Q. As railroads go, though, that is pretty much so, though, isn't it?

A. Well, it is a short line. We have some curves across Missouri we are whittling away on to get rid of.

Q. And on the same page I find, "In the Santa Fe case the straight line proved profitable because most of its

traffic was through haul, anyway and other roads had to base their tariffs on Santa Fe Mileage, although having to haul passenger freight more miles between Kansas City and Chicago." Is that right?

A. Well, I would say the mileage is right. I can't quite subscribe to the balance of that.

Q. Well, weren't the other roads forced to meet your competition?

A. I wouldn't know nor I wouldn't know what the situation was.

Q. It is still true today, isn't it?

A. Well, I don't know. W don't set all the rates between Chicago and Kansas City.

Q. But you still have the short mileage?

A. Oh, we still have the short mileage.

Q. Is there any reason so far as you know now why the Santa Fe couldn't have come east through Keokuk and Peoria in 1887 or '88 if it had chosen to rather than the route it did take?

A. Oh, I simply couldn't answer that question.

Q. You don't know?

A. No, I don't know. I can tell you that very quickly, I [fol. 166] don't know one way or the other.

Q. Well, you have been over—certainly, there was no I.C.C. control in those days?

A. No what?

Q. No. I.C.C. control.

A. I think that came in in 1887, but there was no control over new construction.

Q. Yes, that is what I meant to say, there was no control over new construction at that time?

A. Yes, sir.

Q. So far as the Commission is concerned you could have chosen any route you wanted to?

A. Well, there wasn't any Commission at that time.

Q. Now, you have been over the line between here and Keokuk, haven't you?

A. Yes, sir.

Q. You have seen the physical layout?

A. Yes, sir.

Q. And you haven't seen anything there that would indicate to you that it wasn't physically possible for you to come east through Keokuk and Peoria?

A. Oh, I think from an engineering standpoint almost anything is feasible, or possible, rather, it may not be feasible. From an engineering standpoint you could build a railroad almost anyplace you wanted to.

[fol. 167] Q. There is nothing even unfeasible about that route, is there?

A. I don't know.

Q. You have just been over it, haven't you, and you have been over it on a railroad?

Exam. Albus: The answer is he doesn't know.

A. I don't know whether it would have been feasible to build a railroad down to Peoria or not, I just don't know.

Exam. Albus: All right, that is the answer.

By Mr. Cassell:

Q. Do you know when the T. P. & W. was built between Peoria and Keokuk?

A. Between Peoria and Keokuk?

Q. Yes, sir.

A. Oh, I think it goes back to the '60's, but I am not too sure of myself on that.

Q. If it was possible for the T. P. & W. or its predecessors to do it wouldn't it have been possible for the Santa Fe?

A. I don't know. You are asking me for constructions of before I was born. I don't know, and I have never given it any thought.

Q. You have a great deal of familiarity with railroad construction problems, don't you, in your present capacity?

A. Yes.

Q. And you can look at a piece of ground and see whether or not it is possible to build a railroad over it in a general way, can't you?

Exam. Albus: He has already said it was possible from [fol. 168] an engineering standpoint but he doesn't know whether this particular line would be feasible.

The Witness: That is exactly what I said.

Mr. Cassell: That is all I have, except I would like to make this reservation the same as Mr. Wheeler did, in Mr. Gurley's direct, he made a number of references to items himself and then deferred to Mr. Duffy. I would like to have the same consideration, that if these points are not completely covered by Mr. Duffy we may recall Mr. Gurley.

Exam. Albus: I have talked to Mr. Gurley about that and he assures me that he will be available until Friday.

Isn't that correct, Mr. Gurley?

The Witness: That is correct.

Exam. Albus: If these things can't be cleared up by then, I am not going to hold him over next week.

Mr. Cassell: With that understanding we still have a chance to do some straightening.

Exam. Albus: Your reservation is still good.

Mr. Broker.

[fol. 169] Cross examination.

By Mr. Broker:

Q. Mr. Gurley, when did you decide on the change of traffic policy to put Lomax on a parity with Chicago?

A. Well, since we have embarked upon this plan which is now before the Commission.

Q. Well, do you mean when you first became interested in the property, after you filed the application, can you pinpoint it?

A. No, I don't know as we can. We naturally gave consideration to this thing as we went along. It was a process of evolution. I don't think I could pinpoint it. Naturally, it was, as you probably would surmise around your own place, you talk around a lot. I don't believe I can pinpoint it for you.

Q. Was it at about the time you and the Pennsylvania agreed to buy 52 per cent or was it subsequent?

A. No, it was subsequent to that. It was subsequent to that. I am pretty sure we finally straightened out on the parity it was later than that.

Q. Did the Pennsylvania participate in that position?

A. No, we decided that ourselves.

Q. Do you think the change in policy will be effective and bring results?

A. Yes, sir.

Q. So that by favoring or not favoring a point, then you feel a railroad can influence traffic movement?

A. Oh, I think the traffic solicitor can have the effect [fol. 170] upon traffic movement, yes, sir. They can't control it, as I have said several times, but they can influence.

Q. And then with an interest in the T. P. & W., of course, you will be interested in seeing that prosper, won't you?

A. Yes, sir.

Q. And to see if it gets as much revenue as possible of any traffic that it handles, isn't that true?

A. Well, let's see if we understand each other, to see that it does. They would do their own seeing, they would run their own show.

Q. To do your utmost, let's put it that way.

A. No, I don't think I could go that because our utmost could really be quite tremendous.

Q. Well, then, you are not putting your utmost into the T. P. & W.?

A. No, we are not putting our utmost in. We are putting it in on a parity? You asked me if we put our utmost in, we'd put it in as number one in preference to everything.

Q. I see. Well, you will be interested in such traffic that is routed via Lomax T. P. & W., you will be interested in the T. P. & W. in getting as much revenue out of that as possible?

A. Oh, undoubtedly.

Q. Keeping away from the so-called efficieney point for the moment, did I understand you to testify that the more parties come in the more neutral the railroad will be?

[fol. 171] A. I have that opinion, yes, sir.

Q. But you don't consider such neutrality as necessarily desirable, do you?

A. No, I don't consider neutrality in management to be a desirable thing. Now, let's see what we understand neutrality to mean. I realize you must be neutral in connection with gateways and things of that sort and I have no desire to change that. Maybe neutral may not be the good

word but I think when you get one railroad, oh, who votes one way and blocks another, that sort of neutrality is the thing I object to in a railroad, and in the case of the T. P. & W. in this particular case.

Q. We are back to the efficieney, I see. Your thought is that with this dilution of the railroad too many suggestions are offered and efficieney is lessened?

A. I think that is correct.

Q. Don't you expect these public directors to offer suggestions in addition to those made by your representatives?

A. Yes, I do.

Q. What is the difference?

A. Let me tell you what I think about those directors. I should think that if the railroad people know their business and are fair and square they are going to bring to the board what I would characterize as the technique. I would expect these public people to be more alert to the interests of the line than I would to the actual technique of manag- [fol. 172] ing the railroad. I would expect most of the advice on the railroad technique to come from the railroad people.

Q. You think, then, that the public directors would be more sensitive than the representative of a party that has invested three or four million dollars, is that right?

A. I think that the public directors would be as equally interested as those who had their money, and I think his interest would be what I would characterize as the public interest, whereas I would think the railroad people would be interested in for want of a better phrase the want of technique of an operation.

Q. I gather from your testimony that you don't expect them to make suggestions, is that right?

A. Oh, yes, I expect them to make suggestions. Of course what I am trying to do to you here, to do the best I can to outline my concepts about how the board would function. Naturally, you expect anybody on a board to make suggestions. But the suggestions, it seems to me, should come not from conflicting transportation interests but from coinciding, if that is a good word, transportation interest plus the independent business men.

Q. And yet by having two owners you depend upon a conflict of interest to maintain neutrality, isn't that right?

A. I think that the circumstances I described this morning make a contribution to the fair treatment of the com-[fol. 173] petitors of Pennsylvania and the fair treatment of the competitors of the Santa Fe. I am very sincere in believing that.

Q. What it comes down to, then, you believe that the Santa Fe protects the eastern line and the Pennsylvania protects the western lines?

A. Yes, I think that the interests each have had in the services in their friends is a very influencing factor for good.

Q. And this is based on a natural selfishness and I am not using that in a critical sense?

A. I understand that that is perfectly all right.

Q. What provides the checks and balance when your selfish—and I am not being critical—selfish interests, that is, yours and the Pennsylvania, happen to coincide, what protects the public?

A. I don't completely apprehend your question but I think what protects the public is the same thing perhaps is what protects the public against the Santa Fe in its own territory and the Pennsylvania people in the Pennsylvania's own territory today. There we have the single control yet the public has to get along under those circumstances. Of course, there is always competition.

Q. But you think, then, the checks and balances should be limited to only two parties, that the others, the non participating carriers, if they are non participants should be left to reliance upon the natural actions of just two owners?

A. Yes, I think so. I could extend that answer but that's [fol. 174] good enough, I guess, for the moment.

Q. I have been interested in this thought of inefficiency that you raise. All you railroad presidents are real good friends, aren't you?

A. Well, most of us, anyhow.

Q. Practically all?

A. I think that's right.

Q. And you have to agree from day to day on a host of things, don't you?

A. Unfortunately we do not, that is one of the troubles, we are pretty good friends but we don't agree quite so much.

Q. I wish you would look at Exhibit H-4, the basic maps, now, do I understand the purpose of this exhibit is to show why certain railroads are qualified for ownership and certain railroads are not qualified for ownership?

A. I don't know that that's entirely to show the relationship of the T. P. & W. to these various railroads.

Q. Well, let's take a look at the Wabash for one. That is on Page 9. That would appear to be competitive with the entire line of the T. P. & W., wouldn't it?

A. And, of course, you understand, may I make a preliminary statement, that the Wabash was not included in the T. P. & W. by any action of mine they are one of the intervenors here.

Q. I know and I may say the Nickel Plate is not opposing the Wabash, in fact, believes that every railroad should be [fol. 175] free to come in, but getting back to my question, isn't the Wabash highly competitive with the T. P. & W.?

A. Well, I don't know whether that is completely so or not. There is some competition there, some competition there. There is some competition there.

Q. Now, you disqualified various owners in your testimony for several reasons. Let's take a look at Page 8 of your testimony. It says that the M. & St. L. in the past either favored or advocated discontinuance of service in the western section of the T. P. & W. Now, assuming that's a fact, and I understand it has been challenged by counsel for the M. & St. L., I assume you are putting forth that as a reason why it should not participate in ownership, is that right?

A. I think it would be a factor of influence against it, yes, sir.

Exam. Albus: At this time we will recess until 9 o'clock tomorrow morning.

(Whereupon, at 5:00 p. m., an adjournment was taken until 9:00 a. m., Thursday, February 2, 1956.)

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, APPELLANT,

vs.

UNITED STATES OF AMERICA, ET AL.

No. 27

SOUTH DAKOTA, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

No. 28

MINNESOTA, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

No. 12 filed December 1, 1958.

No. 27 filed January 2, 1959.

No. 28 filed January 8, 1959.

Probable Jurisdiction Noted March 9, 1959.

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BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

Finance Docket No. 18991
Finance Docket No. 19086

Pere Marquette Hotel,
Peoria, Illinois,

TRANSCRIPT OF HEARING—February 2, 1956

Met, pursuant to adjournment, at 9:00 a.m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 178] PROCEEDINGS

Exam. Albus: The hearing will please come to order.

We will continue with the cross-examination of Mr. Gurley.

Mr. Broker, please.

FRED G. GURLEY resumed his testimony as follows:

Cross examination (continuing).

By Mr. Broker:

Q. Mr. Gurley, when did you leave the Burlington?

A. 1939.

Q. Were you with them prior to 1927?

A. Yes, sir.

Q. Did you come in contact with the TP&W at that time?

A. No, I never did. I never had anything to do with the TP&W. I had assignments which were in an entirely different part of the country. I did not have anything to do with the TP&W.

Q. You indicated at page 66 of the transcript that when you considered the Pennsylvania Railroad as a partner you examined the situation in the light of their previous record of ownership in the TP&W. Is that correct?

A. I don't know that it is.

Q. It is at the bottom of page 66.

A. I have it in front of me and what I said is correct.

Q. In the course of that examination did you learn that the Pennsylvania had once proposed scrapping the western [fol. 179] end of the TP&W?

A. No, I did not.

Q. Have you learned since?

A. Not until you just said it.

Q. Did you learn that the Pennsylvania had said that the TP&W could not be operated profitably as then constituted?

A. No, I didn't know that.

Q. Now, you are aware, I believe, that in view of Nickel Plate's interchange with the TP&W in which the Santa Fe has either a prior or a subsequent haul that the Nickel Plate would bitterly oppose any abandonment of the western end of the TP&W?

A. No, I didn't know what your position would be on it, no.

Q. Yesterday you indicated that the Nickel Plate would have no incentive to develop the eastern half of the TP&W. Now, assuming that is so, and of course we deny it, is that because a railroad would naturally favor its own line where it had a 100 per cent interest?

A. Well, I don't know quite how to answer it that way, but let me say this, I think the Nickel Plate is in such a situation that it wouldn't have any economic interest in furthering the end of the TP&W. That is my opinion.

Q. Why does the Santa Fe oppose the M&StL application? They have offered to enter into all the various conditions that were proposed yesterday. I don't want a lengthy answer, but don't you feel that that is sufficient protection.

[fol. 180] Mr. Wheeler: Mr. Examiner, off the record.

Exam. Aibus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

A. You say you don't want a lengthy answer, and the brief answer is that we prefer to own it.

Q. Don't you feel that you are protected by those conditions?

A. Be that as it may, I prefer to own it, that is the reason I oppose them.

Mr. Wheeler: May we have that question and answer read.

(The question previous to the last question and answer was read, and the answer thereto.)

Mr. Broker: Mr. Thomas, page 1, that is the second no. 1 in Mr. Gurley's prepared statement, there is a quotation from the report of the Commission in Finance Docket 6127, and reference is made to a representation uncontroverted by the applicant in that case. Do you have any objection to similar quotations as to representations by applicants uncontroverted made in other finance dockets, either by any of the parties here or any of the railroads involved?

Mr. Thomas: What do you mean, do I have no objection?

Mr. Broker: Do you have any objection. I notice you put in an application by an applicant.

Mr. Thomas: I suggest if you want to put in any such thing I will look at it and tell you when I see it.

[fol. 181] Mr. Broker: All right.

By Mr. Broker:

Q. Now coming to the question of car supply, do you know whether or not the Nickel Plate follows the AAR recommendations as to car ownership?

A. No, I don't. I don't know one way or the other, frankly.

Q. Do you know whether Nickel Plate's maintenance program on its equipment is up to date or not?

A. No.

Mr. Broker: I don't have any other questions.

Exam. Albus: Mr. Davis?

Mr. Davis: No questions.

Exam. Albus: Mr. Martin?

Mr. Martin: No.

Exam. Albus: Are there any further questions of Mr. Gurley?

Mr. Wheeler.

Further cross examination.

By Mr. Wheeler:

Q. Mr. Gurley, will the acquisition of the TP&W by the M&StL exclusively injure or harm the Santa Fe in any way?

A. I don't know that I can answer that.

Q. Do you have any opinion or belief with respect to it?

A. Well, I have the belief that we would prefer to own it just as you have the belief that you would.

Q. Well, that is an expression of preference, Mr. Gurley. Do you have any opinion with respect to possible injury to [fol. 182] the Santa Fe resulting from ownership of the TP&W by M&StL?

A. I really don't know, and I don't know what all the plans of the M&StL may be. They have varied a bit apparently from newspaper accounts, so I can't forecast. I don't know how to make an answer to that question.

Q. In making the determination to purchase the stock of the TP&W, you did not then take into account any possible harm to the Santa Fe resulting from acquisition of that property by the M&StL?

A. Well, I suppose I did, because I preferred to buy it myself rather than the M&StL to buy it, and I was sure that that was better for us than for the M&StL to buy it.

Q. Would it be proper to say, then, to summarize your statement in this manner, that you wanted to have, or you wanted the Santa Fe to have control of the TP&W rather than to have any other railroad have it?

A. Well, if by "control" you mean the application that is here now, I would answer that by saying yes, that is what we want.

Q Now let me ask you one other aspect of that situation, Mr. Gurley. Were you interested in acquiring control of

ne TP&W primarily because you thought the property might pass into the control of the M&StL?

A. No, I don't think I was influenced by quite the way you have put it. As I tried to explain my reasoning on [fol. 183] direct, I had long looked at the TP&W, we had long had an interest in the Lomax route, and I wanted to buy the Lomax route. I did not particularly single out and say I want it rather than having the M&StL get it any more than the Rock Island and these other railroads.

Q. May we get around it this way, Mr. Gurley, weren't you afraid that if the M&StL acquired the TP&W they might abandon the Lomax route which you have stated you wanted to preserve for the Santa Fe, wasn't that one of your principal motivations?

A. No, that wasn't my principal motivation.

Q. Was it one of your motivations?

A. Well, yes, I think I'd say one, surely.

Q. What were the other motivations?

A. I wanted to control the TP&W rather than have the M&StL purchase it. Now, that's it.

Q. That is as far as your thinking went, you didn't consider the various reasons that would cause you to arrive at that conclusion?

A. Well, I arrived at it for reasons that suited myself, and they still do.

Q. Can't you give us those reasons, Mr. Gurley?

A. Well, I wanted to own the railroad because I thought it was to the best interests of ourselves to own it rather than for other people to own it, and I thought it was also in the best interests of the public.

[fol. 184] Q. Let's take the interest of yourself, and I assume there you are speaking of the Santa Fe, what were those interests? What particular interest of the Santa Fe would be prejudiced or needed protection against an acquisition of the TP&W by the M&StL, other than the one you have mentioned, that is, the loss of the possible Lomax gateway?

A. I don't know how to answer your question. I thought it was for the best interests for us to have it rather than the M&StL to have it. I didn't go very far in running out reasons for that conclusion.

Q. Have you any additional reasons or any other reasons in your mind today which should be considered in determining whether or not your application should be granted?

A. I have none to offer, no.

Q. Mr. Gurley, did anyone from the Santa Fe or did the Santa Fe send anyone to Peoria and to the various cities on the line of the TP&W to secure their approval and support of your application?

A. Oh, I think so.

Q. Can you tell me who that was?

A. No, I can't tell you the name of the fellow who may have been down. It was handled through Mr. Bagge's general jurisdiction.

Q. How do you spell that name?

A. B-a-g-g-e.

Q. Is he available in Peoria?

[fol. 185] A. He is once removed from you.

Q. Now, Mr. Gurley, you have stated in your testimony repeatedly that you wanted joint ownership of the TP&W with the Pennsylvania, is that not correct?

A. Yes, that is correct.

Q. And was that the primary or was that—was it joint ownership with the Pennsylvania that you had in mind at all times when you sought to acquire control of the stock of the TP&W?

A. Yes, pretty much. I tried to outline that on direct, pretty much. Ever since 1942 my mind has worked that way.

Q. Mr. Gurley, can you tell us how much the Santa Fe spends on traffic solicitation, incuding advertising, let's say, for 1954 or 1955?

A. Oh, I could. I could look it up. I couldn't tell you offhand.

Q. Could you furnish that figure for the record?

A. I'd be glad to. Would you mind just stating on the record what account you want? That is the best way, tell me the account numbers you want.

Q. Sorry, sir. I can't.

Mr. Thomas: I suggest that Mr. Wheeler talk with me privately and talk with his people and get the account number and we will get it.

Exam. Albus: Very well.

By Mr. Wheeler:

Q. May we have the same information, if you do not [fol. 186] have it in your mind at present, with respect to solicitation offices that you maintain, that is to say, the number and location of them, and how many employees are engaged in solicitation, traffic solicitation.

A. That is not so readily available. It could be prepared, if it is necessary.

Q. Would you undertake so to do.

A. I am not so certain that I care to do that. I can't quite follow the need of putting into this record the employees we have at Los Angeles and how many we have at Portland and what have you.

Mr. Wheeler: Mr. Examiner, I think it is germane to the—

Exam. Albus: May I suggest you talk to Mr. Thomas first and see what you can work out?

Mr. Wheeler: Fine.

Exam. Albus: Any further questions?

Mr. Wheeler: I have just one.

By Mr. Wheeler:

Q. Mr. Gurley, all you know are all the resolutions of the Santa Fe authorizing purchases of the TP&W stock, a part of your application?

A. Yes.

Q. There are no other actions taken by your board which are not shown there?

A. Not that I know of.

Mr. Wheeler: I have no further questions.

[fol. 187] Cross examination.

By Mr. Hoag:

Q. Mr. Gurley, at page 19 of the application of the Santa Fe and the Pennsylvania, at the bottom of the page you state that there is no occasion for imposing protective

conditions for employees. By that, do you mean that you are opposed to imposing protective conditions?

A. Where is that again. I don't find it. Yes, here it is. Well, the entire section reads that way, "Since the present independent management and operation of the TP&W will be continued, there is no occasion to impose terms and conditions under Section 5(2) of the Interstate Commerce Act." That is our opinion.

Q. Is it the position of the Santa Fe and the Pennsylvania now that they are opposed to imposing protective conditions?

A. No. We never really thought it was something to consider.

Q. Are you acquainted with the provisions for protective conditions that have been set forth in the application of the Minneapolis & St. Louis Railroad?

A. No, I did not notice them.

Q. I believe in their application that they state they are willing that the Commission impose the words "Washington job protection agreement". Do you have knowledge of that?

A. No, I didn't notice that.

Q. Would you be opposed to granting like conditions?

A. Not at all.

[fol. 188] Q. You have no objection to imposing job protection?

A. No.

Mr. Hoag: Very well, Mr. Gurley. That is all.

Exam. Albus: In the meantime, Mr. Gurley, would the Santa Fe be interested in acquiring anything less than 50 per cent of the stock of the TP&W?

The Witness: We are not interested in doing it now. I don't know quite how to answer you, Mr. Examiner.

Exam. Albus: I have in mind, suppose the Commission would impose a condition that some other railroads be included in the deal, would you lose your interest in the matter?

The Witness: Mr. Examiner, I think the only fair thing for me to say is I'd have to take a look at it, have to take a good hard look at it at the time.

Exam. Albus: Mr. Wheeler.

Further cross examination.

By Mr. Wheeler:

Q. Along that same line, would you also take another look at your proposal to put Lomax on a parity with Chicago in your solicitation if you had to give up or if you had to sell part of this control of stock in the TP&W to other railroads?

A. Well, of course, we'd take a look at it, surely.

Q. Would it be with a view toward cancelling out that policy and continuing to operate as you do now?

A. I made it abundantly clear, I thought, the proposal [fol. 189] to put Lomax on a parity was in contemplation of a 50-50 and if that did not prevail we'd have a changed condition and that's about all I can say to you now.

Q. Mr. Gurley, you spoke yesterday of changing crews at some point, as I understood, on the TP&W, is that correct, that that might possibly be an eventuality?

A. Well, I don't think I outlined it quite that strongly. I said one of the things that could come to your mind, that you might be able to do so, if you could work out a deal with labor and everybody else, it might be advantageous to run crews through into Shopton rather than making the interchange at Lomax.

Q. Now, those would be Santa Fe crews?

A. Oh, I wouldn't know.

Q. These crews are operating between what points now?

A. They operate now between Peoria and Lomax.

Q. Where is this point Shopton?

A. Oh, it is abount 20 miles west of Lomax.

Q. On the Santa Fe?

A. On the Santa Fe.

Mr. Wheeler: Thank you.

Exam. Albus: Are there any further questions? Is there any redirect?

Mr. Thomas: Yes. One question.

Redirect examination.

[fol. 190] By Mr. Thomas:

Q. Yesterday, in referring to the objectives set forth in Section 3 of your agreement with the Pennsylvania, Mr. Wheeler remarked that that agreement was not for the benefit of the other parties not parties to the agreement. Now, in order to make it perfectly clear, what your position and purpose is toward the TP&W, do you think it would be appropriate for the Commission to incorporate those objectives in any order it might enter in this proceeding in granting the application?

A. I would think that is a fine thing to do. Certainly we have no intention and desire to equivocate on those conditions.

Mr. Thomas: That is all.

Exam. Albus: Is there any recross?

(No response.)

OFFERS IN EVIDENCE

Mr. Thomas: May I offer Exhibits H-6 and H-7 now?

Exam. Albus: Is there any objection to the receipt of Exhibits marked for identification H-4, 5, 6, and 7?

(No response.)

Exam. Albus: Let the record show that those exhibits are received at this time.

(Applicant's Exhibits H-4 and H-5, Witness Clutz, and Applicant's Exhibits H-6 and H-7, Witness Gurley, were received in evidence.)

Exam. Albus: May we have the next witness, please.

Mr. Thomas: I will call Mr. Mahoney now.

(Witness excused.)

[fol. 191] J. J. MAHONEY was sworn and testified as follows:

Direct examination.

Mr. Thomas: Mr. Examiner, we have distributed an exhibit containing in its caption reference to Lomax interchange in various years.

Exam. Albus: Yes.

Mr. Thomas: May that be identified?

Exam. Albus: That may be marked for identification Exhibit H-8.

(Applicant's Exhibit H-8, Witness, Mahoney, was marked for identification.)

Exam. Albus: All right, Mr. Thomas.

By Mr. Thomas:

Q. Mr. Mahoney, will you state your name, address and present position with the Santa Fe?

A. My name is J. J. Mahoney. I am general superintendent of transportation of the Atchison, Topeka and Santa Fe Railway System, with headquarters at Chicago, Illinois.

My duties consist of supervising the distribution of passenger and freight cars over the Santa Fe system, supervising all car service matters, including the interchange of traffic and connecting line railroads, coordinating freight train schedules on the four Grand Divisions into through freight train schedules, and setting up the blocking plan of through freight trains in order to hold the switching of [fol. 192] such trains to a minimum at intermediate terminals.

Q. What prior positions have you held with the Santa Fe?

A. I entered the service of the Santa Fe in May 1912 as a switchman at Pueblo, Colorado, and also served in the capacity of an engine foreman, assistant yardmaster and yardmaster. In July 1920 I was promoted to switching inspector of the Western Lines. On November 15, 1920, I was promoted to general transportation inspector cover-

ing the same territory. On December 1, 1924, I was promoted to assistant trainmaster on the Rio Grande Division in New Mexico. On June 1, 1925, I was promoted to assistant to general superintendent of transportation, with headquarters at Chicago. In that capacity I became actively engaged in checking train schedules, make-up of trains, and the interchange of traffic with connecting line carriers over the entire system. I assumed my present position on July 1, 1936.

Q. Mr. Mahoney, was the exhibit that has been identified as H-8 prepared under your supervision?

A. It was.

Q. Will you describe the interchange tracks at Lomax?

A. In 1926, shortly after Mr. McNear purchased the T. P. & W., he made arrangements with the Santa Fe for the joint construction of interchange tracks at Lomax. The interchange tracks were completed in August 1927 and are shown on page 1 of Exhibit H-8. When this work was completed, the delivery track had a capacity of 29 cars. The first interchange of cars was made on August 6.

[fol. 193] During 1928, the first full year after the interchange tracks were completed, 5,961 loaded cars were interchanged at Lomax.

Q. Could I stop you there for a moment, Mr. Mahoney. You explained that was the year 1928?

A. Yes, sir.

Q. You will note that Exhibit H-5, page 8, shows the interchange for 1928 between the Santa Fe and the T. P. & W. as 7,264 cars in column 5.

A. Yes, sir, I am familiar with that.

Q. Will you explain the difference between that figure and the figure you have just quoted?

A. Yes the difference in that figure and the one I quoted is that 1,303 cars that were interchanged at Eureka in 1928.

Q. Thank you. Will you proceed.

A. The volume of cars interchanged steadily increased until in 1935 a total of about 24,000 cars were interchanged of which 14,659 were loads. It became necessary, therefore, to expand these facilities, rearranging and adding additional trackage, as shown on page 2 of Exhibit H-8.

Continued growth of this gateway made necessary further expansion and rearrangement of the interchange tracks at Lomax in 1953. In that year 34,404 loads and 17,370 empties, or a total of 51,774 cars, were interchanged. The trackage west of the depot was enlarged to permit the handling of a total of 146 cars, 72 on the delivery track and [fol. 194] 74 on the receiving track as shown on page 3 of Exhibit H-8. You will note that page 3 of Exhibit H-8 shows the present Lomax interchange as in service in 1954. This reflects the fact that, after the interchange was expanded in 1953, a cross-over between the eastbound main and the interchange tracks was removed. This took place in 1954.

Q. How was the cost of these improvements in the interchange divided?

A. The cost of contruction of the interchange facilities in 1927 and the expansions in 1935 and 1953 were divided between the Santa Fe and the T. P. & W. on a 50-50 basis.

Q. Will you explain how these inmprovements have facilitated interchange at Lomax?

A. The locating and expansion of the interchange tracks west of the depot at Lomax in 1953, besides permitting the handling of a larger volume of traffic, also provided for accomplishing the interchange in less time than when these tracks were located east of the depot. The present track layout provides for a very simple operating in the interchange of cars for both railroads.

Deliveries require an average of from fourteen to eighteen minutes to accomplish. As many as seventy-two cars can be set out at Lomax for the T. P. & W. in one move.

Most of the cars received at Lomax from the T. P. & W. are for western destinations and these cars are, therefore, [fol. 195] picked up by a westbound train. The westbound train selected to make the pick-up operates over the eastbound main line under automatic train control and traffic reversal movements which permits a very simple interchange of cars between the Santa Fe and the T. P. & W. These pick-ups are accomplished within fourteen to twenty minutes, depending on the number of cars handled.

Q. What else has been done to speak interchange at Lomax?

A. In 1952, in order to expedite the interchange of traffic at Lomax, the Santa Fe installed a Recordak system of photographing waybills, which permits transfer of waybills between the Santa Fe and T. P. & W. in less than ten minutes. Under the Recordak system, photographs of each waybill are taken and later the film is developed and station records are prepared from the film instead of the former practice of holding the trains at the station while station records were made from the waybills by hand.

Q. Will you comment on the establishment of perishable schedules through Lomax?

A. In 1930 arrangements were made between the Santa Fe and the T. P. & W. for the establishment of coordinated schedules for the handling of perishable traffic, and the T. P. & W. constructed icing facilities at Peoria to accommodate this traffic. The T. P. & W. has been a part of the through transcontinental schedules for perishable traffic originating in California and Arizona from 1930 up to the present time. In addition to the transcontinental [fol. 196] schedules, we also have in effect coordinated perishable schedules from Texas, Oklahoma, New Mexico, Colorado, Kansas, and Missouri with established cut-off times for the delivery of traffic for through freight train schedules with the T. P. & W.

To further expedite perishable traffic through Lomax, arrangements were made with the T. P. & W., beginning in 1939, whereby heaters placed in refrigerator car bunkers for protection against freezing would be operated from Kansas City to East Peoria and vice versa to avoid the delay of changing heaters at Lomax, the junction point, which is the usual practice among railroads.

Q. Have you other examples of steps taken to speed service through Lomax?

A. Yes. The chief dispatchers for the Santa Fe and the T. P. & W. keep in close contact with the movement of traffic to be interchanged at Lomax. The Santa Fe keeps the T. P. & W. informed as to the approximate arrival and number of cars that will be delivered at Lomax and the T. P. & W. keeps the Santa Fe informed as to the cars that will be delivered by the T. P. & W. With this information at hand each railroad arranges train move-

ments so that cars can be interchanged at Lomax with minimum delay.

Q. Will you describe the present operating schedules through Lomax?

A. 4 and 5 of Exhibit H-8 show the present A. T. & S. F.-T. P. & W. coordinated operating schedules between [fol. 197] Kansas City and East Peoria and East Peoria and Kansas City.

Q. May I interrupt there. Will you indicate what East Peoria is to the T. P. & W., what significance it has to the T. P. & W.?

A. That East Peoria, that T. P. & W., is what we call the east river there, the east side of Peoria.

Q. Proceed.

A. These schedules are self-explanatory. At the present time we have an agreement with the T. P. & W. that the cut-off time for receipts of traffic for their evening trains departing Lomax is 8 o'clock p.m. The cut-off time for receipts of traffic departing in their morning train from Lomax is 7 o'clock a.m.

Footnotes on pages 4 and 5 of the exhibit show the territories on the Santa Fe from which traffic is delivered to the T. P. & W. to meet the 8 o'clock p.m. cut-off and the 7 o'clock a.m. cut-off, respectively.

We receive the largest volume of traffic from the T. P. & W. at Lomax in their evening delivery, which is due to arrive at Lomax at 5:45 p.m. This traffic is handled westward in our expedited schedule on No. 159 and No. 59. The delivery we receive at Lomax at around 4:50 a.m. is generally handled westward in a section of No. 49 or 59, arriving Kansas City the following morning around 5 o'clock a.m.

Q. Will you describe the arrangements made to handle livestock from La Harpe? By the way will you indicate where La Harpe is?

[fol. 198] A. La Harpe is the junction on the T. P. & W. where the route from Lomax and the route from Keokuk converge.

Q. Thank you.

A. In addition to the agreements between the T. P. & W. and the Santa Fe for the handling of perishable freight,

Santa Fe has, for many years, agreed to hold at Lomax until 4:30 p.m. for livestock destined to the Chicago market. Since 1949, at the request of the La Harpe Livestock Shipping Association to permit later loadings at La Harpe, the Santa Fe has arranged to hold at Lomax until 7 o'clock p.m. on Mondays so as to provide early morning delivery at the Chicago market the following day. Last Monday night we picked up five cars of livestock from La Harpe for Chicago.

Q. Will you describe generally the working relationships you have had with the officials of the T. P. & W.?

A. Yes, sir. In working with the T. P. & W. in regard to the interchange of traffic and coordinating freight train schedules through the Lomax gateway very little difficulty has been experienced. It is true that in working out some of these arrangements we have had conferences during which there were some disagreements. That is only natural. But in the end arrangements were made to the satisfaction of both roads.

Q. Do you think the schedules that have been worked out have been satisfactory to shippers?

A. Yes, sir. During my experience with train schedules [fol. 199] that have been worked out with the T. P. & W. through the Lomax Gateway has been that since this service was inaugurated we have had no complaints registered by shippers against the service through this route. We have had some specific complaints, and may receive others about failure to make the schedule with certain specific cars, but we have never received a general complaint from any shipper in our territory on service through the Lomax Gateway.

Mr. Thomas: That is all on direct.

[fol. 200] Exam. Albus: Cross-examination, please. Mr. Wheeler.

Cross Examination.

By Mr. Wheeler:

Q. Mr. Mahoney, I gather from your testimony, and I believe you stated, that you were getting pretty complete

cooperation from the T. P. & W. officers and employees at the present time, so far as your train schedules and billing of the interchange at Lomax and so forth is concerned, is that correct?

A. That is correct, Mr. Wheeler.

Q. Do you think that situation would be changed by the acquisition of control of the T. P. & W. by the Santa Fe & Pennsylvania?

A. Working arrangement through that gateway?

Q. Yes.

A. I don't think it would.

Q. Or the cooperation you are not getting from the T. P. & W. officials, would that be changed, insofar as your operations on the Santa Fe are concerned?

A. No, I couldn't see where there would be any need for any change.

Q. Referring to shipments of livestock from LaHarpe.

A. Yes, sir.

Q. How do those shipments move?

A. They are loaded at LaHarpe and the T. P. & W. moves the cars into Lomax, thence the Santa Fe picks them up [fol. 201] with an eastbound train and moves them into Chicago.

Q. The T. P. & W. does not get the long haul on that movement, then, does it?

A. No, they get the haul from LaHarpe to Lomax.

Q. Can you give me that distance as compared to the haul to Eureka? What is the distance from LaHarpe to Lomax?

A. Well, sir, I haven't got that.

Q. Do you know approximately?

A. I would say it is about between 15 and 20 miles, just offhand. I am sorry I can't tell you the exact mileage.

Q. Do you know what the distance is from LaHarpe to Eureka? Isn't that the junction point of your Chicago branch?

A. Yes, we have a junction at Eureka with the T. P. & W.

Q. What is the distance from LaHarpe to Eureka, approximately?

A. Well, I don't have that mileage.

Q. Would it in the vicinity of 80 miles?

A. I think it would be from LaHarpe to—

Q. Between 80 and 100 miles?

A. About 80 miles. If that isn't very close I will tell you later.

Q. All right.

Mr. Broker: It is 84.4 miles west of Peoria.

A. Mr. Wheeler, will you accept that mileage from that gentleman over there, 84.4?

By Mr. Wheeler:

Q. I will accept it.

[fol. 202] You did not by your testimony with respect to the interchange of traffic between the Santa Fe and T. P. & W. at Lomax mean to indicate, did you, that all of that traffic was influenced or solicited for movement over the T. P. & W. by the Santa Fe?

A. No, I did not. I am not in the sales department, Mr. Wheeler.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassel.

Cross Examination.

By Mr. Cassel:

Q. Mr. Mahoney, on these eastbound trains of perishables, do they terminate at Lomax?

A. No, they don't terminate—do you mean Santa Fe trains terminate?

Q. Yes.

A. No, sir. We make setouts at Lomax and continue on to Chicago or Chillicothe.

Q. Are their schedules entirely set out for the T. P. & W. or do they also have considerations of the needs which they must make at Chillicothe or Chicago?

A. Trains that generally make the setouts at Lomax have cutoff and setout times at other Illinois junctions, such as Nemo, Streeter, Joliet, McCook.

Q. Their schedules, then, are determined not only by the junction at Lomax but also by these other junctions, aren't [fol. 203] they?

A. We have an agreement or understanding at what time we will deliver at all junctions.

Q. Who sets the cutoff time at Lomax, the Santa or the T. P. & W.?

A. I set it. Of course I do that in conference with the T. P. & W. I work those out.

Q. You are able to maintain those connections at the present time because of the cooperation of the T. P. & W. as well as what you do, isn't that right?

A. Yes, the T. P. & W. cooperates with the Santa Fe in providing a through service through that gateway.

Q. And if the T. P. & W. were to fail to meet those cutoff times it would pretty effectively break the connection, wouldn't it?

A. Yes, if they failed to meet the delivery time of the Santa Fe the connection would be broken, naturally.

Q. So it requires the cooperation of both railroads to keep that as an effective service route?

A. That is right. That doesn't only apply, Mr. Cassell, at Lomax, but that applies at any junction where you have a connection with a connecting line carrier.

Mr. Cassell: That is all. Thank you.

Exam. Albus: Mr. Broker, please.

Cross Examination.

By Mr. Broker:

Q. The East Peoria yard referred to on page 4 of your [fol. 204] exhibit, is that the yard that is adjacent to the Farmdale interchange with the Nickel Plate, do you know?

A. I do not know.

Q. Now, these schedules are generally co-ordinated multiply with those of eastern carriers at Peoria, aren't they?

A. I understand that the lines east of Peoria have an understanding and an agreement with the T. P. & W. for the receipt of traffic from them to make certain trains from East Peoria.

Q. And that would include the Nickel Plate as well as other eastern connections?

A. That is correct.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions of Mr. Mahoney? Is there any redirect?

Redirect Examination.

By Mr. Thomas:

Q. Mr. Mahoney, you were asked about this possibility of hauling the livestock from LaHarpe to Eureka and turning it over to the Santa Fe there to reach the Chicago market. Could that kind of service be provided and provide the expedited movements needed to reach the Chicago market on that Monday night train?

A. No, we couldn't provide it on that following day market.

Q. What is that Santa Fe train that this service from LaHarpe connects with, that livestock train, where does it come from?

A. We run a livestock special every night out of Fort [fol. 205] Madison, Iowa, and gather up livestock at all stations along the railroad. That is the only way we can accomplish the next morning market.

Mr. Thomas: That is all.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, Mr. Mahoney. Thank you, sir.

(Witness excused.)

Offer in Evidence

Mr. Thomas: May we offer Exhibit H-6?

Exam. Albus: Are there any objections?

(No response.)

Exam. Albus: Exhibit marked H-8 is received.

(Applicant's Exhibit No. H-8, Witness Mahoney, was received in evidence.)

[fol. 206] GERALD E. DUFFY was sworn and testified as follows:

Mr. Thomas: May the map of the United States be identified as the next numbered exhibit?

Exam. Albus: That will be H-9, map of the United States.

(Applicant's Exhibit No. H-9, Witness Duffy, was marked for identification.)

Mr. Thomas: And the blue-covered exhibit.

Exam. Albus: H-10 for identification.

Mr. Thomas: I might say it is GED-2 in the lower right-hand corner.

Exam. Albus: Yes.

(Applicant's Exhibit No. H-10, Witness Duffy, was marked for identification.)

Mr. Thomas: And the single-page map.

Exam. Albus: Single-page map of the principal interchange points of the Santa Fe, Kansas City and East is 11, H-11 for identification.

(Applicant's Exhibit No. H-11, Witness Duffy, was marked for identification.)

Direct examination.

By Mr. Thomas:

Q. Will you state your name, address and position with the Santa Fe?

A. My name is Gerald E. Duffy. I am vice-president of traffic. My address is 80 East Jackson Boulevard, Chicago.

[fol. 207] Q. What other positions have you held with the Santa Fe?

A. Well, I have been attorney, a commerce attorney, assistant to the president, assistant vice-president of traffic, and vice-president of traffic.

Q. And in that capacity, that last capacity, you are in charge of all solicitation efforts as one of your duties are, you not?

A. Yes, sir, I am in charge of solicitation and rates and advertising, both passenger and freight.

Q. Will you describe the exhibit which have been identified as H-9, the map of the United States?

A. The Exhibit H-9 is a map of the Atchison, Topeka and Santa Fe Railway System, map of the United States, on which I have circled in blue certain important junctions between by the Santa Fe interchanges traffic with other railroads.

I want to make it clear that I haven't circled all of the junctions. I think the number of junctions that I have circled are representative. Nor have I attempted to circle junctions on the Pacific Coast, that is, the California interchanges. For the purpose of my testimony I didn't regard it as important, but we do have junctions west of the junctions that I have indicated.

Along that line, Mr. Thomas, I should say at this time for the record that on traffic interchanged at Chicago, between eastern and western railroads by a belt line, there is a charge of $10.90, which is paid by the carrier delivering [fol. 208] the freight to the belt line. I think that is the amount, $10.96.

Q. Then on eastbound traffic the Santa Fe would pay the switching charge?

A. That is right.

Q. And on westbound—

A. Traffic the line delivering to the belt line would pay it.

Q. Will you turn to Exhibit H-10 and comment on page 1.

A. On page 1 I have indicated the carriers with which the Santa Fe interchanges at the various junctions shown on my Exhibit H-9. I think the exhibit is self-explanatory. It is merely a factual exhibit.

Q. Do you also show in Exhibit H-10 the amount of divisions percentage paid to the Santa Fe on traffic west of the junctions shown on Exhibit 9?

A. Yes, on pages 2 and 3 I have shown the divisions accruing to the Santa Fe, both on eastbound and westbound traffic, west of the various gateways indicated between representative points in the east and representative points in the west. Now, when I say accrued to the Santa Fe, I mean that that accrues to any group of western carriers

who haul the traffic. I am assuming that the Santa Fe in this particular case hauled it all the way.

Q. Now, those points that you referred to are shown in the second column on page 2, aren't they, and page 3?

A. Yes, sir. You mean the gateways?

[fol. 209] Q. Yes.

A. In other words, I have restricted the showing in these two exhibits to the so-called Chicago gateways and Kansas City.

Q. Are those gateways shown on Exhibit 11?

A. Yes, sir, they are shown on Exhibit H-11.

On page 4 I have ran out the divisions accruing to the Santa Fe west of the so-called junctions that I have indicated on Exhibit 9 west of Kansas City. Now, I have confined that showing to transcontinental divisions, first of all, because the junctions are quite a bit west, and, second of all, becauses about 50 per cent of the traffic interchanged between the Santa Fe and the T. P. & W. is what might be termed transcontinental traffic. And for the purpose of the case I thought that these divisions would be representative of the situation that we are trying to show.

Exam. Albus: Very well.

By Mr. Thomas:

Q. I call attention to Exhibit H-11 again. Would you state the difference in distance over the Santa Fe between Chicago, on the one hand, and Streeter—let's take them one at a time, Street.

A. Streeter is 90 miles less than Chicago.

Q. Nemo?

A. One hundred ninety miles less than Chicago.

Q. Lomax?

A. 219 miles less than Chicago.

[fol. 210] Q. Kansas City?

A. Four hundred fifty-two miles less than Chicago.

Q. Now, Mr. Duffy, will you describe generally what the solicitation policy of the Santa Fe is?

A. Wel. the general policy is to try and get our long haul. Now, if you will look at the map, Exhibit H-9, it is very apparent that to and from so-called eastern territory

that our long haul, we would consider our long haul Chicago. On the other hand, geographically, when you look at the map, you can appreciate that to and from southeastern territory we would have to be content, generally speaking, with a long-haul through Kansas City or one of the Texas junctions like Fort Worth, depending upon where the traffic originated. I should say that as a matter of fact, and there again I am speaking generally, there are limited number of rates applying from southeastern territory via the Santa Fe through Chicago. The whole point of my showing in this respect is to the effect that the traffic that we are talking about here is generally traffic to and from eastern territory. Now, I am not going to attempt to define that any broader or any more specific because when we talk about southeastern territory and eastern territory in that respect it is very difficult to say where the borderline exists. In other words, the C. & O. has a pretty good line to a part of the southeastern territory and to Chicago and we might get some out of there, but nevertheless [fol. 211] I would say the seven southeastern states are out of the picture, and generally speaking, some of those other states are out of the picture, but there are border points in each where traffic might move Chicago or through Illinois gateways.

Q. That is on east-west traffic?

A. That is on east-west traffic.

Q. Does the Santa Fe always insist on getting the long haul?

A. We not only don't insist on getting the long haul but we are not always able to get the long haul. While we do pretty well at Chicago on the territory east-west, there are a number of shippers for one reason or another based on experience try to keep away from the Chicago gateway. It is obvious from the standpoint of those shippers the Santa Fe can't get a long haul; we either get no haul at all or have to get a haul through interior junctions.

I should mention the fact that not very long ago the New York Central came to us and said they could give better service through Streeter than Chicago. Streeter is a short haul for us, technically speaking, we get better divisions, and asked what we'd do about it. Having in mind that

after all, service to the shipper is paramount and we have to take a little bit less at times, we told the New York Central that from a shipper's standpoint we'd put Streeter so they could work Streeter as well as Chicago. That's an indication of the fact that sometimes you must have to take a shorter haul in order to give the service to the ship-[fol. 212] per, or in order to give the best service to the shipper.

Right along that line I should refer to the fact that a great part of the traffic of the country today moves on bills of lading on which no junctions are shown. In other words, the shipper inserts the carriers but doesn't insert the junction because thereby he places an obligation on the carrier to move it over the route that has the lowest rate.

Speaking along the same line of giving service at a sacrifice of the long haul, I should say that the Santa Fe today on all traffic routed T. P. & W.-Santa Fe without a junction, that the Santa Fe turns that traffic over to the T. P. & W. at Lomax rather than take its long haul around through Eureka.

I merely bring that out to show that sometimes you forego your long haul in order to give service to the shipper.

Q. You do that because you think you are better off in the end, don't you, financially?

A. There is no use cutting off your nose to spite your face. Service is a big factor and service in the long run is something that if the shipper doesn't get he is going to go to somebody else.

Exam. Albus: Mr. Duffy, how much of the Santa Fe traffic is routed by the shipper?

The Witness: Well, I never ran out of percentages, Mr. Examiner, but I would say that the amount of traffic today [fol. 213] that flows over the Santa Fe or any other railroad that is not routed by the shipper is infinitesimal. I mean it is very, very, small.

Exam. Albus: Would it be limited to company material or something like that?

The Witness: Well, even there the railroad to whom the company material is going routes the traffic itself. In other words, they divided their business between various railroads.

Exam. Albus: I understood you to say it is very seldom that the junction points—

The Witness: I didn't say very seldom, I said there is a great proportion of the traffic. I am not in position to say how that divides.

Exam. Albus: I am talking about junction points designated by the shipper; you say that is rare now.

The Witness: I didn't say it was rare. I said there was a substantial part of the traffic of the country on which those junction points are not indicated.

Exam. Albus: That is what I understood you to say.

The Witness: I have never found any way to show the percentages, but I think every railroad man in the room recognizes the fact that the shipper tries to protect himself by not putting in the junction.

Exam. Albus: Thank you.

[fol. 214] By Mr. Thomas:

Q. Are there other factors that influences the shipper besides the service?

A. Oh, yes. While service we always regard as paramount, nevertheless solicitation, friendship, reciprocity, and the desire of a shipper to naturally be on good terms with as many railroads as possible is a big factor in dividing the traffic of the country. In other words, while I think service is paramount, nevertheless there is an appreciable amount of traffic moving in this country today on which service is not the criteria.

Q. Do these other factors sometimes prevent you from getting your long haul?

A. That is the factors I am talking about that prevent us from getting the long haul. I was merely going to emphasize the fact that on that traffic where service is not paramount or of the utmost reasonable importance that you find shippers routing this traffic pretty well all around the country via circuitous routes in order to try to include as many railroads as possible.

Now, the reason for the average shipper in trying to include as many railroads as possible or being on friendly relations with as many railroads as possible and divide

his business up to some degree is the fact that he has ate matters coming up from time to time, and, after all, te matters are a question of judgment, and sometimes if a fellow doesn't have any chips in the pot he isn't very much interested in the rate problems of the shipper. So you [fol. 215] find shippers, generally speaking, like to be on friendly terms with as many railroads as possible.

Q. What has been the attitude of the Santa Fe with respect to the Lomax gateway and the T. P. & W. route?

A. Well, the Santa Fe has always regarded the Lomax gateway as an asset in meeting the competition of St. Louis. While all through the years we have regarded as an asset and cooperated in every respect, service-wise, nevertheless from the very beginning, the T. P. & W. has always understood that we'd try to solicit our long haul via Chicago. It is a fact that the T. P. & W. solicit short hauls on the Santa Fe and traffic that otherwise might move by us through Chicago, and I think that as a whole, while we are not 100 per cent satisfied, and sometimes don't let them get away from it, nevertheless we are a lot more tolerant about those short hauls than we are with respect to short hauls through Kansas City and interior junctions shown on my map.

Q. Why are you more tolerant that way?

A. Well, the reason we are more tolerant is due to the fact that we recognize that the T. P. & W. is one of the few routes that we have that will go out and solicit traffic for the Santa Fe in competition with the St. Louis gateway.

Mr. Wheeler: Pardon me, Mr. Duffy.

May I have that answer read back.

(Answer read.)

[fol. 216] A. Every time that they are successful in obtaining a car over its route that we might get at Lomax, in competition with the St. Louis gateway, we are pretty well off. I don't mean that they solicit the St. Louis gateway for the Santa Fe alone. I mean that they solicit the Santa Fe gateway for their own benefit, and all the railroads that don't happen to reach St. Louis, or even some that do receive the benefit.

By Mr. Thomas:

Q. Do they solicit for the gateway through Keokuk, too?

A. Yes, sir, the T. P. & W., so far as I understand their policy, is that they solicit for the T. P. & W., they play no favorites as to junctions, they don't even solicit their long haul. They are perfectly content to get any haul at any junction, thereby throwing revenue into their coffers.

Q. You were talking about the route via the Lomax gateway as compared with the gateway via St. Louis. Have you some material in your Exhibit H-10 which bears on that in connection with the eastern lines?

A. Yes, sir. If you will refer to pages 5 and 6 you will see that I have indicated the percentage, or division per cent, that the eastern lines receive via the same gateways that are reflected on pages 2 and 3 and between the same representative points.

The facts speak for themselves, except I should say that, generally speaking, the divisions of the eastern lines [fol. 217] through St. Louis is greater than through Chicago, the divisions of the eastern lines through Peoria is better than through Chicago, so that relatively in competition with the St. Louis gateway the Peoria gateway, that is, the T. P. & W., is in a little better position to compete to the extent that the eastern lines have any interest than the Chicago gateway.

Q. Would you take the Nickel Plate just as an example and illustrate how that works?

A. Well, I think the best example, and I think it is the example—it isn't representative because you will find different per cents all the way through, but nevertheless taking Pittsburgh as representative and the transcontinental divisions eastbound as the subject of my discussion, you will see that the Chicago per cent for the eastern lines is 16.5, East St. Louis is 20 per cent to the eastern lines. On the other hand, in that particular case, on transcontinental traffic, Peoria pays the eastern lines the same per cent that St. Louis pays. I bring that out that at least so far as a railroad like the Nickel Plate is concerned and the transcontinental traffic it should not worry too much whether it turns the business over to the T. P. & W. at Peoria or carries it to St. Louis. Now, that isn't true with respect

to other divisions. I said before, generally speaking, there is a difference in favor of the St. Louis gateway but a greater difference under the Chicago gateway.

[fol. 218] Q. What is the relative importance of the Chicago and St. Louis gateways?

A. Well, the Chicago and St. Louis gateways are the two most important gateways in the country because there the greatest number of eastern and western railroads meet. It is true that there are railroads that serve Chicago that don't serve St. Louis, but nevertheless a great number of the railroads that serve St. Louis also serve Chicago, and it is very obvious that the western railroads converging at these two points and having in mind the general terrain and the general geographic situation that these two gateways are the important gateways of the United States.

Along that very line it might be appropriate to say that the Santa Fe, unfortunately, does not serve St. Louis. On the other hand, two of our western competitors in this case, one of who has been very nice about the case, that is the Burlington and Rock Island not only serve St. Louis and Chicago but serve Peoria. Santa Fe only serves Chicago, it doesn't serve Peoria or St. Louis.

Q. What important western railroads which compete with the Santa Fe compete with St. Louis?

A. If you will look at map H-11, you will see that the major railroads that compete with the Santa Fe west of Kansas City, at St. Louis, that serve St. Louis are Missouri Pacific, Frisco, the Katy, the Rock Island, the Burlington, [fol. 219] and the Cotton Belt. Now, I am conscious of the fact that the Wabash and G. M. & O. also serve St. Louis, but their termini is Kansas City, so that they are not actually in competition with us west of Kansas City, although they are in competition with us to Kansas City.

Q. You referred to the Cotton Belt. It isn't identified that way on the map. I thought I might have you point out.

A. St. Louis is L. S. F.—no, I beg your pardon. S. L. S. W.

Q. What is the general policy of these western competitors to the Santa Fe on traffic that moves through St. Louis?

A. Well, leaving aside for the movement the Wabash and G. M. & O. who stop in Kansas City and obviously can't,

go beyond that, the other railroads in competition with us naturally seek to maintain their longest haul. As I said before, a great substantial part of the traffic of this country moves on bill of lading that doesn't show junctions. Now, if any of those railroads have such a bill of lading whereby it is routed Rock Island, Santa Fe, the Rock Island is very much within its rights to carry that traffic to Amarillo. The Katy is very much within its rights to carry that traffic to Fort Worth or some other junction. The Missouri Pacific is very much within its rights to carry that traffic to Pueblo. Now, I use that as representative. To the extent that there are junctions and the traffic flows over our western competitors via St. Louis, Kansas City, Santa Fe, the information of any great flow of traffic in that direction in [fol. 220] the hands of one of our western competitors makes them do just like we'd do under the circumstances and that's send their solicitors out and start working on that traffic and see why they can't get a longer haul on it. So the St. Louis gateway is a gateway that under existing conditions is not a very good gateway for the Santa Fe Railroad.

Q. In your referring to these lines getting their long haul, you had in mind traffic in which the Santa Fe is named as a connection carrier at some junction?

A. Oh, yes, sir.

Q. Is the Lomax gateway important to the Santa Fe in meeting this situation?

A. I think it is very obvious, having in mind that while we work awfully hard through Chicago we need help. As I pointed out there is a little bit better divisional basis through the T. P. & W. and Peoria gateway. With another railroad working for us it is very obvious that they must solicit and obtain traffic that otherwise would move via the St. Louis gateway, some on which we wouldn't receive a haul at all and some on which we may receive an interior junction haul.

Q. When you speak of a railroad working for you, such as the T. P. & W. working for you via the Peoria gateway, just what does that mean?

A. I really mean that they work for themselves, and to [fol. 221] the extent that they work for themselves we work

awfully hard to get that traffic that they have solicited via our gateway, just like the Rock Island would, too. They are not working for the Santa Fe. I don't think any solicitor of the T. P. & W. could go out and work for the Santa Fe in relation to the Rock Island and Burlington, if so, they would be in trouble pretty quickly. The gateway is there and the T. P. & W. solicits, we solicit also.

It is very obvious that we would much rather receive a car through the Lomax gateway from the T. P. & W. than to receive it even from one of our western competitors through the Kansas City gateway, not only because of the money loss but also because of the fact that our traffic is always in jeopardy when it is in the hands of our competitors as a connecting carrier.

Q. There has already been some discussion of what the Santa Fe intends to do traffic-wise if the present application is granted, and that involves securing a 50 per cent interest in the T. P. & W.?

A. Well, on the condition that we obtain a 50 per cent interest in the T. P. & W., it is the purpose of the Santa Fe to advise all of its solicitation force that they will place Lomax on a parity with Chicago in their solicitation efforts. Now, I mean by that that they will tell a shipper with respect to any traffic that moves over the Santa Fe and they [fol. 222] ask what junction we want it for, we will say we will take it either to Lomax or to Chicago. It doesn't mean that we are going to solicit for—period. I will stop right there.

Q. Do you think this will benefit the T. P. & W.?

A. Well, it is pretty obvious that as the resistance of the Santa Fe by placing Lomax on a parity with Chicago lessens to some degree that the T. P. & W. solicitors ought to be in a better position to pick up some traffic that otherwise might move by our line through Chicago. Now, we are not doing this from an eleemosynary standpoint because we figure as an owner of the line we want to build it up to the maximum degree, and for every car that they may short haul us from Chicago, I would say the more the line is used, the more prominent it becomes in the minds of the shippers and in the experience of the shippers, that they are bound to pick up a relative, maybe not exactly the same, but a

relative amount of traffic from the St. Louis gateway, because the more shippers who use this route I am satisfied that the degree of satisfaction will be such that the T. P. & W. will be a more potent force in soliciting traffic not only from Chicago but also St. Louis. I think in the overall picture, we are putting chips in the pot, which will come back to us in dividends.

Q. In other words, there would be both the revenues, dividends, earnings from the T. P. & W. 50 per cent—

A. (Interrupting) That is correct.

[fol. 223] Q. And this other factor?

A. That's right.

Q. In actively supporting the T.P. & W. route, will the Santa Fe work in favor of the Pennsylvania and against the other eastern railroads because of its half interest in the T. P. & W., because of the Pennsylvania's half interest?

A. Mr. Thomas, every railroad man in this room knows that any railroad that attempts to dictate or advise a shipper as to a railroad that he should use beyond his own termini just gets himself in trouble. He has enough trouble trying to solicit traffic over his own line. If I go to a shipper and say that when it gets to Chicago I would like to have you send it over the Erie, he says, "What business is that of yours?" He just doesn't tolerate it. It isn't a fact that we can't do it and don't do it, but we also must maintain neutral friendly relations with all of our eastern connections. It would be suicidal for the Santa Fe to try and pick out one carrier, one eastern carrier and work preferentially with it, because not only—we'd have the whole eastern railroad segment of the industry reciprocating in that respect and hurting us.

Now, you say how would they hurt us. This solicitation business is a rather peculiar business. Our railroad solicitors in the eastern territory must depend on the good will of the solicitors of the railroads that originate traffic in the area, they must depend upon the goodwill of the station [fol. 224] agents of those railroads because they are the railroads that know when traffic is originating and where it is going. We don't know.

Q. In other words, you get information that enables your solicitors to work?

A. We get information, as long as you are friendly the eastern railroads will be helping you in the respect of telling you that here is some traffic you can go out and get. They might not tell the Santa Fe alone because they are playing a neutral game with everybody else. But, if, for instance, the Nickel Plate found that we were favoring the Pennsylvania and hurting the Nickel Plate, I am sure Mr. Lynn White or Mr. Silwit would very promptly see that his solicitors were advised that they should give the cold shoulder to the Santa Fe where we are trying to get business.

Q. Those gentlemen are executives of the Nickel Plate?

A. Yes, sir, and very good ones.

Q. Have you anything further to say about the solicitation policy, Mr. Duffy, before we go on with your testimony?

A. I think I have covered it.

[fol. 225] Q. Let's talk about the other matter that Mr. Gurley said you would discuss, that is, the location of industries on the T. P. & W. First, tell me what is the importance to a railroad of locating industries on its line.

A. I don't know of any factor that is more important to a railroad than to have an industry located on its line. Once the industry is located on its line, it must depend upon that carrier for its car supply, there is daily contacts between its people and the railroads, not only with respect to service, the industry looks to the railroad that serves it for help in rate matters, and if any railroad treats its industry halfway decent, it is bound to receive a linehaul on a preponderant amount of that industry's traffic.

Q. What is the situation of the Santa Fe with respect to industrial land in the Chicago area?

A. Unfortunately the Santa Fe came into Chicago rather late and we came in from the west, and we came through an area where there was very little vacant industrial property. Whatever little property we had is pretty well gone, and the Santa Fe in the Chicago area today really suffers from a lack of industrial property. I think in the Chicago area alone we only have about 60 acres and some of that is pretty well cut up. A large part of it is cut up by the canal property that is owned by the state under which our

title is in jeopardy and it is bisected and makes a rather difficult property to sell to shippers. It's true we have [fol. 226] attempted to or we do have property out at Willow Springs where the General Motors plant is located, property in the neighborhood of 500 acres. That property is pretty far out, and that again pretty well requires an awful lot of work before it's usable by industries, and so far outside the General Motors plant we haven't been able to interest anybody in it. In other words, we are one of the few Chicago railroads, I think that are in a rather poor position with respect to industrial property. Now, we haven't sat on our hands and liked the situation, we have looked around and looked around and tried to find ways and means of acquiring property that we could use, but so far we just haven't come up with the property because it's not in the nature of things to get it.

Exam. Albus: Let us take a 10-minute recess.

(Short recess)

Exam. Albus: The hearing will please come to order. We will continue with the direct examination of Mr. Duffy.

Mr. Thomas, please.

By Mr. Thomas:

Q. Mr. Duffy, we were talking about location of industries. I want to ask you now what will be the attitude of the Santa Fe toward location of industries on the T. P. & W. if the Santa Fe is permitted to acquire a 50 per cent ownership of the T. P. & W.?

A. It will be the attitude of the Santa Fe to try to help the T. P. & W. in every respect to locate industries on its [fol. 227] line. I should say, I should inform the people here, that the T. P. & W. is in the fortunate situation of having large acreages of potential industrial property, not only at Peoria but along its railroad, and they have very few industries on its line. So far as the Santa Fe is concerned, it does it, not only because we are going to be a half owner and accrue benefits, but also the selfish reason we have limited industrial area in Chicago which makes it much more attractive to us to help the T. P. & W.

Q. The result would be you would hope to secure traffic from those industries?

A. Well, there is no question about it, in other words, the industries that we show naturally would be industries, and when I say show, we not only show them in Chicago but at Galesburg and places like that, and those industries that have traffic to western destinations. That doesn't mean they won't have traffic to eastern destinations but we don't get very much enthused about industries that don't have traffic that goes to our territory.

Q. Even as traffic that went to eastern destinations you would benefit, would you not, as a half owner of the T. P. & W.?

A. That is right. I would like to amplify the fact that the Santa Fe has a large industrial department. We have an assistant to the president who is in charge of locating industries and we are constantly in touch with potential in- [fol. 228] dustries that want acreage and there is no question in my mind that if we showed all of the industries that come to us seeking industrial property in which we think that it would be to our interest to show them property to include the T. P. & W. acreage as well as our own acreage that it would benefit the T. P. & W. substantially, particularly as where they have very little local traffic, and where if they develop that local traffic it will add to their stature immeasurably as well as to the revenue that they obtain.

Q. Would you like to say something about car supply as related to the location of industries?

A. Well, I am speaking generally now, and I have no knowledge of how the T. P. & W. has found the situation, but certainly an industry is more interested in locating on a railroad where it may be reasonably assured of a good car supply than locating on a railroad where there may be doubts about that matter, because for a number of years now under certain times of the year cars have been scarce and a railroad that doesn't own the equipment is not in a position to service its industries in the way it should, and industries are very touchy about that situation.

Q. Do you think the policy that Mr. Gurley discussed about car supply in relation to the T. P. & W. if the Santa

Fe was a 50 per cent owner would help the location of industries on the T. P. & W.?

[fol. 229] A. There is no question about it.

Q. Did you want to say something further about an illustration you gave a while ago with reference to the Nickel Plate in discussing solicitation policy?

A. I just want to call attention that my good friends of the Nickel Plate indicated I did them an injustice and I want to correct that immediately. On page 1 of my Exhibit H-10 I did not complete the interchange at Chicago that we have with the Nickel Plate, in addition to the interchange that is shown on the exhibit we also interchange through—with the Nickel Plate through the Illinois Northern, you might indicate that.

Q. Would you simply add the name of the Nickel Plate at the top of that column there?

A. That's right. Where it says Illinois Northern. It says C. & W. I. railroad, Illinois Northern. Where does it say Nickel Plate?

Q. It says via belt railway, it says N. Y. C.

A. It says direct up there, it says C. & W. I. railroad, Illinois Northern. If you put Nickel Plate in there, that means through the Illinois Northern. We also handle perishables with the Nickel Plate, with the I. H. B., Indiana Harbor Belt, and that should be added. I apologize to the Nickel Plate for omitting that.

Mr. Witt: No apology necessary, Mr. Duffy.

By Mr. Thomas:

Q. Is there anything further you have to say, Mr. Duffy?

[fol. 230] A. No, sir.

Mr. Thomas: That is all.

[fol. 231] Exam. Albus: You may cross-examine, please, Mr. Wheeler first.

Cross examination.

By Mr. Wheeler:

Q. Does the Santa Fe experience car shortages at any time throughout the year, Mr. Duffy?

A. Yes, sir, the Santa Fe, like a lot of railroads, as I said before, has experienced car shortages at times throughout the year, but I would like to add to that if all the railroads in the country had brought their car supply up to the AAR requirements and all the car rules, car interchanges rules, had been complied with, the Santa Fe would not have a car supply shortage, because we own enough cars to take care of the requirements of the shippers on this line.

Q. Whether the others followed AAR requirements doesn't give you any more cars—

A. (Interrupting) It certainly does, because as the total cars go up, those lines aren't deficient and won't hold our cars and we will get our cars back in greater numbers.

Q. I think you misunderstood me. It doesn't change the situation as of now?

A. No, sir, unfortunately.

Q. You do have shortages, and regardless of what that is attributable to—

A. (Interrupting) I have so admitted.

Q. (Continuing) —You do have shortages on your line? [fol. 232] A. I have so admitted.

Q. Are you familiar with the situation on the M&StL?

A. No, sir.

Q. With respect to car supply or car shortages?

A. No, sir.

Q. Are you familiar with the situation on the TP&W?

A. Only by hearsay. I understand that at times they have suffered car shortages.

Q. Do you know whether those car shortages were in greater number than the car shortages, average daily car shortages, on the Santa Fe?

A. I do not know.

Q. Do you know what industries located on the TP&W have found this car shortage harmful?

A. I do not know. I assume that any industry on the TP&W that suffered a car shortage would find it harmful.

Q. But do you know specifically any industry?

A. No, sir.

Q. Would it be your policy during a period when the Santa Fe was short of cars to take cars away from industry that was shipping freight over the Santa Fe from Cali-

fornia to Chicago, to take cars away from them and divert them to a shipper on the TP&W that was going to ship, say, from Peoria to Effner?

A. I don't know.

Q. You don't know?

[fol. 233] A. No, sir.

Q. Who would know that?

Mr. Thomas: Mr. Gurley testified about that.

A. Under those particular conditions, I think somebody in the higher echelons in the operating department will have to make that decision. After the consultation of all of us we'd reach the best conclusion we could under all the circumstances that then existed.

By Mr. Wheeler:

Q. You wouldn't tend to favor the shipper that gave you the longest haul?

A. We don't always do that.

Q. Do you normally do that, all other things being equal?

A. I would say that we have no set rule along that line. I say we meet the car shortage situation at every point on our line and in the most equitable and in the fairest way we can and what we do under given circumstances depends upon the circumstances.

Q. What are some of these equitable situations that you mentioned?

A. Division of cars.

Q. On what basis?

A. You are getting me in a situation that you will have to refer to Mr. Jim Mahoney. I know what our general policy is; I know how they do it and how they carry it out, but I would rather have you ask Mr. Jim Mahoney who is [fol. 234] an expert along those lines.

Q. Mr. Duffy, you spoke of location of industry, and you named some place outside of Chicago, Wildwood—

A. Willow Springs.

Q. And you indicated you had some considerable difficulty in locating industry on tracts of land you—

A. I said we had difficulty in locating industry. I didn't say it was attractive land.

Q. I said "a tract of land," t-r-a-c-t.

A. I beg your pardon. The answer is yes.

Q. Why have you encountered difficulty?

A. Well, I don't know that I can answer that question. I would say, first of all, the number of industries that we might have shown the land don't want to go out that far, in relation to the city, that is, the trucking back and forth, a number of industries don't like the access, and there are many factors. I just haven't talked to all industries. The main fact is that we haven't located anyway, let's put it that way.

Q. Is Peoria closer to Chicago than Willow Springs?

A. No, but that doesn't mean that an industry that would not go to Willow Springs would not go to Peoria, because, after all, they are looking at the relationship of the city in respect to trucking and hauling and that sort of thing.

Q. What are these considerations that industries usually take into account when they are thinking about locating a new plant?

[fol. 235] A. Well, I don't like to speak for industry, but I might name a few that occurs to me. First of all, they like an industry that is adjacent to a good labor market, I mean land that is adjacent to a good labor market.

Q. Let's take that now. Is Peoria known to be a good labor market?

A. I don't know.

Q. You haven't investigated that factor?

A. No, sir, I have not.

Q. Go ahead.

A. They like to locate on land where power and water is available. Do you want me to stop when I answer each one?

Q. Yes, sir. Have you investigated that situation with respect to Peoria?

A. No, sir.

They like to locate on land that has good railroad service and good highway service.

Q. Have you investigated that specifically with respect to Peoria?

A. I have not. I have seen the acreage of the lands along the TP&W, but I made no investigation specifically along those lines.

Q. Let me ask you this, Mr. Duffy, do you know whether or not the TP&W has better industrial development land available to it than the other railroads that serve Peoria? [fol. 236] A. Oh, no, I don't know anything about the relative situation. I merely said that they have good lands.

Q. I believe you indicated that you would be interested in an industry, more interested in locating an industry that would ship over your lines than you would one that would ship east, for instance.

A. I don't know that I wanted to leave that impression exactly. I would say that so far as we are concerned, along our own railroad we certainly would not show an industry that had no tonnage over our railroad and only ship east out of Chicago because, after all, it wouldn't mean anything to us. I said that at Peoria we would show an industry land or would show an industry that shipped west land, but I don't want to imply that we wouldn't show an industry that shipped east lands at Peoria, because they were in a little different situation in Chicago because an industry that shipped east at Chicago wouldn't give us anything, but an industry that shipped east at Peoria at least would contribute to the TP&W and we would benefit indirectly. We would prefer to have an industry that shipped in both directions.

Q. I take it from your answer, then, you would be most interested in locating industry at the points on your lines from the point at which you would get the longest haul?

A. Well, you know, you just can't cut it so fine with these industries. You have to look at their total tonnage and [fol. 237] their total potential revenue. It might not be a long haul. They might have quite a bit of tonnage for a short haul. We look at the total over-all picture.

Q. I don't want to quibble about this.

A. No, I am not quibbling with you, either.

Q. Let's take a concrete situation and see if we can nail this down. Supposing you had an industry that was going to ship substantial tonnage to the West Coast, would you be more interested in locating that industry in New Mexico or in Illinois, assuming that you can say to that industry where they could locate?

A. It would be very obvious that we would be more interested in locating the industry in Illinois; but on the other hand, the primary interest is where the industry wants to locate territorially, and that we wouldn't have much to say about.

Q. I understand. But, as a choice of locations, you would prefer and would seek to influence the shipper to settle on the location that would give you the longest haul, would you not?

A. On the basis, as you put it, if we had the choice and we had the industry that would say, "I will either go to New Mexico or Chicago, where would you go?" I would tell them I'd like to have them go to Chicago.

Q. Now, wouldn't the same things be true, I have looked at your divisions and it appears that you get a substantially [fol. 238] greater division to Streeter than to Lomax, is that correct?

A. That is correct.

Q. So that you would rather locate an industry at Streeter than you would to locate it at Lomax?

A. There is no doubt about the fact, I wouldn't quibble with you at all, that if we could locate the industry at Chicago we'd prefer, then, to locate it on the TP&W, but, on the other hand, it must be entirely clear that our ability to locate industries in the Chicago area is limited because of the situation with respect to our industrial property, so therefore we don't always have the choice, and I merely say that industries that are looking for industrial property in the fotal, all the area, we don't want to put our eggs in one basket, we won't put our eggs in one basket, we won't confine it to Chicago, the Chicago area, we show them Galesburg and we show them Peoria.

Q. Now, supposing this industry is located, this new industry or additional, in addition to an existing industry, on your line, is located at Streeter, will you have to divide the revenue with any other carrier that you receive shipments from, say, at an off-line point of yours in California?

A. Pretty obviously we wouldn't.

Q. That would not be the case or not be true of an industry located on the TP&W, would it, other than at Lomax?

A. You mean other than at Lomax, no; if it located on the [fol. 239] TP&W and it shipped to a local point on the Santa Fe, we'd have to divide with the TP&W and part of it we'd get back.

Q. And part of it would go to the Pennsylvania under your proposal?

A. That is right.

Q. So it would be to your greatest economic advantage to locate the industry on your own lines as against the TP&W?

A. I am not quibbling about that fact. I admitted it before. If we had the choice and had a clear-cut ability to locate an industry on our line, we'd try to do it, but I have tried to tell you that we'd be very foolish to put our eggs in one basket in showing potential industries acreages that are available to it because of the fact that our acreage in Chicago is limited, and the industry, if we only show it one, they'd go away and leave it. We'd rather show them Galesburg and Chicago. We want to get them someplace where we'd get revenue.

Q. Mr. Duffy, in view of that fact, why didn't you buy the TP&W by yourself rather than split it with somebody else?

A. Well, that's only one factor, Mr. Wheeler. After all, Mr. Gurley has indicated all the factors that led him to believe that the inclusions of the Pennsylvania would be good. What I am talking about here is just one of the factors that we are indicating by which we can be beneficial to the TP&W as an owner.

[fol. 240] Q. Mr. Duffy, I was left a little confused with respect to your proposed policy with respect to the solicitation of traffic via the TP&W through the Lomax gateway.

A. Yes, sir.

Q. I would like to try to put it in my words—

A. All right, you try.

Q. (Continuing) —to see if we have a meeting of the minds.

Do I correctly understand your testimony to be that if you get 50 per cent ownership of the TP&W you will not solicit Chicago versus Lomax?

A. I will not solicit Chicago preferentially over Lomax, and that is what you mean, I assume.

Q. So that the TP&W's own solicitation would be relieved of the Santa Fe pressures for the long haul for Chicago?

A. Yes, sir. Could I add to that?

Q. I'd like to go one step further.

Mr. Thomas: Let's let Mr. Duffy finish his answer before you ask another question.

Exam. Albus: This is still the question.

A. I may be going beyond it if I answer, but go ahead, I will let my answer stand.

Exam. Albus: Very well.

By Mr. Wheeler:

Q. And another aspect of that is that you will not actively solicit Lomax as against Chicago but only as against Kan- [fol. 341] sas City or other Missouri gateways?

A. Well, I said that we would not solicit Chicago preferentially over Lomax. We won't solicit Lomax preferentially over Chicago. We will solicit both Chicago and Lomax over the interior gateways. If that is what you are getting at.

Q. I'd like to break that down a little more and see if I understand it. You will regard, or you do regard, at the present time the TP&W as an alternative which you can offer to shippers to, for instance, the St. Louis gateway?

A. That is right.

Q. Now, Mr. Duffy—

A. (Interrupting) Of course, we can offer Chicago, too, but we are not too successful at times.

Q. When you can't get them to go to Chicago, then you fall back on—

A. (Interrupting) We fall back on everything.

Q. Now, what about Nemo? First of all, would you please state for the record what Nemo is.

A. Nemo is our interchange with the M&StL, which is indicated on my map.

Q. And that comes into the TP&W interchange with interchange with the TP&W at Peoria?

A. That is correct.

Q. Now, what is your policy with respect to Nemo at the present time?

[fol. 242] A. I think it is greatly the same as it is with respect to the TP&W, approximately the same. I would say the same, if you want.

Q. Now, Mr. Duffy, if your application is granted, Nemo will cease to be on a parity with Lomax, will it?

A. That is correct, so far as I have indicated our solicitation policy.

Q. Yes.

A. Servicewise and every other wise they would be.

Q. I believe you stated that—oh, pardon me. Are you a co-owner of the Belt Line in Chicago?

A. Yes, sir. I think one of 13. I may not be right, but that is my recollection.

Q. So that you participate in any revenues that are paid by the Belt Line?

A. Well, we participate if there is any profit.

Q. You'd have to participate in making up any losses, too, wouldn't you?

A. That is correct.

Q. Do you make any effort to locate industry on the Belt Line?

A. No, sir. Let's put it this way—I beg your pardon. I am too fast—I would say this, that if an industry can't be located on the Santa Fe in Chicago we do show a piece of property on the Belt Line, we would much rather have it on the Belt Line in Chicago than on a competitive railroad.

[fol. 243] Q. There will be a loss to the extent that you divert traffic to Lomax from Chicago, there will be a loss of revenue to the Belt Line, will there not?

A. I think, if you will rephrase your question, I will agree with you, and that is, I say we will not divert it, the TP&W will divert it.

Q. You mean you are not going to solicit for the Lomax gateway?

A. I said we will tell the shipper he can either go to Lomax or Chicago—let's get this straight, when we put ourselves in the position that we will take a shipment either at Lomax or Chicago, we leave open to the TP&W the chance of getting that traffic, the New York Central and all the railroads serving Chicago, the Erie, which doesn't serve St. Louis, we leave open the Nickel Plate, the CM, the L

linois Terminal, everybody in, participating in, the traffic, in other words, we don't have anything to say whether it is going any other railroad beyond Chicago or beyond Lomax, that is traffic that will be solicited by the various railroads serving Chicago and connecting with the TP&W, and those checks and balances will pretty well say whether the traffic goes to Lomax or to Chicago, in other words, the TP&W isn't going to take all of our traffic over the Lomax gateway, because we have these Chicago railroads that are going to see that a great part of it continues to flow to Chicago. I want to get that clear in the record.

[fol. 244] Q. I wish it were clear in my mind, Mr. Duffy.

A. Well, I will be very glad to—

Q. What percentage of your traffic now goes to Chicago?

A. About 60 per cent.

Q. What per cent goes over the TP&W?

A. Well, I have some figures, and I don't want to have you hold me down to them because there are flaws in them, in other words, they were made up by cumulation and some of our people misinterpreted as to what we wanted, but I can give you an approximation.

Q. All right.

A. Our total eastbound and westbound via Lomax, about 10 per cent. I don't want to be held down to these figures as being accurate.

Q. So your approximation would be that of the traffic, the east-westbound traffic, it moves to Chicago now on a ratio of about six to one?

A. That is right.

Q. Over the TP&W?

A. That is right.

Q. Now, to the extent that your present solicitation policy results in the diversion of traffic from Chicago to the TP&W, the Belt Line Railroad will suffer a loss in revenues, will it not?

A. Well, to the extent—let's get this straight, a lot of our [fol. 245] traffic at Chicago is not interchanged through the Belt. If you will look at my exhibits you will find we have direct connections with the—well, right now, as of now, I am not in position to tell you, but I will tell you this, we do have direct connections with a number of railroads in

Chicago and traffic does not flow through the Belt in all cases. Subject to that reservation, I would say that any traffic that otherwise the Belt might get, that would flow over the TP&W because the TP&W does a better solicitation job, the Belt Line would lose that revenue, if that is what you want to know. Incidentally, when we made that agreement with the New York Central it was also made with the Belt to put Streeter on the same parity as Chicago. The same conditions applied, but we did it nevertheless.

Q. Are you familiar with the term "incremental dollar" as used in the railroad industry?

A. Well, I don't know how you use it. I'd rather have you tell me what you mean by it and then maybe I will agree or not agree.

Mr. Broker: Excuse me, Mr. Examiner. We can't hear the questions or answers very well.

Exam. Albus: Let's speak up a little, please.

By Mr. Wheeler:

Q. Are you familiar with the fact that in the railroad industry the last dollar that you take in, that of the last dollar that you take in, a far greater share of it goes to [fol. 246] profit than the first dollar that you take in.

A. Well, you are getting into a stage of economics that I would prefer not to indulge in.

Q. Are you familiar with the fact that if you took revenue away from the Belt Line Railroad, that is, revenue at the top, it would result in a disproportionate loss dollarwise to the Belt already in net revenue?

A. I don't know that I fully agree with you. It may very well be certain economists reach that conclusion, but I am not going to get into that phase of economics or railroad cost accounting.

Q. Mr. Duffy, can you tell me how many cars the Santa Fe interchanges at Chicago, east and westbound?

A. I think roughly, I don't know whether these are through cars or not, but roughly I would say at Corwith and McCook it would be close to 300,000 cars, that is, in 1955.

Q. Now, what is your total interchange at Lomax?

A. I am going to give you another statement where I said, the one I have shows 8.1 and the other one shows 9 per cent, so I took the 10 per cent figure without knowing which one was correct. Based on my reference to the 300,000 cars at Chicago, which indicates that it is—I would say that the number of cars at Lomax is 35,321 in 1955.

[fol. 247] Q. Mr. Duffy, what effect do you think your new solicitation policy will have on the Nemo gateway?

A. I don't think it will have any. When I say "any", I mean, let's put it very little.

Q. Well, then, Mr. Duffy, why did you think your policy will help Lomax?

A. Well, I don't think that the TP&W is going to get any appreciable amount of cars away from the M&StL, and I will tell you why. Any of the cars that you get between Peoria and Nemo come within the category of those factors that I said that develop traffic for a railroad, and that is solicitation and friendship, and I don't think that our placing Chicago, or Lomax on a parity with Chicago, is going to have any effect on the friendship that Mr. Nelson and a lot of the solicitors have with a lot of these industries through which you have persuaded them to give you a share of the traffic. Now, that is not inconsistent, in my opinion, with the theory that we are going to get more cars away from the St. Louis gateway. I think that the cars that I am talking about are the cars that come from these larger railroads, railroads in the West, when you come to a railroad like yours that participates in that east-west traffic, Peoria to Nemo, I think most of it is purely on a friendship basis.

Q. Now, if it is not on a friendship basis but on a solicitation basis—

[fol. 248] A. Well, they are interchangeable in my book.

Q. They are interchangeable, on a service basis?

A. I am not talking about a service basis. I don't think those cars fandamentally are on a service basis.

Q. Well, if you should be wrong, and—let me ask you a qualifying question, Mr. Duffy. Have you ever worked for the M&StL?

A. No, sir.

Q. If you should be wrong and the movement of those cars is on a service basis, don't you believe that your acquisition of the TP&W will adversely affect the flow of cars through the Nemo gateway?

A. If I should be wrong, why, those conclusions follow, but I am pretty certain I am not wrong.

Q. That is competitive traffic?

A. Oh, yes, sir, it is competitive to a degree, yes, sir.

Q. Well, it is all bridge traffic, so it has to be competitive, doesn't it?

A. I am not quarreling with you.

Q. Mr. Duffy, do you have the information with respect to the solicitation forces and the amount of money, revenue that is devoted to the solicitation each year by the Santa Fe?

A. Well, I don't have it handy. I would say this, that if you want to find out where our offices are, all you have to do is look at the Railway Guide, that shows the off-line and division offices of all railroads. If you are talking about [fol. 249] the number of employees that we have in solicitation forces then we get into a quandry, a lot of them are joint, a certain number of passengers only, and in the offices themselves many of them are not solicitors but service agents. We'd have to develop that information. I don't have it handy.

Q. Do you have the annual amount that is spent by you and your department annually and the number of employees that are under you, that are in your department of the Santa Fe?

A. Well, we have it but I don't have it right with me.

Q. Could you supply that for the record?

A. If you will talk to Mr. Starr Thomas.

Mr. Thomas: The Examiner has suggested that we handle this off the record. He is asking for the same thing again.

Exam. Albus: Yes, try to get together on it.

By Mr. Wheeler:

Q. I believe you said in your direct testimony that eastern roads were better off division-wise Peoria as against Chicago?

A. Generally speaking.

Q. That is not true of the Pennsylvania, is it?

A. Are you talking about Effner?

Q. Effner.

A. Well, I think I'd rather have you ask the Pennsylvania questions about that. They have some ideas about it that they will tell you.

Q. Now, you made the statement, I'd like to have—

[fol. 250] A. (Interrupting) Let's get the specific divisions, then we will have it. That's the best way I know. If you are talking specifically, I'd rather have the specific divisions. Where do you want to talk about?

Q. You just made the general statement—

A. (Interrupting) You said generally.

Q. I want to know whether or not the Pennsylvania is an exception.

A. Well, let's take Effner all the way down the line and we will get the facts. Let's take Effner transcontinentally first, versus Chicago.

Q. What page are you on?

A. I am on page 5, eastbound, Effner and Chicago, Chicago is half—if we look at page 5 and take Pittsburgh to transcontinental, you will find that the eastern lines get sixteen and a half per cent through Chicago and sixteen per cent through Effner. Now, I will take any other one.

Q. Just a moment. What is the one right below that?

A. I will take anyone you want.

Q. Is that Peoria?

A. Peoria, 20 per cent.

Q. Would that apply to the Pennsylvania?

A. Not if it went through Effner, they'd get 16 per cent.

Q. Supposing it didn't go through Effner?

A. And it went through Peoria?

[fol. 251] Q. Yes, sir.

A. Any railroad that took it through Peoria or group of railroads would get 20 per cent.

Q. Are you familiar with the fact that the Pennsylvania moves a substantial amount of traffic into Peoria over that route, transcontinental traffic?

A. I am not familiar with the traffic, the flow of traffic, over that route. The Pennsylvania is, and I'd rather have them tell you what it is.

Q. Isn't it the general rule—referring to your page 5, Mr. Duffy, of your exhibit, page 10—isn't it true that with the exception of the transcontinental traffic, the division of the eastern carriers is greater via East St. Louis and via Peoria?

A. Oh, I said that. But I want to amplify that the difference is much greater east St. Louis than Chicago.

Q. And Effner is the lowest in all other instances?

A. Whatever the facts show, I am willing to take.

Q. Referring, Mr. Duffy, again to your other testimony, the primary competition of the T.P.&W. is to the St. Louis-East St. Louis gateway, the Chicago gateway, and the Kansas City-Decatur gateway, is it not?

A. I would say the primary competition—well, let's say yes.

Q. Mr. Duffy, have you discussed—

A. (Interrupting) No, I say the competition is there. I am not saying it is equal: I mean there might be differ-
[fol. 252] ences in shades. That's the reservation I made on it.

Q. All right. Have you attempted in connection with this operation at Streeter, have you attempted to enter into an arrangement with the New York Central for the acquisition of part of that line into Streeter?

A. Oh, no, sir. We just happened to have a good connection there, and we are just maintaining it. The New York Central says they can get better service through Streeter than Chicago, and we say that's what we are for is service, we will cooperate.

Q. Do you have an explanation for your different policy in connection with the T.P.&W. at Lomax?

A. Oh, we are getting into a realm that has no connection one with the other. In other words, in one case we have a situation where the New York Central has a connection, it is a big railroad, it is not for sale, there is no relation with the situation of the T.P.&W.

Q. I believe you said on your direct testimony that you don't, the Santa Fe doesn't now serve Peoria. Now will that situation be changed if your application here under consideration is approved?

A. Well, so far as the Santa Fe itself is concerned I see no difference tomorrow than with the situation that exists

today. I am speaking about the Santa Fe Railroad as an operating railroad.

Q. Do you believe that the T.P.&W. will work, will solicit [fol. 253] more for you, for the Santa Fe that is, if it is controlled by you than it does now?

A. No, sir, I do not. I think the T.P.&W. would there again commit a very—would be lacking in judgment, and we as owners, if we had anything to do with that policy would be lacking in judgment to effect any such thing. The T.P.&W.'s success is founded not only in the traffic of the Santa Fe or the Pennsylvania but it is founded on the fact that it has junctions with the Burlington, with the Rock Island, with the C.I.M., the Illinois terminal, the New York Central, the Nickel Plate, and any time it was guilty of preference, even with its owners under an independent operation, it wouldn't be long before the T.P.&W. would find very little cooperation with any of the other railroads that now interchange with it.

Q. Now, supposing that happened—

A. (Interrupting) Laci of, all right.

Q. Supposing just what you say happens, supposing the T.P.&W. does start soliciting for the Santa Fe and the Pennsylvania much harder than it does now, that would have a detrimental effect on these roads that you have named, would it not?

A. It is hard for me to indulge in that assumption, but if I have to indulge in it the answer conclusively, the answer is yes.

Q. Mr. Duffy, you did not include the M.&St.L. in the list of railroads interchanging with the T.P.&W. Are you [fol. 254] aware of their position with respect to interchange with the T.P.&W. relative to other railroads?

A. Well, if I didn't include them in my over-all statement, pardon me, and I will have it understood that I meant to include them.

Q. You are aware, are you not, that they are the third—

A. Yes.

Q. (Continuing) —largest road from the standpoint of interchange with the T.P.&W.?

A. I apologize. It wasn't intentional.

Mr. Thomas: I think the record ought to be corrected on that.

The Witness: I thought he meant to say I didn't talk or didn't include the M.&St.L. when I mentioned all these other railroads with which the T.P.&W. interchanges.

Mr. Thomas: He asked if you didn't know that the M.&St.L. was the third largest interchange with the T.P.&W.

The Witness: I say whatever the figures are I don't know.

Mr. Thomas: It isn't the fact?

The Witness: If you will show me the figures, I will be very glad to put them in the record. They are in the record, I think.

Exam. Albus: They are in the record.

The Witness: I don't keep it all in my mind.

By Mr. Wheeler:

Q. You state that you don't have favored connections [fol. 255] with other railroads, is that correct?

A. I said we don't have any favored connections with eastern railroads.

Q. Aren't you making one with the T.P.&W.?

A. No, sir, I don't think we are making any with the T.P.&W., any more than we—let's put it this way, if you call—may I withdraw my answer.

If you call placing Lomax on a parity with Chicago, favoritism, then we are favoring the T.P.&W., but we are favoring them under the conditions whereby we are half owner. I said that we don't favor any eastern railroad or any railroad where we have no such ownership.

Q. Now, to the extent, to that same extent you are also favoring the Pennsylvania when you enter into this arrangement, are you not?

A. I am not entirely sure that we do. In other words, as I tried to tell you before, that while the T.P.&W. might solicit more traffic over the T.P.&W., that doesn't mean that it is going over the Pennsylvania. It means it might go over the Nickel Plate, it means it might go over the New York Central through Shelton, it means that it might go through the I. C., or the Illinois Terminal, through the

C.I.M., through Peoria, it will go wherever the railroad has a junction with the T.P.&W. that is able to solicit that traffic as part of the through route.

[fol. 256] Q. Well, at least to the extent that the Pennsylvania participates. Well, in the ownership of the T.P.&W., you are making them a favorite connection by placing Lomax on a parity with Chicago, are you not?

A. Well, I think we are mixing up two things. If you talk about the fact that if we make any profits on the T.P.&W. as to whether the Pennsylvania shares in that, the answer is obviously yes, but that doesn't mean that we are putting the Pennsylvania as a railroad or as a connection in any favorite position over any other railroad.

Q. You say that despite the interchange figures that have been introduced in Effner?

A. Those interchange figures were brought about by the conditions I referred to whereby the Pennsylvania either originated the traffic or is able to solicit it in competition with other carriers, and in conjunction with the T.P.&W. It certainly wasn't due to any effort on the part of the T.P.&W. [illegible]ve preference to the Pennsylvania over the Nickel Plate.

Q. Have you made any estimates of the effect of your new policy on the Lomax gateway?

A. I don't think it is susceptible to an estimate.

Q. Have you made any as to the effect of your new policy on the Nemo gateway?

A. Well, I just told you my opinion about it.

Q. That you have made no estimates or no study of it?

[fol. 257] A. When I say you are not appreciably hurt I don't need an estimate. I can't tell you the number of cars if that is what you mean.

Q. This becomes a guess, does it not?

A. It is informed judgment, a little bit more than a guess.

Mr. Wheeler: I have no further questions.

Exam. Albus: We will take a 10-minute recess. This time we mean 10 minutes.

[fol. 258] Exam. Albus: The hearing will please come to order.

We will continue with the cross-examination of Mr. Duffy. Mr. Cassell, please.

Mr. Cassell: No cross.

Exam. Albus: Mr. Broker?

Mr. Broker: No cross-examination.

Mr. Martin: No cross.

Exam. Albus: Mr. Wheeler?

Cross examination.

By Mr. Wheeler:

Q. Your Exhibit H-10, page 1, shows a direct interchange in Chicago with a number of railroads, as to that direct interchange is any charge incurred?

A. I don't think so. If my answer is wrong, I will tell you.

Q. So it would be the interchange via the belt—

A. (Interrupting) I was talking about the belts.

Q. The belts?

A. Yes.

Q. Mr. Duffy, you testified, I believe, that junction points are not indicated by shippers on a substantial part of the traffic?

A. That is correct.

Q. As to that part of the traffic, as to that traffic, then, there would be your change in solicitation policy would have no effect with respect to the Lomax Gateway?

A. No, because we send it over the Lomax Gateway, any-[fol. 259] way, if it is routed T. P. & W. without a junction.

Q. And if it is not routed T. P. & W., you would take it to Chicago?

A. Well, I would say yes.

Mr. Wheeler: I have no further questions.

Exam. Albus: Is there any further cross-examination of Mr. Duffy?

(No response.)

Exam. Albus: Is there any redirect?

Mr. Thomas: Yes.

Exam. Albus: Mr. Thomas, please.

Redirect examination.

By Mr. Thomas:

Q. Mr. Duffy, I have a couple of questions about car supply and car shortages. Do you know whether or not car shortages tend to appear on the Santa Fe and T. P. & W. at the same time or different times?

A. I think when you have car shortages, the car shortages are pretty well spread over the country and I would say the same time.

Q. How about the grain movement or—

Mr. Wheeler: Mr. Examiner, I object to this question on the ground that Mr. Duffy has previously stated that he has made no study as to the times when the car shortages—

Mr. Thomas: I will withdraw the question.

Mr. Albus: Thank you.

[fol. 260] By Mr. Thomas:

Q. Mr. Wheeler asked you some sort of hypothetical question which assumed that Nemo received its traffic, as I understood it, in relation to Lomax, its interchange business with the Santa Fe as in relation to the T. P. & W.'s business with the Santa Fe at Lomax, that was the point under discussion, and I think he said if that's not solicitation but service that results in Nemo getting the traffic that it does get today, and in that hypothetical situation he asked you whether the change in Santa Fe policy in solicitation in putting Lomax on a parity with Chicago would affect the traffic moving through Nemo. Now, is the service, as far as the Santa Fe is concerned, going to be changed, Nemo versus Lomax, under our policies?

A. No, sir.

Q. So the service would be the same?

A. That is correct.

Q. And our solicitation policy wouldn't have any bearing on service?

A. Well, if the—

Q. (Interrupting) That is a different subject, isn't it?

A. It is a different subject. In other words, if you are talking about service as a factor, therefore there is no change.

Q. In other words, if Nemo gets its business or a service basis and the service isn't changed, would you expect Nemo to lose business?

A. It's hard for me to see that.

[fol. 261] Mr. Thomas: That is all.

Recross examination.

By Mr. Wheeler:

Q. As I view the Nemo-Lomax situation, Mr. Duffy, don't you solicit the longest haul you can get on the Santa Fe?

A. Subject to the qualifications that I have mentioned and other qualifications—

Q. (Interrupting) Subject to qualifications I mean.

A. That's right.

Mr. Sheeler: That is all.

Exam. Albus: Thank you very much. You are excused, Mr. Duffy.

(Witness excused.)

OFFERS IN EVIDENCE

Mr. Thomas: I offer Exhibits H-9, H-10 and H-11.

Exam. Albus: Is there any objection?

(No response.)

Exam. Albus: They are received.

(Applicant's Exhibits Nos. H-9, H-10 and H-11, Witness Duffy, were received in evidence.)

Mr. Thomas: I have two exhibits which is to bring up-to-date, or up to November 1955, certain information that was included in the Santa Fe-Pennsylvania application and is required by the Commission's regulations with respect to such applications.

Exam. Albus: Very well.

[fol. 262] Mr. Thomas: They are one relating to the Santa Fé including a general balance sheet and income account, may that be identified?

Exam. Albus: That will be identified as Exhibit H-12.

(Applicant's Exhibit No. H-12, Mr. Thomas, was marked for identification.)

Mr. Thomas: The other relates to the income and general balance sheet of the T. P. & W.

Exam. Albus: That will be H-13 for identification.

(Applicant's Exhibit No. H-13, Mr. Thomas, was marked for identification.)

Exam. Albus: And if there is no objection, they will be received at this time.

(Applicant's Exhibits Nos. H-12 and H-13, Mr. Thomas, were received in evidence.)

Mr. Lucas: Mr. Examiner, the next witness will be Mr. Symes, President of the Pennsylvania Railroad. May we take a minute to distribute the two exhibits that he has?

Exam. Albus: Yes.

James M. Symes, was sworn and testified as follows:

Direct examination.

Exam. Albus: Before we proceed with the testimony of Mr. Symes let the record show that the two exhibits to be [fol. 263] introduced through him will be marked, first of all—

Mr. Lucas: The blue book first, if you please.

Exam. Albus: That will be Exhibit H-14.

(Applicant's Exhibit No. H-14, Witness Symes, was marked for identification.)

Exam. Albus: And the single sheet will be H-15.

(Applicant's Exhibit No. H-15, Witness Symes, was marked for identification.)

Exam. Albus: You may proceed, Mr. Lucas.

By Mr. Lucas:

Q. Mr. Symes, will you give your full name and business address for the record, please?

A. James M. Symes, President of the Pennsylvania Railroad, headquarters at Philadelphia, Pennsylvania.

Q. When were you elected to the position of president of the Pennsylvania Railroad Company?

A. May 1, 1954.

Q. And prior thereto you were executive vice-president of the Pennsylvania?

A. For several years prior thereto.

Q. And prior to that, Mr. Symes, what was your experience, particularly with reference to allotment of time in the Chicago area?

A. Well, from 1916 to 1928 I occupied—or 1927—I occupied a number of positions throughout the railroad as clerk, statistician, car tracer, car distributor, movement director. Then in 1928 I was appointed superintendent of the passenger transportation of the Western Region at Chicago. [fol. 264] Then December 1, 1929, a similar job, in the Eastern Region in Philadelphia, and in 1934 chief of freight transportation for the system, and in October 1, 1935, I was furloughed for three and a half years to serve as vice-president operation and maintenance of the Association of American Railroads in Washington, returning to the Pennsylvania on February 1, 1939, as general manager of the Western Region at Chicago, 1942 vice-president of the Western Region at Chicago, and 1946 I moved to Philadelphia as vice-president of operations.

Q. Can the narrative that you have just given be summarized as saying your experience is predominately in the operating departments of both the railroad and the A. A. R.?

A. That is right.

Q. You mention the A. A. R. during your furlough from the Pennsylvania Railroad. Have you had any other outside connections or assignments that had to do with the railroad industry generally?

A. Well, in 1932 Mr. Eastman then federal coordinator of transportation appointed me along with two other railroad officers in the east to study the seven party consolida

tion plan and I served in that capacity for about six months, and then the following year he appointed me as chairman of the New York Harbor Coordinating Committee, which I divorced myself from railroad duties and served in that capacity for about six months.

Q. And in both of those capacities you might say it was industry-wide?

[fol. 265] A. It was.

Q. Your sojourn three and a half years with the A. A. R. was, of course, an industry-wide assignment, is that correct?

A. That is correct.

Q. Mr. Symes, you have prepared some testimony for presentation in this proceeding here today?

A. I have.

Q. Will you proceed with it, please?

A. Mr. Gurley has presented the long term history of the T. P. & W. Railroad. For me to do so would burden the record repetitiously. But I do think it necessary that the position of the Pennsylvania Railroad be clearly understood with respect to its interest in the T. P. & W. Railroad. I believe I have been associated with each and every consideration of the matter insofar as the Pennsylvania Railroad has been concerned during the last 15 years.

The T. P. & W. Railroad has been successfully operated over a period of many years, and that has been particularly so since the ending of World War II. Why has it been a success? The answer is simple—because of the heavy interchange of traffic with the Pennsylvania Railroad at its extreme east end at Effner, Indiana, the Santa Fe interchange at its extreme west end at Lomax, Illinois, plus a very able, aggressive and independent management in the middle of the property at Peoria, Illinois.

[fol. 266] Insofar as the Pennsylvania Railroad is concerned, we would have preferred the railroad remain in its independent status and ownership. But apparently the trustees of the controlling owner estate deemed it advisable to dispose of the property. I have been told that their reason for wanting to dispose of it was because they believed the estate would be better served by a diversity of investment holdings rather than concentration in this one venture.

The Pennsylvania Railroad was approached by the trustees as to our interest in the property. I told them what I have just said—that we would prefer it remain in its present independent status and ownership—but if it was decided to dispose of the property, we should be interested, along with the Santa Fe, in acquiring ownership at a fair and equitable price.

But if they had in mind negotiating with us and others for the purpose of raising the price of the stock, I would appreciate being told this as I did not want to waste my time or to be involved in any part of such an arrangement.

I also discussed the matter with Mr. Coulter, President of the T. P. & W., along the same lines I have enumerated. A little later on I met Mr. Coulter in New York and he told me of the considerations on the part of the trustees and why they thought the property should be sold. I advised him that in the light of all considerations, it seemed to me the sensible thing to do would be for the Santa Fe and Pennsylvania to each acquire 26 per cent of the stock ownership from the McNear Estate. That would [fol. 267] leave the estate as the largest holder of the stock.

In that way the estate could raise money for diversification of investment, but, of more importance, with the two railroads that contributed so largely to the success of the property having an ownership therein, it would better insure its future as a good investment for the estate. Apparently the trustees at the time thought so too—as evidence by the agreement made with them at the time to carry it out and which they later indicated (on advice of counsel) was not a legal and binding agreement on the part of trustees. But I am not here indicating that they were right in their position. That is another matter, and I understand is not an issue in the proceedings before this Commission.

The the issue before the Commission is a simple one—is it in the public interest that ownership of the T. P. & W. be vested equally in the Santa Fe and Pennsylvania—or exclusively with the M. & St. L.—or divided up among a number of additional interests? It seems to me the answer is perfectly obvious, and that answer, in my opinion, is Santa Fe-Pennsylvania Railroad.

As I have said, it is the heavy interchange of traffic with the Pennsylvania on the east and Santa Fe on the west, plus capable and aggressive independent management at Peoria, that is responsible for the success of the property. The Pennsylvania and Santa Fe advocate a continuance of that independent management at Peoria plus continu-[fol. 268] ance of other working and traffic conditions presently in effect with all other railroads connecting with the T. P. & W.

In considering the possibility of control of the T. P. & W. by other carriers, let me first refer to considerations, which, from a railroad viewpoint, have relation to the Minneapolis and St. Louis.

Does anyone believe that if the M. & S. L. owned the property, they would keep that independent management here in Peoria? I know that in prior considerations of a merger of the M. & S. L. and T. P. & W., it was thought by the former management of the M. & S. L. that the headquarters of the merged roads should be in Minneapolis. Would that be in the public interest? In my judgment, it definitely would not be.

Does anyone think that the M. & S. L. would continue the heavy interchange with the Santa Fe at Lomax, rather than attempt to concentrate it through Nemo 29 miles away? In my opinion, it would attempt to control its movement of the traffic through Nemo. If so, could the future operation of the T. P. & W. west of Peoria be economically justified? In my judgment, it would not.

In past considerations of a merger of the T. P. & W. with the M. & S. L., I know that the prior management of the M. & S. L. thought it would be possible, and desirable, to abandon the west end of the T. P. & W. Would that be in the public interest? I think not.

[fol. 269] Now as to the Nickel Plate.

Do you think the Nickel Plate would promote the T. P. & W. taking the long haul to Effner, Indiana, and turning the traffic over to the Pennsylvania, or would they advocate moving the business over their own competitive line from Peoria to the east—thereby taking the long haul themselves? Might not such an arrangement result in discontinuance in the eastern half of the railroad? If the latter

became a reality, would that be in the public interest? I say it would not.

As for the Rock Island—while it has a connection with the T. P. & W. at Keokuk, it also connects at Peoria; in fact, it connects there with two lines, one from the main line at Bureau and the other coming down from the main line at a point a short distance west of Rock Island. These two lines converge on Peoria, one from Chicago on the east and the other from Rock Island on the west. It is quite understandable that the Rock Island would favor interchange with the T. P. & W. at Peoria. But that doesn't help the T. P. & W. on its portion of the line west of Peoria.

Finally, as to multiple ownership.

If you were to find the T. P. & W. owned by a number of conflicting interests—some attempting to promote the expansion of the property through modernization and better service—others attempting to weaken it by lack of mod- [fol. 270] ernization and inferior service, would that conflict of objectives by the owners best serve the public interest? I do not think so.

I should add here that the Pennsylvania Railroad is making an investment in the T. P. & W. Railroad because we believe that joint ownership in the property with the Santa Fe (the two Roads that have been primarily responsible for its success in the past), makes it a solid long-range investment—and it would be to our best interest to do so. If additional allocations of ownership are made, I can assure you that we are going to take another look at the situation—because it would be difficult for me to recommend to my directors acquisition of stock ownership in a company that is also owner by other interests who might not have the same feeling towards its future as we do.

You will remember what the T. P. & W. was from the standpoint of earnings, service, and so forth, before 1927 when the Pennsylvania's long-time working alliance was supplemented by a similar working alliance on the part of the Santa Fe—evidenced by the establishment of the Lomax interchange—and by the active off-line solicitation program inaugurated by George P. McNear, Jr. These causes of the success of the T. P. & W. might, if now disrupted, result in its failure—and that should be considered carefully.

the light of the overall public interest, in a situation of that kind.

Q. Mr. Symes, you referred to your experience under the Office of Defense Transportation. You heard Mr. Gur-
[fol. 271] ley's testimony yesterday that he had had some conversations or inquiries as to whether the Santa Fe on the west of the T. P. & W. might cooperate in connection with the welfare of the T. P. & W. Did you have any conversations with Mr. Eastman on the situation east of the T. P. & W.?

A. I did.

Mr. Wheeler: Mr. Examiner, to which we object.

Exam. Albus: On what ground?

Mr. Wheeler: It is hearsay.

Mr. Lucas: Mr. Examiner, it was not objected to yesterday and it is offered—it is part of a communication received from an office, an official of the government, Mr. Eastman then occupying the Office of Defense Transportation, which he took up in his official capacity the matter of having the T. P. & W. possibly participated in by the Pennsylvania Railroad on the east just as Mr. Gurley had testified there was a similar conversation with reference to the T. P. & W., or the Santa Fe on the west.

Mr. Wheeler: Mr. Examiner, I not only object but I want to have physically stricken from the record the remarks of counsel. He is not only seeking to get hearsay in the record through his witness, he is seeking to get it in through his own mouth. This is the sheerest kind of hearsay, the fact that it emanated from a man who occu-
pied a position in the government makes it none the less [fol. 272] hearsay. Unfortunately Mr. Eastman cannot be produced as a witness here. We cannot have an opportunity to examine on all the considerations that were present in his mind when he wrote this important letter or communication.

Mr. Broker: I am going to concur in the objection, Mr. Examiner.

Exam. Albus: The objection is overruled.
The witness may answer.

A. Well, it was in 1942, I believe, when I was general manager at Chicago, or vice-president, I am not sure which,

it was around that time, that I had a phone call from Mr. Eastman in Washington, at the time of the threat of the strike on the T. P. & W. before the appointment of the federal manager, asking me if I would consider operating the east end of the T. P. & W., and I told them no, I would not be interested, because of the labor troubles, I just could not get myself involved in them. That's all there was to it.

By Mr. Lucas:

Q. Mr. Symes, will you look at your exhibit that has been marked for identification H-14 and just briefly state what page 1 consists of, the map?

A. Well, page 1 is a map of the Pennsylvania Railroad as now constituted and indicates, being one of the later maps, our new regional plan of organization that was set up on November 1 last year, indicating the headquarter cities for the new regions.

Q. The system is here shown complete except for the lower right-hand portion where the line extends down to and serves Norfolk, is that correct?

[fol. 273] A. Yes, the line on the extreme east goes down the Delaware peninsula to Cape Charles, which is probably 30 miles beyond what is shown on the map.

Q. The division into the regions shown on this map had some relationship to more local autonomy with respect to the Pennsylvania Railroad, did it?

A. That was the primary purpose.

Q. Is there some connection in your opinion between that new effective setup on November 1 and the purpose of the applicants here in respect to the T. P. & W.?

A. Very similar.

Q. Will you take the second map, or the map on page 2, and very briefly comment on that?

A. Well, the map on page 2 is what is known as the Peoria branch of the Pennsylvania Railroad running from Peoria, Illinois, to Terre Haute. Actually it runs to Farrington and then uses the main line of our old panhandle into Terre Haute. It serves a local territory. There has been some comment in the testimony the last two days that this was a competitive line with the T. P. & W. through

Effner. In so far as it being located on the map is concerned I think you probably could say that it is, but as a practical matter it is not competitive even though a few of freight do move over it. It is a light rail line, 85 pound rail, it is a 30 mile speed restriction on it. It has numerous [fol. 274] railroad crossing at which you must stop. The grade lines are bad. There are light bridges. We operate over several railroads. To use it we have to use the P. P. & U. to get out of Peoria and the Nickel Plate from Farmdale and we get down to Decatur and have to use the Illinois Central. So all in all from the standpoint of a service route it is not competitive with the T. P. & W. If you would start a car out of Peoria on the T. P. & W. and start it down here at the same time 30 hours later, you would find a car 300 miles farther east than the car that moves this way (indicating). As I say, it serves a local area, to Indianapolis, west to Effingham, and this general west area, yes, it is, and it is also used to the east, but certainly not competitive in any sense of the word even though a few cars move that way.

Q. Mr. Symes, at pages 3, 4 and 5, may I direct your attention to the fact that there are two sections, section A beginning on page 3, headed "Capital Expenditures", and then section B is on maintenance under "Extraordinary Expenditures" on page 5. Will you comment first on section A of pages 3, 4 and 5?

A. Well, it is indicative of the line of railroad that we operate from Logansport to Effner, Indiana, to connect with the T. P. & W. Since 1927 we have been bringing the railroad along. We have gone from the old 60 and 70 pound rail to 85, and from 85 to a hundred, over the period of time, and I assume we will soon be going to 131, maybe 133, [fol. 275] but it does indicate we have been taking care of our rail requirements pretty generally. We have a 45 mile speed limit on the branch for freight lines, and that's incidentally 5 miles slower than the fastest freight line we have on the Pennsylvania Railroad, the New York Division, in fact, so we are considering and have been keeping this on a competitive basis. We have also increased the weight of some of our bridges. We put a little extraordinary maintenance in it as indicated on page 5, item B in the

middle, which is over and above normal maintenance, of course. So we have over the period of time been bringing this railroad along and modernizing it as conditions require, the same as we do all of our other properties.

Q. Mr. Symes, you have heard the testimony of both Mr. Gurley and Mr. Mahoney as to the improvements at Lomax, starting with the establishment of that connection with the T. P. & W. in 1927?

A. I have.

Q. And on page 3, the first entries there shown are an expenditure for capital improvements of over $350,000?

A. Page 3, yes.

Q. Will you comment now, please, on page 6?

A. Well, page 6 indicates the capital improvements, expenditures for capital improvements at Effner, Indiana, where we perform the interchange with the T. P. & W. We are like Mr. Gurley, we have one of the cornfield interchanges which is quick and cheap, and they bring the traffic in to us, they make one classification, as I recall it, perish- [fol. 276] able freight only, so we can handle it quickly. The train comes in, they cut off, we put an engine on, away we go. It is the quickest thing in the world. It is just the changing of an engine and crew, so it takes very little in the way of facilities to provide interchange. As a matter of what in railroad language we call main tracking them quite often.

Q. The amount shown here is capital expenditures and of course there has been maintenance expenditures additional to the amount shown here?

A. Oh, yes.

Q. Whatever amount has been expended Effner is now an efficient interchange for the schedules in effect and for the tonnages moving through that point?

A. Yes.

Q. Have you any comment on page 7? That, I believe, is the speech you made here in Peoria at the time of the luncheon and with the announcement of the filing of the application, was it not?

A. That is correct.

Q. Generally speaking, did you point out at that time the same considerations that are in your application and that you are still supporting here today?

A. I pointed out at that time the same considerations that are in our application and I reiterate, we have not changed our mind one bit as of today.

[fol. 277] Q. Having announced your purposes and your program to the public did you also alert your staff, as shown on page 8?

A. Yes, sir.

Q. And there set forth the same conditions with instructions to pass them on to the supervisory force under the staff, is that correct?

A. That is correct.

Q. Have you any comments on pages 9, 10 and 11?

A. No, except to indicate that in prior considerations of consolidation of railroads that the T. P. & W. was more or less either divided or the part east of Peoria allocated to the Pennsylvania in practically every plan, and, as a matter of fact, going back to the beginning, it was built from Logansport to Effner, Indiana, in 1857, was built the same year as the T. P. & W. from Effner west, it was simultaneous, it was all part of a plan.

Q. Taking up Exhibit H-15, that summarizes and shows somewhat pictorially the track improvement, does it not, to which you have already referred in connection with your previous exhibit?

A. What one?

Q. H-15, the single sheet.

A. Oh, yes, it indicates what I have already said that we have been taking out the older and lighter rail from time-to-time to improve conditions on our Effner branch, between there and Effner and Logansport, taking out the 60 and 70 and then later the 80 and putting in a hundred, and then, as I say, we will eventually start on another [fol. 278] program when that hundred is worn out to put in heavier rail.

Mr. Lucas: That completes Mr. Syme's direct testimony.

Exam. Albus: We will now take a recess until 2 o'clock.

(Whereupon, at 12:30 p.m., a recess was taken until 2 o'clock p.m. of the same day.)

[fol. 279] AFTERNOON SESSION 2:00 p.m.

Exam. Albus: The hearing will please come to order.
Do you have anything further from Mr. Symes on direct?
Mr. Lucas: Nothing further on direct, but, Mr. Examiner, it might be of value to counsel to say that Mr. Symes will be followed by Mr. Carpi, our vice-president in charge of traffic.
Exam. Albus: Thank you very much.
We will continue with cross-examination.
Mr. Wheeler, please.

Cross examination.

By Mr. Wheeler:

Q. Mr. Symes, on pages 1 of your written statement you attribute the success of the T. P. & W. to the heavy interchange of traffic with the Pennsylvania and the Santa Fe plus the management of the property at Peoria.
A. That is correct.
Q. Do you intend by that statement to take credit for the heavy interchange of traffic at Effner between the Pennsylvania and the T. P. & W.?
A. Partially.
Q. Why?
A. Because, if you will go back to the days before Mr. McNear took the property over, it was pretty well run down. The volume of traffic on it was rather light, in fact so light that you couldn't justify the service that was required to put it on a par with other gateways. After Mr. [fol. 280] McNear took over and established the interchange with the Santa Fe at Lomax with our interchange at Effner plus the service that we provided at each end, he was able to go out and solicit traffic through those two gateways plus the better railroad that it was competitive, which has made the T. P. & W. the railroad that it is today.
Q. I think you have covered my point. You said, as I recall, that Mr. McNear, and I assume in using his name you are using the entire force of the T. P. & W.?

A. That is right.

Q. Referring to that?

A. That is right.

Q. It was his solicitation effort?

A. Plus our service.

Q. Plus the fact that you afforded them an interchange?

A. A good service outlet.

Q. Does that interchange benefit the Pennsylvania or does it benefit solely the T. P. & W.?

A. It benefits both.

Q. Had the benefit been solely for the T. P. & W. would you have put that interchange into effect?

A. Solely the T. P. & W.?

Q. Yes, sir.

A. Well, if it was going to cost us money probably we wouldn't.

Q. Does the Pennsylvania solicit traffic via Effner as [fol. 281] against St. Louis?

A. No, we do not.

Q. As against Chicago?

A. Effner as against Chicago?

Q. Yes.

A. No, we do not. However, we do not object to the T. P. & W. soliciting it that way.

Q. It would be fairly difficult for you to object to it, would it not?

A. Well, the only way you could object would be to have the service, and we have the service, which makes it possible.

Q. Mr. Symes, you are aware, are you not, that the solicitation of M. & St. L. contributes to that interchange at Effner, does it not?

A. I assume that it does, yes. I hope it does.

Q. Mr. Symes, would your solicitation policies be changed in the event you acquire a 50 per cent interest in the T. P. & W.?

A. Well, I prefer that Mr. Carpi answer that, but as president of the company I wouldn't think they would substantially change because the service now and for some years as between St. Louis, Chicago and Effner has been par. We certainly haven't objected. If somebody asked

me in Philadelphia, I am going to ship a car of freight to California, I would say St. Louis, if you couldn't do it there but could at Chicago I'd say do that, if you couldn't do that at Chicago, give it to us at Effner, I'd say give it [fol. 282] to us. I don't think it would change very much.

Q. The Pennsylvania owns 99 per cent of the common stock of the Wabash, does it not?

A. Yes.

Q. And it owns a substantial part of the preferred stock, does it not?

A. Yes.

Q. And it has been authorized by the Interstate Commerce Commission to control the Wabash, has it not?

A. Oh, yes.

Q. Are you familiar with the conditions that were imposed by the Commission in connection with that authorization of control?

A. Yes, it is practically what we have agreed to in connection with this property if we get it. It has worked out beautifully. I don't know anybody who is dissatisfied with it.

Mr. Wheeler: May I have the answer read?

(Answer read.)

By Mr. Wheeler:

Q. Are you familiar with the representations that were made by officers of the Pennsylvania in connection with that control case?

A. Well, as a blank check, no, I was not involved in the case.

Mr. Wheeler: Mr. Examiner, we have taken excerpts from the testimony given by officials of the Pennsylvania and the Wabash in Wabash Railroad Company Control, Finance Docket No. 13235. We have had a photostat of [fol. 283] that testimony certified to by the secretary of the Commission. We would like to have this made a part of the record here, introduced as an exhibit, and we have copies for distribution.

Exam. Albus: Is there any objection?

Mr. Lucas: Yes, Mr. Examiner, I don't think he should ntroduce exhibits on cross-examination.

Exam. Albus: I don't think so either.

Could it be just as well handled on your direct?

Mr. Wheeler: Yes, sir.

Exam. Albus: I would like for you to reserve it until hen, if you will, please. Of course you can inquire of Ir. Symes in connection with this examination about it.

Mr. Wheeler: I just thought it might be helpful to Mr. ymes in connection with my cross-examination.

Exam. Albus: Yes.

By Mr. Wheeler:

Q. In your administration of the Pennsylvania Railroad its chief executive officer have you in mind the fact that e Pennsylvania witnesses in that case testified that the ennsylvania had joined with the Wabash in opening up a st freight route to the East, particularly to New York?

A. No, I am not familiar with it.

Q. Would you agree that that is the effect of the control the Wabash by the Pennsylvania?

A. That is the effect of the control?

ol. 284] Q. Yes, sir.

A. No, I know they have such a route.

Q. You would agree that it was a fast route?

A. Oh, yes. It is a competitive route.

Q. And it is a joint route with the Pennsylvania?

A. Not to the extent I'd like to see it. They interchange re traffic with Lackawanna at Buffalo than their ten in- changes with the Pennsylvania.

Q. Are you familiar with the physical interchange at gansport?

A. Yes.

Q. Is it true, could it be said with respect to that that more time is consumed there than those necessitated ere engine and crew changes are made?

A. No.

Q. What is the fact?

A. They come into Logansport, the cars come in on the bash, they break them up then switch to the Pennsyl- ia interchange track and then we take them to our yard

and put them in a train, so the physical interchange with the Wabash at Logansport as compared with TP&W at Effner is actually five and six times as long actually in making the interchange.

Q. How long does the connection take at Logansport?

A. About two hours and a half.

Q. Do you know any reason why Mr. F. C. Wilkinson [fol. 285] would have testified to the contrary?

A. No.

Q. Are you familiar with Mr. Wilkinson?

A. He is dead.

Q. Were you familiar?

A. Yes.

Q. What position did he hold with the Pennsylvania?

A. Oh, he was sort of assistant chief engineer in charge of research.

Q. Would you disagree with the statement that the Pennsylvania Railroad offers the Wabash wide markets in the east on account of the diversity of important eastern points served by the Pennsylvania Railroad?

A. No, I would not disagree with it. We offer the same to TP&W.

Q. Would you agree that the arrangements with the Wabash has been beneficial to both roads?

A. The Pennsylvania and Wabash?

Q. Yes.

A. Yes, I would say they were and not detrimental to anyone else.

Q. I believe you heard Mr. Gurley testify. Would you agree with his statement that the Wabash route was competitive with the TP&W route?

A. The Wabash route competitive with the TP&W?

Q. Yes, sir.

[fol. 286] A. Yes, it is.

Q. Interpolating for a moment, Mr. Symes, are you familiar with the fact that after the strike shortly, immediately after the strike on the TP&W, that the Pennsylvania initiated a general policy so far as its solicitation was concerned of telling shippers that the route, their route to Peoria, was as good a service route as the Pennsylvania's route via Effner?

A. I am not familiar with any such statement but I do know that during the strike in order to keep the Peoria gateway open we established a service from Peoria to Terre Haute, which was very little used, at least the shippers didn't believe it was competitive, and the amount of traffic moved over it was very light. As to what our solicitors might have said I do not know.

Q. Do you know whether or not your solicitors generally were given such instructions by the main office in Philadelphia?

A. No, I do not.

Q. After the strike?

A. After the strike?

Q. Yes.

A. No, I do not. If they were I didn't know anything about it.

Q. Did you disagree with the statement in the Wabash control case by Mr. Arthur K. Atkinson that, and I quote "As the Commission is aware, the Wabash line by way of Decatur, Illinois, and the Hannibal Bridge provides an [fol. 287] efficient alternative transcontinental route that avoids the Mississippi River crossings at St. Louis. This ling is particularly useful in times like the present when speed is vital and delay is serious."

A. Would I disagree with that?

Q. Yes.

A. No.

Q. Would you agree with it?

A. I would be inclined to agree with it.

Q. There was also testimony given at that time that the Pennsylvania would work to—if it got control of the Wabash would work to effect further improvements in the traffic handling over the Wabash ~~route between~~ Logansport and Kansas City. Can you tell me what steps have been taken to carry out that promise?

A. We have, with the Wabash at Logansport, close connections with eastern service in the same manner as we have with the TP&W at Effner. Apparently the over-all picture of the Wabash has materially improved as reflected by the volume of business they are handling and the earnings they are making, and it is a very good railroad. It

is entirely independent of us, I will tell you that, we haven't any voice in its management, they are independent. They are working under rules, and so far as I know those rules are being carried out.

Q. Do you feel that your continued control of the Wabash, is that advantageous to that railroad?

[fol. 288] A. Well, it certainly hasn't been harmful.

Q. But you wouldn't say that it was advantageous?

A. Oh, I would think it would be somewhat advantageous.

Q. In what particulars?

A. We have close working arrangements with them. We don't interfere in any way with their policies or capital expenditures or things of that kind. They are handled by, I would say, an independent Board of Directors. While we own the stock, it is an independently managed road the same as we would expect the TP&W to be if this authority were granted. As I said, as far as I know it has not worked out adversely to any interest.

Q. Do you think it has helped them traffic-wise?

A. Our being in there?

Q. Your being in control of their company.

A. I don't know whether it has or not. I sometimes think so when I see their figures.

Q. If you had the choice, assuming you have a 50 percent ownership in the TP&W, if you had the control of routing traffic of a particular shipment beyond Logansport, as between the TP&W and the Wabash, which way would you route that traffic?

A. I think I would maintain a neutrality in that case. I'd probably be desirous of getting the longer haul maybe, but I wouldn't be very much one way or the other on that.

Q. Don't you feel that you have a duty to the Wabash arising out of the statements that were made at the Wabash [fol. 289] control hearings and the Commission's decision in that case to route such traffic over it?

A. No, I don't believe so, not as against other routes.

Q. Would you feel any commitments to the minority stockholders in the Wabash to do so?

A. The minority stockholders in the Wabash are legal minority, minority. We are about about like Ivory soap, we have all of it.

Q. I was thinking momentarily of the preferred.

A. Well, they are pretty well taken care of.

Q. You feel that you don't owe them any obligations?

A. Under that particular traffic, no, I wouldn't, in that case.

Q. How about to your own stockholders?

A. What?

Q. Since it would put more dollars ultimately, or would bring more dollars ultimately to the Pennsylvania Railroad wouldn't you feel an obligation to your own stockholders?

A. It would take short—it would take a lot of figures at Logansport as compared with the long haul at Effner as to who had the most at the end.

Q. But you would route the traffic—

A. (Interrupting) We don't route it.

Q. To give you the total, taking my assumption now.

A. All right.

Q. To give you the greatest total revenue for your stock [fol. 290] holders, would you not?

A. Not necessarily.

Q. Why not?

A. They are more interested in net than they are in gross.

Q. What is that?

A. They are more interested in net than they are in gross for their benefit.

Q. Don't you bring down your gross to net?

A. It depends on where it is. Sometimes we can take less gross and produce more net than we can with more gross and produce less net.

Q. Would that be the case here?

A. I don't know. I'd have to study it.

Q. What would lead you to doubt that it would be the case?

A. You take a car at Logansport, the division in the rate, how much you'd get for hauling it to Effner and compare it with the expense.

Q. As against Kansas City?

A. What is that?

Q. As against to Kansas City?

A. Well, that's Wabash and we are not, of course, interfering with the Wabash in any way.

Q. But you do through your practically 100 per ownership?

A. I would say this, as a practical matter, using a car in your case, going west, solicited by the TP&W through [fol. 291] Effner, do you mean to infer that we might very well influence their routing the traffic through Logansport in order to give them the long haul to Kansas City, we wouldn't.

Q. I don't think that is the example.

A. I mean as a practical matter that is what you are talking about and we wouldn't do it, and we wouldn't here either.

Q. When you say you wouldn't here?

A. Well, against Chicago, if the TP&W solicit traffic through the Effner gateway and we see it going there we certainly wouldn't endeavor—

Q. (Interrupting) I am not talking about TP&W soliciting traffic.

A. I know you are talking about the Wabash, it is the same principle.

Q. I am talking about traffic over which you have the predominant influence, let's say traffic originating on the Pennsylvania. Now, how would you route that traffic if it was going to Kansas City?

A. We'd probably take it to St. Louis.

Q. You'd take it to St. Louis?

A. Probably. If it was our routing, but it isn't our routing, that is what I am trying to tell you.

Q. Would you seek to influence, let's put it that way—

A. (Interrupting) What is that?

Q. Would you seek to influence routing? You'd first seek [fol. 292] to influence the routing to St. Louis?

A. Yes, I think I would.

Q. As a second preference would you seek, if the shipper did not want it there, would you seek to route it via the Wabash?

A. No, I'd probably try for Chicago.

Q. You'd try for Chicago?

A. If it was an open route.

Q. And now as to your third preference?

A. I'd probably take Effner.

Q. You'd take Effner?

A. I probably would.

Q. As against the Wabash?

A. Yes, I probably would.

Q. Now, why would you do that?

A. Take the long haul. The Pennsylvania, of course, that's the railroad I am responsible for running, not the Wabash.

Q. I see. And you feel no responsibility to the Wabash?

A. Not along the line you are talking. I think they can very well take care of themselves. Under the rules prescribed I think it is working out very well.

Q. Mr. Symes, you state on page 1 of your testimony the Pennsylvania was approached by the trustees as to our interest in the property. Now, would you please tell me who of the trustees approached you?

A. Well, I don't know. It was Mr. Chinn and Mr. Ban-
[fol. 293] croft of the Wilmington Trust Company.

Q. Can you tell me when this was?

A. I can't give you the exact date, but it was, as I remember, the early part of '55.

Q. The early part of '55?

A. I think it was the early part.

Q. January?

A. I can't tell you exactly. It was around then.

[fol. 294] Q. You say they approached you, asking you to buy stock in the TP&W?

A. No—well, I would say this, they approached me and said they were considering the sale of the property.

Q. Did they tell you that anyone else had evidenced interest in the purchase of the stock?

A. I don't believe so.

Q. Now, according to your statement you told them you would prefer to have the TP&W remain independent railroad, is that correct?

A. I did.

Q. Owned by, controlled by the McNear estate?

A. Present ownership—their ownership.

Q. But that if that was not feasible you, along with the Santa Fe, would be interested in buying it?

A. I couldn't say that for the Santa Fe. I thought that we and the Santa Fe would be the logical ones to own it, if it were going to be for sale.

Q. That is the interpretation we should be interested along with the Santa Fe at acquiring ownership at a fair and equitable price.

A. That is right.

Q. What was the next time that you discussed the purchase of that stock with anyone connected with the Wilmington Trust Company?

[fol. 295] A. Well, that was the first direct time that I discussed it with anybody with the Wilmington Trust Company. I think following that that our Financial Vice President discussed it with them, at which time I was not present. And then there was another meeting, I believe, in April that it was discussed with them.

Q. What did you discuss it with Mr. Gurley?

A. Well, Mr. Gurley and I have talked about it. As I remember, he called me as late as, well, it was the Fall of '54, probably November, talking about the rumors that the TP&W might be for sale and so on, and naturally because we believed and agreed that we were responsible for the success of the TP&W and it meant so much to us and was part of a transcontinental, very important transcontinental gateway that we had an awful lot of stake in this thing and we were going to watch developments.

Q. Did the rumors that he related to you include a reference to prospective purchase by the M&StL?

A. I don't believe it did.

Q. When was the first time that you became acquainted with the fact that the M&StL might be interested?

A. I can't tell you exactly, but, as I remember it, as I read it in the newspaper.

Q. About when?

A. Well, it was about then, when this proxy fight was going on or something. I could be mistaken but I believe [fol. 296] I read it in the Chicago Tribune.

Q. Would this be in the fall of '54?

A. It was about that time, fall or winter. I can't tell you exactly. It was certainly rumored around. It was pretty much gossip around. As I tell you, I am pretty sure I saw it in the newspaper.

Q. Let me ask you this, did you discuss this question of purchase at any of your board meetings?

A. Oh, I got their authority.

Q. When was that?

A. I believe it was the April board meeting. I am not sure of that.

Q. Had you had any discussions that raised the question of acquisition prior to that April meeting?

A. Not formally.

Q. Informally?

A. I think I have discussed it with several members of our board informally.

Q. On or after the board—

A. On.

Q. That is, during the course of the board meeting?

A. Oh, no, on the side. We meet every once in a while, get together.

Q. What board members?

A. What board members?

[fol. 297] Q. Yes, did you discuss it with.

A. Oh, I think I mentioned it to Walter Franklin, who was our former president; I think I mentioned it to Clement, who was our former president; and, as I recall, I probably mentioned it to Mr. Ingersoll, who is one of our Philadelphia directors. I can't say exactly, but I know I have talked to two or three of them.

Q. Did you ever discuss it with Phil Clarke?

A. I have, yes.

Q. About when did you have your discussion with him?

A. Oh, I couldn't say exactly. Sometime during that same period.

Q. Around in the latter part of '54 or '55?

A. In '55, I would say.

Q. Did he tell you that the M&StL was interested in buying it?

A. I don't know whether he told me or I told him. It was very much rumored around by that time.

Q. Did Mr. Clarke mention acquisition or mention the—

A. (Interrupting) Mr. Clarke.

Q. (Continuing) —of the TP&W?

A. I might have mentioned it to him.

Q. At any rate, it is quite possible that it was covered in your conversation?

A. Yes, because that was pretty much common gossip, too.

Q. When you say it was pretty much common gossip, to what do you refer?

[fol. 298] A. About the Monon, it has been common gossip, as far back as I know, 1945.

Q. Is that the M&StL?

A. The TP&W and the Monon.

Q. You mean the M&StL?

A. What?

Q. You mean the M&StL?

A. No, the TP&W and Monon.

Q. The combination of those two roads?

A. A connection between the two roads.

Q. Were you opposed to a connection between those two roads?

A. I was and still am.

Q. I think you said your financial vice-president took over the negotiations.

A. He didn't take them over, but he happened to be in town that day. I am not sure I was, but he discussed it with the Wilmington Trust one day there. I think it was March. I am not exactly sure.

Q. Now, at this time had you and Mr. Gurley arrived at an understanding or tentative agreement or anything of the kind with respect to the joint venture to buy the TP&W?

A. Oh, yes, we had talked about that, as I say, even in '54.

Q. Did you have any understanding as to who would make, who would do the buying of the stock?

A. Oh, no.

[fol. 299] Q. Whether it would be you or the Santa Fe?

A. No, sir.

Q. But you say as early as '54 you generally reached an understanding?

A. We didn't reach an understanding. We discussed it, and the possibility of what was going to happen with all of these rumors going on.

Q. You were in agreement that it would be beneficial to the two roads for you to own it?

A. Beneficial to everybody. My interest was to preserve what we had. As I say, I preferred it being what it was, then when it wasn't going to be that, then what is the best thing you can do to preserve what you have, and then I think the application we have before the Commission is that. It is just that simple with me.

Q. You state on page 2 of your testimony: "In that way the estate could raise money for diversification of investment, but, of more importance, with the two railroads that contributed so largely to the success of the property having an ownership therein, it would better insure its future as a good investment for the estate." I believe we have covered the question I had in mind there. I believe you have already stated this has not been a one-way street so far as contribution is concerned.

A. That is right. It is just as simple as that. If that [fol. 300] was the problem, diversification, I felt by the Santa Fe getting twenty-six and continuing west, they on the west and we on the east, and preserving what they had, and the two people that made the property and providing the service that made the property with an ownership would better insure the estate an investment, it is just that simple.

Q. In March your financial vice-president entered into negotiations with the Wilmington Trust. Did he have discussions with Mr. Gurley or anyone with the Santa Fe with respect—

A. (Interrupting) Oh, yes. Mr. Marsh was with him that day.

Q. And they arranged for the exchange of letters dated April 15 which are a part of your application?

A. I would say yes, with my approval, so far as the past was concerned.

Q. Did you believe that the acceptance of the letter constituted a binding agreement on the part of the trustees to sell Pennsylvania 23,400 shares of stock at a hundred dollars a share?

A. I thought so, yes.

Q. Did you believe that by reason of the letter of April 15 you incurred any liability to the trustees beyond the sum of $100 a share?

A. Did I?

Q. Yes, sir.

A. Any liability on the part of the trustees for selling it [fol. 301] beyond a hundred dollars?

Q. Any liability on the part of the Pennsylvania—

A. (Interrupting) Not for the 26 per cent, no.

Q. Did you believe that if you entered into a subsequent contract with the trustees directly that it might prejudice your claim to get the 23,400 shares at $100 a share in accordance with the letter of April 15?

A. No.

Q. You didn't?

A. I could clear that up very easily without a lot of questioning.

Q. O. K.

A. We made what we thought was an agreement to buy 26 per cent of the stock with the trustees at a hundred dollars a share. Apparently the trustees—well, I will tell you very plainly, on the advice of counsel they told me that they did not consider what we thought was a legal and binding agreement, was binding on their part of it. Our counsel thinks it is. But that is not before the Commission, that is something else that has to be decided. So I would say, on advice of counsel to them, it isn't; and on advice of counsel to us, we think it is.

Q. Whether or not your counsel advised you that if you entered into another contract directly with the Wilmington Trust of Monon—

A. (Interrupting) He did not.

[fol. 302] Q. (Continuing) —it would prejudice your case—

A. (Interrupting) He did not.

Q. (Continuing) —your claim against them for the the 23,000 shares at $100 a share?

A. He did not so advise me and I never asked him. Perhaps if I had asked him he might have advised me that way, but I didn't.

Q. Do you know whether any such advice was given to your financial vice-president?

A. No. He advised me we had an agreement.

Q. Were you surprised when—well, let me ask you this, did the trustees after April 15 call you with respect to buying shares in the TP&W?

A. They did.

Q. Now, when did that happen?

A. Well, it was in May. I can't tell you the exact day. I think it was the 24th of May or thereabouts. It was the same day they called Mr. Gurley. I was looking at it yesterday when he was testifying, whatever that day was.

Q. What was the substance of the conversation?

A. Well, I was told that on advice of counsel it was not considered that it was a legal and binding agreement on the part of the trustees.

Q. Is that all you were told?

A. Well, no. I was also told that if we wanted it we'd [fol. 303] have to match the price.

Q. What price?

A. One hundred thirty-three and a third dollars, as I recall it.

Q. Did they tell you who had made that offer?

A. I don't know whether they did or not, but I knew.

Q. What was your information?

A. M&StL. I don't know whether they told me that, but I certainly assumed it. I knew what had taken place with Mr. Heineman.

Q. What was your reply?

A. I don't think that would be good for the record. I didn't like it, I will say that.

Exam. Albus: That is fine. That will take care of it.

The Witness: Does that answer it?

Exam. Albus: Yes, that answers it.

[fol. 304] Q. Have you pursued your claim against the trustees for the 23,400 shares?

A. In what way?

Q. To try to get them to deliver the stock to you?

Mr. Hamilton: I object to that question, Mr. Examiner. I have been very patient. It seems to me that counsel for

the M&StL is trying to inject in this case a matter that is purely judicial. There is no dispute in this lawsuit between the people on each end of that claim. It is a matter, if it is not adjusted between my clients and the Pennsylvania, for the courts. It has in no way been pertinent to any issue before this tribunal.

Exam. Albus: Do you have anything to say to that, Mr. Wheeler?

Mr. Wheeler: Only that there is a specific reference to it in their application.

Exam. Albus: I will overrule the objection and permit the witness to state whether or not he pursued his claim against the trustees.

A. I turned it over to our legal department.

Exam. Albus: All right.

By Mr. Wheeler:

Q. Are you familiar, Mr. Symes, with the whereas clause that is inserted in the agreement between you and the Santa Fe under date of January 28, 1955, Exhibit 7-D to your application?

[fol. 305] A. 7-D?

Q. Yes, sir.

A. What page is that?

Q. Page 59.

A. I read it.

Q. Is the purpose as you understood it as president of the road to protect your claim against the trustees?

A. Well, as a lawyer, I don't know, but I say it is a fact, but I assume—

Q. (Interrupting) That is what I want to know.

A. Yes, I would assume that.

Q. When was the first discussions after May 26 that you had or any other officer of the Pennsylvania had with the Santa Fe regarding the stock?

A. Was the 26th Thursday?

Q. Yes.

A. The next day.

Q. That was the—

A. (Interrupting) 27th.

Q. What was the substance of those?

A. I saw Mr. Gurley in Washington. We were at an AAR meeting and we had a little discussion about it and we decided we were going to discuss it later.

Q. Did you have at that time any discussion as to price?

A. No, sir.

[fol. 306] Q. When were your next discussions?

A. Oh, it might have been a week or two weeks after that probably. It was very near it. Not more than two weeks, I don't believe.

Q. And you just continued your discussions until you arrived at the contract which is—

A. That is right.

Q. Which is Exhibit 17?

A. Right here.

Q. Was there at any time any substantial disagreement between you with respect to the terms and conditions?

A. Well, if there were we ironed them out. No, I wouldn't say there was.

Q. I believe you stated that you had some discussions with Mr. Heineman, Mr. Ben W. Heineman, the Chairman of the Executive Committee of the M&StL. regarding the acquisition of control of the TP&W.

A. I had one conference.

Q. Had you had discussions prior to that conference with any other officer or director of the M&StL regarding the acquisition of the TP&W by the M&StL?

A. I would say not for perhaps nine or ten years.

Q. Were those discussions with Mr. Sprague?

A. They were.

Q. During the course of those discussions did you not [fol. 307] tell Mr. Sprague that you thought that he and Mr. McNear should get together and join their properties?

A. I did.

Q. That is, the M. & St. L. and the TP&W?

A. I did.

Q. Didn't you tell the same thing to Mr. McNear?

A. I did. It didn't do much good, they didn't speak to each other.

Q. Didn't you tell Mr. Sprague that you regarded the merger of the M. & St. L. and the unification of the M. & St. L. and the TP&W as a natural arrangement?

A. I don't know how I told it to him. I told him we certainly wouldn't object to it.

Q. Didn't you at that time feel that it was a logical or natural arrangement of flow between the two roads?

A. Well, I could see at that time the possibility of the M. & St. L. traffic Nickel Plate at Peoria going to the Pennsylvania at Effner, to be perfectly frank with you.

Q. Could you answer my question?

A. That is the answer.

Q. The answer is yes.

A. That is the answer.

Q. Mr. Symes, didn't you have, not just one, but a number of conversations with those two men and other officers of the M. & St. L. or the TP&W in which you expressed that view?

[fol. 308] A. Oh, I wouldn't say a number. In fact, I went up to Minneapolis and rode over the M. & St. L. and Mr. Devins and Mr. Ward and several people to see what kind of railroad they had.

Q. You did express the view at that time?

A. I assume they did. There wasn't any secret about it as far as I was concerned then.

Q. That it was the logical—

A. (Interrupting) Well, not logical. I wouldn't oppose it. I spoke to Mr. McNear about it.

Q. Didn't you say that the Pennsylvania—pardon me, I didn't mean to interrupt you.

A. Yes, I spoke to Mr. McNear about it.

Q. Did anyone discuss with you in 1954 whether or not you would oppose, that is, the Pennsylvania would oppose the acquisition of the TP&W by the M. & St. L.?

A. Did anyone?

Q. Yes, sir.

A. I don't believe so.

Q. Including officers of the TP&W?

A. It may well be that Mr. Coulter asked me that question but I couldn't swear to it.

Q. Well, in any event what answer did you give?

A. Well, as I say, I am not sure I was asked, so the answer would have to be in the same boat.

Q. In the fall of 1954 had you had such a conversation, [fol. 309] what would your answer have been?

A. Well, it all depends under conditions. It was very much changed conditions in the consideration I gave in '45 when I made that statement as compared with what I understood was the situation in '55.

Q. '54, please, now.

A. '54.

Q. What was the change?

A. Well, I knew that the M. & St. L. had changed hands, I knew that, at least it looked like, they were trying to get the TP&W, and I knew it was rumored by this so-called outer, outer belt, and it would change the whole complexion as far as I was concerned.

Q. Well, now, Mr. Symes, isn't it a fact that during 1954 and before you became aware of these rumors with respect to this outer outer belt around Chicago, to which you refer, that you still adhered to your earlier position that the acquisition of the TP&W by the Monon, or by the M. & St. L., pardon me, was a natural move?

A. I wouldn't say a natural move but I could very well have said I didn't see any objection to it or something like that. I am not sure that I did that but I wouldn't say that I didn't.

Q. Can you tell us now for the record what this outer outer belt around Chicago would consist of to which you [fol. 310] made reference?

A. Well, the thought was first we might as well know that the Monon does not connect with the TP&W. It crossps our railroad, Pennsylvania Railroad, at Reynolds, oh, about 10 or 12 miles east of there. It was always Mr. McNear's ambition to get trackage rights over our railroad to connect with the Monon at Reynolds which would enable him to move north on the Monon all the way to Michigan City and connect with every east-west trunk line in that territory. Naturally, we were opposed to it. That plan was revised by Mr. Heineman on the outer outer belt. I understood I might be wrong but at least I understood that he

was buying into the Monon, and that was the purpose of it, and I am opposed to it.

Q. And that's when you became opposed to the acquisition—

A. (Interrupting) The whole uncertainty of the thing. When the thing was coming on the block my purpose was to preserve that TP&W Railroad as it was operating and this was the best way of doing it. That is my interest in it.

Exam. Albus: I think we have covered that sufficiently.

Q. Didn't you state, just to culminate this thing, in May of 1955, that you had changed your view with respect to the acquisition of the TP&W by the M. & St. L. in order to, or because of the stories you had heard of the plans to merge the M. & St. L. and TP&W with the Monon?

A. Well, I don't know whether it was May, but I will tell [fol. 311] you story. Mr. Heineman asked if he could see me. It might have been May. I don't know the exact date. It was around April or May, and I told him I'd be delighted to, and then he and Mr. Devins called at my office, and as I recollect, Mr. Heineman said he felt very derelict in his duties because he had not come to see me earlier because he had always understood that I favored a merger of the M. & St. L. and the TP&W, now he understood we were in there trying to buy it. He also went so far as to say, as I recollect, that if the thing that is bothering you is because the M. & St. L., or I mean the TP&W, would be figuring on tying in with the Monon I could probably agree with you that that probably would not be done, would that change your position, and I said it would not change my position, because I had made a commitment, and we were going forward to carry it out, and in addition what would the agreement mean if the M. & St. L. builds or the TP&W what is going to prevent the Monon from building over here, I mean it was all conditions that had changed and I changed with them.

Q. Perhaps you have indicated this by your past statement, but to make the record clear, during the course of that discussion did Mr. Heineman not tell you that he was prepared to have not himself but his associates sell all of his stock in the Monon in order, because the TP&W was so important to the M. & St. L.?

A. I don't recall that. I do recall him saying that he [fol. 312] would make an agreement that he would not do that but I don't recall it being that way.

Q. Referring to page 3 of your written statement, Mr. Symes, you say, "Does anyone believe that if the M&StL owned the property, they would keep that independent management here in Peoria? I know that in prior considerations of a merger of the M&StL and TP&W, it was thought by the former management of the M&StL that the headquarters of the merged roads should be in Minneapolis. Would that be in the public interest? In my judgment, it definitely would not be." Would you tell me the reasons for that conclusion?

A. I think the TP&W, as I have said all along, because they have an interchange plus an independent management located on the property here at Peoria, and I think that Peoria, as large as it is, is a city, and it is more or less a Peoria railroad, the headquarters largely should be here rather than removed, and by the same token if the M&StL and the TP&W merge, I think it would be logical that they would move their headquarters to Minneapolis and it is just that simple, but I don't think it would be in the public interest from the standpoint of the TP&W to move their headquarters out of here.

Q. Now, Mr. Symes, refer to your Exhibit H-14, and the map that is contained therein.

What is the total tonnage in the revenue and the track miles in the division of the Pennsylvania that connects with [fol. 313] the TP&W at Effner?

A. You mean that region?

Q. Yes, sir.

A. Oh, we have that. I could give it to you. It is a matter of record, and I would say that we in dividing up these regions had a number of factors, the amount of tonnage involved, the number of employees involved, the number of tracks involved, the importance of the community to the Pennsylvania Railroad, they were all factors, and I would say that northwestern region which has the Effner line is not quite as big, of course, as our Pittsburgh region, but is a very important factor. All of those things had to be considered.

Q. You wouldn't have a general idea as to what the revenues of that northwestern region are?

A. Well, if you were to divide it up on a ton-mile basis, I would guess they would probably be around a hundred million a year, probably, eighty to a hundred, I'd say.

Q. Do you see anything against the public interest in having the headquarters of that region in Chicago?

A. Yes, I think it is very much in the public interest they do that.

Q. Would it be more in the public interest to have it at Fort Wayne?

A. No.

Q. Or Grand Rapids?

[fol. 314] A. No.

Q. Well, how do you acquaint that with the fact that a merged M&StL-TP&W ought not to have its headquarters in Minneapolis?

A. It is rather far removed from this east-west line, as I have indicated, and they have been here, and you take them away, if it is an independently operated railroad, such as we propose they would be maintained here.

Q. Isn't Chicago at the extreme western end of the northwestern region?

A. Yes.

Q. It is not located centrally at all, is it?

A. No.

Q. How is it more in the public interest for the TP&W, for the M&StL-TP&W operation, to maintain its offices in Peoria than it is for the Pennsylvania to maintain its headquarters of its northwestern division in Fort Wayne? It would seem to be right at the center of that operation and interseeting the north and south—

A. (Interrupting) There is quite a difference. The big part of our northwestern region is Chicago, both from the standpoint of operation, volume of traffic, contact with the shippers, contact with the interchanging railroads, it is all right there, and that is where it belongs, and Peoria to the TP&W is in about the same status, even though it is in the middle of that property, it is a bigger city, it is more [fol. 315] in the interchange, in the middle of it, and it is on the property.

Q. Well, would it be as against—would it be the most important interchange point as against Minneapolis if it were a combined operation, the TP&W and the—

A. (Interrupting) I don't know what the interchange is at Minneapolis.

Q. Would you say that the standards of public interest that you refer to in having Peoria as the headquarters of or of not having Minneapolis the headquarters of a merged M&StL-TP&W were consistently carried out in your various regions on the Pennsylvania?

A. They couldn't be entirely consistently carried out because of the size.

Q. As a matter of fact, there isn't much consisteney in the location of the headquarters of your various regions, is there?

A. Yes, I think there is, if you will analyze the traffic and the employees in the importance of the railroad, you will find we hit the nine spots pretty well.

Q. Those are the elements that are important in determining the public interest?

A. That is right.

Q. Let me ask you something, what is the extent of the autonomy of these divisions that you refer to?

A. Well, each region is in charge of a regional manager, [fol. 316] and the case of two of them he was also a vice-president, Pittsburgh and Chicago. They have, under their jurisdiction, all matters pertaining to the running of that railroad within their area from the standpoint of operation, maintenance, solicitation of traffic, real estate, industrial development, passenger sales and services, in other words, the regional manager is responsible for the whole railroad operation within that territory. He will have his own set of accounts.

As to the revenues he takes in, the expenses paid out, and we expect after it is ironed out that we will have a pretty complete fine setup here within the system, fine regional headquarters.

Q. What is the purpose of this regional regionalization, if I may use the term, of the Pennsylvania?

A. We feel it will strengthen us from the standpoint of efficient operation as well as in the solicitation of traffic.

Q. The smaller operations will be more efficient?

A. We believe so, with the delegation of authority to these regional managers, and we hope it will.

Q. Ultimately, of course, those regional managers are responsible to you?

A. No, not directly. We have, of course, our system staff consisting of a number of vice-presidents in charge of various departments and will co-ordinate the activities as between the departments in the regions.

[fol. 317] Q. What is your smaller district in terms of gross revenue, or region, I should say?

A. I believe it would be the southwestern.

Q. Can you tell me about what that is?

A. Oh, I believe that would be sixty million, maybe.

Q. And your largest would be the Pittsburgh?

A. Yes.

Q. And what would the size of that be?

A. That might very well go to two hundred, maybe a little more.

Q. With all of these managers having this autonomy, what is your role in the Pennsylvania now?

A. I still can't get away. Well, my role is to try to co-ordinate the activities as between my staff and this group.

Q. And they in turn are responsible to you and you in turn are responsible to your Board of Directors? Mr. Symes, you referred to the speed of the interchange at Effner. Would that be in any way affected by acquisition of the TP&W by the M&StL?

A. Would it?

Q. Yes.

A. I really don't know. It depends to what happens to the traffic on the east end of the branch. If it grew a lot, we'd probably have to put in more. If it diminished, we'd probably have to pick some up.

Q. You would be glad to see it grow a lot, wouldn't you?

A. Yes, I would.

[fol. 318] Q. Mr. Symes, you state in following down in your testimony on page 3, "Does anyone think that the M&StL would continue the heavy interchange with the Santa Fe at Lomax, rather than attempt to concentrate it through Nemo 29 miles away?" What is the reason for your statement?

A. I would think if the M&StL owned the two routes rather than having one through Nemo and Lomax, the logical thing to do would be to develop it from the standpoint of economies. Again discussion I had with Mr. Sprague was that if he did it he was going to abandon the west end of the TP&W at Peoria and do the very thing I say there.

Q. So the reason there might be an economy resulting from an abandonment, is that correct?

A. Perhaps plus an economy from the standpoint of traffic.

Q. You are aware, of course, that that could not be done without the Commission's approval?

A. I am.

Q. Has the Pennsylvania been engaged in a program of abandoning unprofitable operations in recent years?

A. We have, and services.

Q. Do economies control the Pennsylvania decisions?

A. What?

Q. Do the economies to be effected control the Pennsylvania?

A. The economies and practicalities.

Q. I am not sure that I know what you mean by practicalities.

[fol. 319] A. I know what you are referring to here, and if all the traffic was concentrated through one and there wasn't very much left you might very well justify the abandonment of the railroad because there wouldn't be enough there to support it without the through traffic, which might be detrimental to the communities but would be a business proposition from the standpoint of the management of the property.

Q. Don't you take public relations in relation to shippers and other such matters into account in determining whether to abandon a given line?

A. It is one of the factors against the weight of economies.

Q. You have no reason to believe that the M&StL wouldn't take those into account, do you?

A. That is what I am saying, I think they would.

Q. Do you think it would be in the public interest for the Pennsylvania and Santa Fe if they got control of the TP&W to abandon the Lomax-Peoria line?

A. Do I?

Q. Yes, sir.

A. No.

Q. How about the Lomax-Effner line?

A. No. You mean Effner and Peoria?

Q. Yes, sir.

A. No. It is a very important transcontinental gateway, whether you like it or not, and should be encouraged and [fol. 320] not diminished. I think it is too important to our future economy to transportation in this country.

Q. Would the Pennsylvania follow any hostile or discriminatory practices against the TP&W and the M&StL, if you were to acquire the property?

A. We don't become hostile with friendly connections.

Q. At page 4 of your testimony you refer to the causes, you state that the causes of success of the TP&W might, if now disrupted, result in its failure. Now, you have previously referred to—

A. (Interrupting) Where do you read that?

Q. At the bottom of the page.

A. Oh, yes.

Q. Those causes that you have referred to, first of all, past long-time working alliance. If I understand you correctly, a previous answer, that would not be affected one way or the other by Pennsylvania-Santa Fe control or, on the other hand, M&StL control?

A. Here is what I was trying to drive there. We are a stub end railroad coming into the TP&W at Effner and the Santa Fe, on the other end. I said when I got in here we have set up a wonderful service, competitive with any other gateway, plus the rehabilitation since McNear's regime and put it on a competitive basis. We are giving this service. Let's assume a lot of interests in here that is not [fol. 321] their best case to promote the continuance of it. As I mentioned, Nickel Plate, don't you think very likely they would like to take the long haul to Buffalo instead of taking it over to Effner and giving it to the Pennsylvania. I think I would, if I were them. But we think what is pre-

posed here will promote it. This, as Mr. Gurley said, this diluting and diluting at the Effner interchange would bring about a situation that we just couldn't make out from Logansport and give them that service. That is what I mean when I say we made it, if anything here does harm to it, we could destroy it. That is not a threat, I don't mean it that way but I could very well do it from the standpoint of economics. What I say again is we are trying to continue the TP&W as it is. M&StL, I would think, would gain, but that is matter of opinion.

Q. Well, Mr. Symes, I take it this is all addressed to the question of dilution primarily rather than acquisition by the M&StL?

A. We are trying to preserve what it is now there. We preserved it, continued with the service of the TP&W, we want to continue it and we think this is the best way to do it. You divide it up and you get an interest in there that don't have the same situation or same feeling toward the TP&W, you could start diminishing it and we at the other end would have to do it economically.

Q. You don't have any doubt about the friendly feeling [fol. 322] of the M&STL toward the TP&W, do you?

A. No, I don't.

Q. It would be to their direct interest to promote this Peoria gateway as they always have?

A. Don't you think the M&StL would take the long haul?

Q. What is that?

A. Don't you think the M&StL would take the long haul?

Q. What would the long haul?

A. Oh, the TP&W would Effner.

Q. So we would promote?

A. Yes.

Q. So our interest and theirs would coincide?

A. The reality of the situation, we think, the two are really not competitive transcontinental route with it at each end, instead of bringing in everybody else, might have the effect of destroying it as compared to the other two, and it would. It is just a natural of these two areas, all you have to do is look at the map.

Q. In any event, Mr. Symes, if the M&StL gained control of it the past-working alliance at the east end, which is one

of the causes which you cite on the bottom of page 4 of your statement, would not be interfered with one way or the other, would it?

A. Well, it depends on what the M&StL would do.

Q. Can you tell me what the M&StL might do with the TP&W?

[fol. 323] A. If the M&StL had the TP&W and operated it independently as of now I don't think we would change our situation one bit at Effner, but if that condition changed we might very well change our condition at Effner, not by way of a threat but in the way of reality, but in effect the two logical railroads to own it are the Santa Fe and the Pennsylvania.

Q. I understand you feel that way about it, Mr. Symes, but I don't understand how the M&StL, how you would economically or otherwise be impelled to take any action with respect to your eastern connection with the TP&W at Effner if the M&StL gained control of the property?

A. Let's assume that the M&StL did gain control of the property, the first thing they probably would want is trackage rights over our railroad to Reynolds. They have announced that.

Q. Where was that announced?

A. Well, you talked to me about it.

Mr. Lucas: You are pointing to Mr. Heineman?

The Witness: What?

Mr. Lucas: You said "you".

A. Yes, we talked about it. It has been a dream.

By Mr. Wheeler:

Q. What did Mr. Heineman say to you?

A. He said what's bothering you is I am going to connect the TP&W up with the Monon and I would be willing to withdraw from that and make an agreement to that effect.

Q. That's what's bothering you?

[fol. 324] A. It would bother me, yes.

Q. Assume that's not in the picture.

A. What?

Q. Assume that's not in the picture.

A. How do I know it won't be?

Q. Assume for the purposes of my question that it is not in the picture.

A. Well, I will say this, if the TP&W could continue to operate as it now does, with that interchange at Effner, we will go and get it.

Q. Even though owned exclusively by the M&StL?

A. We'd have to.

Q. Mr. Symes, on page 4 of your prepared statement you made reference to a situation that might prevail when or if there were multiple ownership of the TP&W, you stated that others attempting to weaken it by lack of modernization and inferior service, can you more specifically identify whom you meant by others?

A. Well, the Santa Fe and the railroad owning the TP&W as part of a transcontinental system and its importance to us are naturally going to see that it is a pretty good route from the standpoint of a railroad. Now, somebody else coming in as an owner, along with us, might very well have another viewpoint on it, instead of the long haul going across. Maybe one railroad would say, why don't we take the long haul, which would deprive the TP&W of [fol. 325] traffic, than as you would deprive the TP&W of traffic you might very well destroy it, at least from the standpoint of earnings to do the modernization that is required in making a good railroad, and you get too many in there and if they don't go for the same common cause it could be very destructive in my opinion.

Q. That destructive effect would result from the competition of the other railroads with the TP&W?

A. That is right.

Q. Are you familiar, Mr. Symes, with the par value of the stock of the Wabash?

A. Par value?

Q. Yes, sir.

A. I don't know whether it has a par or not, to tell you the truth.

Q. Do you know what your investment in the Wabash amounts to?

A. I don't have it here. It is all a matter of record.

Q. You think it is a matter of record in that docket?

A. No, not in this docket. I say it is all a matter of record. I can get it for you.

Q. Would you furnish that for the record, please?

A. All right.

Q. I would also like to know what the market value of that is, too, at the time that is furnished.

Mr. Lucas: Mr. Wheeler, is that the par value of the [fol. 326] Wabash common stock?

The Witness: And the preferred?

Mr. Lucas: And the preferred?

Mr. Wheeler: Yes.

Mr. Lucas: And the market value as to the first two dates that information was furnished.

Exam. Albus: And the investment.

Mr. Lucas: What do you mean by investment?

Mr. Wheeler: The cost of the Pennsylvania.

Mr. Lucas: Our holdings?

By Mr. Wheeler:

Q. Did you, or any one on the Pennsylvania have any discussion on the Wabash prior to the initial discussions with the trustees for the McNear estate regarding the purchases of the TP&W stock?

A. I did not, and I don't believe anyone else did.

Q. Were any subsequent discussions had with them?

A. Yes.

Q. What was the substance of those discussions?

A. Well, Mr. Atkinson talked with me about the Wabash coming into this case, and I told him that he was on his own—that the Wabash is on their own and whatever he felt was necessary to best protect the interests of the Wabash Railroad it was up to him, I didn't have anything to do with it.

Mr. Symes, are you familiar with the fact that the [fol. 327] Wabash was a party in the Illinois terminal case?

A. I am.

Q. The Pennsylvania was a derivative party to that case, too, were they not?

A. How do you mean derivative?

Q. I mean out of relationship of the Wabash.

A. We gave our consent to the Wabash doing it, which we had to do legally, as I understand it, we were not in any way taking a position.

Mr. Lucas: Mr. Examiner, there was a separate application filed for the indirect effect of the Pennsylvania.

Exam. Albus: I think I remember it.

Mr. Lucas: I think you are familiar with it.

Exam. Albus: Let's take a 10-minute recess.

(Short recess.)

[fol. 328] Exam. Albus: The hearing will please come to order.

Before proceeding with further cross-examination of Mr. Symes, Mr. Martin has a statement to make for the record.

Mr. Martin: Mr. Examiner, to help speed my departure from this congenial company and pursuant to my request at the opening of the hearing, I would like to get two or three things straight, if I may.

First, from you, do I understand that the intervening petition of the Burlington has been received, and likewise that the verified statement in support of the conditional request for participation offered as Exhibit H-1 likewise is in evidence?

Exam. Albus: That is in the record.

Mr. Martin: From each of the counsel for carriers present I would like to ask whether I am correct in my understanding that each of them has approved the list of suggested conditions which was attached to our intervening petition as supplemented by the statement on the record by Mr. Thomas. I understand that to be so, but I would like to go down the line.

Mr. Wheeler, is that correct as to the M&StL?

Mr. Wheeler: Yes, sir.

Mr. Thomas: Yes, as to the Santa Fe.

Mr. Lucas: It is correct as to the Pennsylvania Railroad and as to the Pennsylvania Company.

Mr. Cassell: Yes, as to the Rock Island.

[fol. 329] Mr. Broker: As to the Nickel Plate, yes.

Mr Davis: As to the Wabash, yes.

Mr. Martin: I want to go down the line again and ask whether or not it will be necessary so far as those parties are concerned for me to call down to this hearing the witness who verified the exhibit H-1 or whether it may be treated as evidence without cross-examination.

Exam. Albus: Mr. Wheeler?

Mr. Wheeler: No need so far as the M&StL is concerned.

Exam Albus: Mr. Thomas?

Mr. Thomas: No need as far as the Santa Fe is concerned.

Exam. Albus: Mr. Lucas?

Mr. Lucas: No.

Exam. Albus: Mr. Cassell?

Mr. Cassell: None for the Rock Island.

Exam. Albus: Mr. Broker?

Mr. Broker: No, for the Nickel Plate.

Exam. Albus: Mr. Davis?

Mr. Davis: No.

Mr. Broker: May I ask with respect to Exhibit 2, that was the Nickel Plate Exhibit H-2, as to general information concerning its financial picture, do any of you want to call Mr. Weneman for verification?

Mr. Wheeler: No, sir.

Exam. Albus: Mr. Thomas?

[fol. 330] Mr. Thomas: No.

Exam. Albus: Mr. Lucas?

Mr. Lucas: No.

Exam. Albus: Mr. Cassell?

Mr. Cassell: No.

Exam. Albus: Mr. Davis?

Mr. Davis: No.

Exam. Albus: Mr. Martin?

Mr. Martin: No.

Exam. Albus: One more. For the Rock Island, the same question, and the same answer?

Mr. Wheeler: Same answer.

Exam. Albus: Thank you very much.

Continue with your cross-examination, Mr. Wheeler.

By Mr. Wheeler:

Q. I believe you had just finished stating that you talked to Mr Atkinson of the Wabash with respect to this case. Is that correct?

A. That is right.

Q. And the question that was discussed, as I recall it, was whether or not the Wabash should intervene, is that right?

A. Yes. I am a director of the Wabash, and at their last meeting I could not be present, and he discussed with me for that reason as to whether or not as a director I had any objection to the Wabash intervening in this case, and I told him that it was up to he and the directors, I [fol. 331] wasn't going to be there, but certainly whatever they felt was the right thing to do was all right with me.

Mr. Broker: Mr. Examiner, I hate to repeat this, but we can't hear all of the questions.

Mr. Wheeler: I will try to speak up.

Exam. Albus: If you will, please.

By Mr. Wheeler:

Q. After you acquired subject to Commission approval your interest in the TP&W stock, did you discuss with Mr. Atkinson, with Mr. Atkinson or anyone else on the Wabash, the protest filed by the TP&W against the petition of the Wabash and other parties to take over control of the Illinois Terminal?

A. No.

Mr. Martin: Mr. Examiner, after Mr. Wheeler's graciousness in response to my request, but I do object that has nothing whatever to do with this case.

Exam. Albus: Yes, what is the purpose of that question, Mr. Wheeler? We are getting a little far afield here.

Mr. Wheeler: The purpose relates to the exercise of control over old companies.

Exam. Albus: The objection is overruled.

You may answer, Mr. Symes.

A. No, I did not.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

[fol. 332] By Mr. Wheeler:

Q. Mr. Symes, does the Pennsylvania Railroad or any of its subsidiaries or the Pennsylvania Company maintain any deposit with the Wilmington Trust Company?

A. I cannot answer. I do not know.

Q. Can you ascertain that?

A. Yes.

Q. Will you furnish that information for the record?

A. My opinion would be they would, but I don't know as a fact.

Q. If you will furnish that information and the amounts, I would appreciate it.

A. All right.

Q. Is Mr. Lammot DuPont Copeland, shown in your application as a director of the Pennsylvania Railroad, also a director of Wilmington Trust?

A. I do not know.

Q. Will you ascertain that fact?

A. Yes.

Mr. Lucas: Mr. Wheeler, are you asking Mr. Symes a question that he should develop whether Mr. Copeland is a director of the Wilmington Trust Company?

Mr. Wheeler: Yes, sir.

Mr. Lucas: I beg your pardon?

Mr. Wheeler: Yes, sir.

Mr. Lucas: Why don't you develop that information from [fol. 333] the Wilmington Trust Company?

Mr. Wheeler: This man is a director of the applicant company. I should think that information most properly should come from him.

Mr. Lucas: I don't see why that information should not be developed by your witness.

Exam. Albus: Mr. Symes said he would supply it.

Mr. Lucas: Mr. Examiner, I am not objecting to a question which I think is entirely irrelevant to what is going on here.

Exam. Albus: I appreciate that.

Mr. Wheeler: Mr. Examiner, I might note I didn't object to a lot of hearsay in the direct testimony, too.

Exam. Albus: Very well. Let us proceed, please.

By Mr. Wheeler:

Q. Would you please at the same time supply the name or names of any persons who are directors, officers or directors, of Pennsylvania Railroad Company's subsidiaries

and also officers or directors of the Wilmington Trust Company.

A. Yes.

Mr. Lucas: Mr. Examiner, Mr. Wheeler has representatives of the Wilmington Trust Company here. Why can't he develop that information in his own case?

Exam. Albus: Maybe it will come out later. I don't know. If it doesn't, Mr. Symes will furnish it.

By Mr. Wheeler:

Q. Mr. Symes, does the Pennsylvania Railroad or the Pennsylvania Company own any bonds of the Wabash?

fol. 334] A. Bonds?

Q. Yes, sir.

A. I will have to let you know on that, too.

Q. Mr. Symes, or would Mr. Carpi know, be better informed on the total traffic derived from the DuPont Company?

A. I think he would be better qualified.

Q. Mr. Symes, in your exhibit, H-14, you set forth some excerpts from various consolidation plans for the railroads of the country. Those consolidation plans were proposed in connection with a section, a paragraph of Section 5, which is no longer in the statutes in the Interstate Commerce Act, isn't that correct?

A. I understand that is right.

Q. Do you know whether or not these were all of the plans that were considered by the Commission?

A. I can't answer as to whether there were others or not. I think it is, all that were formally considered, but I couldn't say.

Q. Do you know whether or not, in essence, with respect to any of these plans that are shown in your exhibit?

A. The sense?

Q. Yes, sir.

A. I assume they were, although I am not familiar with the details.

Q. Are you familiar with the fact that—well, does the Pennsylvania Railroad control any companies that were

fol. 335] allocated to other systems by any of the con-

solidation plans to which you adverted in your exhibit, H-15, that is, the Pennsylvania, the Railroad or the Pennsylvania Company?

A. I don't believe I can answer that. I don't recall any, but I could be mistaken.

Q. Do you know whether the Wabash was allocated to the Pennsylvania in any of the plans which you have referred to here?

A. Yes, I know it was in the two-party plan.

Q. I refer to page 11, the middle paragraph, reference there to the Wabash Seaboard System.

A. Yes.

Q. Mr. Symes, wasn't it a fact in those proceedings the TP&W objected to being included in a system to which the Wabash was allocated, irrespective of which system it was?

A. My recollection is that I think that is right.

Mr. Wheeler: I have no further questions.

Exam. Albus: Thank you very much.

Mr. Cassell?

Mr. Cassell: May our normal order be reversed and the Nickel Plate go first?

Exam. Albus: Yes.

Mr. Broker.

Cross examination.

By Mr. Broker:

Q. Turning to page 3 of your statement, reference is there made to the Nickel Plate and the suggestion is made [fol. 336] that we would favor eventually the discontinuance of the eastern half of the TP&W. In making that statement, you are considering the situation as if the Nickel Plate were the sole owner of the TP&W, is that not so?

A. Not entirely so. I should think that if they were a part owner that they would still be very much interested in taking the long haul on the traffic through Peoria rather than going to Effner.

Q. How could the Nickel Plate as a part owner with the Pennsylvania possibly promote abandonment of the east half of the TP&W?

A. They could certainly, if they were successful in getting a large part of the traffic through Effner and drying that up, it would automatically follow that the east end of the TP&W might not be economically justified. My intention there was to show that the conflict of interests of the Nickel Plate as a part owner as compared with the Pennsylvania could very well be apparent, which doesn't promote harmony.

Q. And you don't think there is any conflict of interest between the Pennsylvania Railroad and the TP&W?

A. Conflict of interest?

Q. Yes.

A. No, I don't. Very, very little.

Q. Not through your ownership in the Wabash?

A. Well, not entirely, no. As I say, we are working under orders of the Wabash that are being carried out where we don't interfere with them in any way, all the routes and [fol. 337] divisions. That is a good example of what we are proposing here, I think. The same fears were expressed there, but they haven't worked out, it is working out beautifully.

Q. But you already have your interest in the Wabash?

A. I know, but I say, isn't it working out all right? I think it is. I think everybody else thinks it is working out all right. The fears were not there.

Q. Let's assume for the moment that it is.

A. Yes.

Q. The fact is, though, you have that interest in the Wabash today, don't you?

A. We do.

Q. And doesn't that interest conflict with the TP&W?

A. No, I don't think so. They are competitive, sure.

Q. That is just what I mean, aren't they competitive?

A. They are.

Q. And you'd have 100 per cent ownership

A. (Interrupting) And we are, too, we are competitive with the Wabash.

Q. I know that. I have advocated that in a case once.

Q. You don't feel you have a conflict of interest, then, with the TP&W. Why, then, do you advocate the long haul to St. Louis, if you can get it?

A. Well, I think, to be perfectly frank about it, if we have this fifty-fifty ownership in the TP&W as it is proposed I won't be too much concerned whether it goes Effner or St. Louis. It is only natural that you look at the long haul, but I don't think I would be too much worried about it. I think you would put all the gateways on a parity with service and certainly wouldn't interfere very much with a solicitation.

Q. Aren't they on a parity of service today?

A. Generally, yes.

Q. But you will do everything possible to equalize them?

A. I would say that we have today three gateways, principal gateways, to the west, which is this one, Chicago, St. Louis. If we had a 50 per cent ownership in the TP&W I think it would make us sort of put them all on a par. It wouldn't make much difference to me one way or the other. You get a little more money on the long haul, and it is true you get, you have a little less expense in the short haul.

Q. Those gateways compete today, don't they?

A. They do. All three of which handle a substantial volume of traffic. We want to preserve it. We think it is important that this gateway be preserved and we don't know a better way of doing it than what we propose.

Q. In your speech made here in Peoria on July 8, 1955—that is page 7 of H-14—you made the statement to the members of the public that were present that the two railroads—that would be the Pennsylvania and the Santa Fe—do not compete with the railroads they are acquiring. How does that square with your testimony?

[fol. 339] A. I think it squares all right.

Q. Now, I take it it is the Pennsylvania's policy today to promote the long haul to Effner whenever possible?

A. To do what?

Q. Promote the long haul to Effner over the TP&W.

A. Coming east?

Q. Yes.

A. Well, I wouldn't say that. I don't think we favor Effner over Chicago or St. Louis.

Q. I am talking about traffic which is moving over the TP&W. Your primary interest is in the long haul movement to you at Effner, isn't that true?

A. Oh, sure.

Q. Won't that continue to be your policy as a part owner?

A. I would think so. We don't want to change what is going on now, as a matter of fact. That is the reason we are even ready to stipulate all these things.

Q. You indicated earlier in your testimony that the best thing you can do to preserve what you have is by ownership. Do you recall that testimony?

A. Yes.

Q. And that would apply to all lines, wouldn't it?

A. Well, no, I don't believe it would preserve what you have. The two lines that want to preserve what they have [fol. 340] are the ones that are really responsible for the TP&W as it is, and if you get a lot in there with minor interests and some with objectives which might not be to the interests of the TP&W, you might not find it so with that sort of ownership.

Q. Are you a director of the Wabash?

A. I am.

Q. May I ask you how you voted on the Wabash petition?

A. I was not present, as I explained.

Q. Were the other directors of the Pennsylvania present?

A. I cannot answer that. We have two other ones on there, but whether they were present I do not know. The discussion with me was as a director, by the president, was there any objection on my part because of me not being present to their doing it, and I told them it was absolutely not and it was up to them to do what they wanted to do.

Q. Wouldn't that promote the further dilution?

A. No, the Wabash, as I understand it, are in here to protect what they now have, as we have stipulated, and the only reason they would want an ownership is because you would get one or somebody else, but I think the Wabash petition indicated, as I recall it, their appearance in the case, if there are interchanges, divisions, working arrangements are continued in effect and only the Santa Fe and Pennsylvania own it, that is satisfactory with them. I think that is correct.

Q. In other words, the Wabash is not opposing the Penn- [fol. 341] sylvania in this case?

A. They are only in there to protect and preserve what they now have, and in the event additional ownerships are allocated, they want one, too.

Q. What ingredient do the additional owners have—

A. What is that?

Q. What ingredient do the additional owners have that jeopardizes the position of, let us say, the Wabash?

A. Well, you and the Wabash and the Nickel Plate are pretty competitive, and it's only natural that these competing lines feel that if you get it I want it, and if you get a lot of interests in there there isn't any doubt about it, as it has been said, you get too many cooks in the broth and it isn't any good, and I am fearful that is what could happen here. We want a united front to continue this property as it is, and the Santa Fe and the Pennsylvania can furnish that and I don't believe it can be furnished with a group of owners.

Q. In other words, through ownership a competitive advantage may be gained, is that right?

A. I wouldn't say so much gained as it would preserve what we have.

Q. Well, you say the Wabash wants to come in because—

A. (Interrupting) Well, the Wabash naturally wants to come in to protect themselves. They have a couple of trackage arrangements and I think three interchange points, and they want to see that those things are preserved, not [fol. 342] that they are fussing about we and the Santa Fe owning the stock, at least I don't think so. They will have to speak for themselves. That is as I recollect.

Q. What we come down to, then, is ownership provides the best protection that you can have, is that right?

A. I think the ownership of the Santa Fe and Pennsylvania best provides the continuance of the TP&W as an important transcontinental route than any other arrangement.

Q. I know your position. What I am trying to find out is whether or not you think the element of ownership provides protection to a railroad above and beyond non-ownership.

A. Oh, I guess realistically you would have to say yes to that. It is not the intention to do it, but that is why we have rules that the Commission stipulate in cases of that kind.

Q. You feel that you people, then, are logical owners because you are on the east and west end?

A. Yes; we are stub end to them as part of a transcontinental route.

Q. But you have a line in Peoria?

A. We do have a line in Peoria and it is true there is certain eastbound traffic that moves that way, and I don't know why, because we cannot compete servicewise with that route. I indicated this morning if you start two cars out of Peoria at the same time, one this way (indicating) and [fol. 343] one that way (indicating) and one that way (indicating), the one that goes through the Effner gateway is three hundred miles east 30 hours after it leaves of the other one. It is true, the TH&P or the Terre Haute branch to Terre Haute gets a little further, not much, it is important to the community it serves, and Decatur is in the middle.

Q. It connects with your main line at St. Louis, does it?

A. At Terre Haute.

Q. That main line gives pretty good service, I assume?

A. The same as Effner and the same as Chicago, but you can't get it down to it.

Q. What were the factors, again, that prevented this from being a service route? You said there was a speed restriction, if I recall, a 30-mile speed restriction.

A. Yes, our track.

Q. Who imposes that speed restriction?

A. Who does what?

Q. Who imposes that speed restriction?

A. The operation people of that division.

Q. Is it because of the quality of the track?

A. Partly the track.

Q. What would be the other reasons?

A. Light bridges, curves, general construction of the railroad.

Q. What about crossings of other railroads?

A. The same thing. There are numerous crossings, some [fol. 344] of which we have to stop under the law, others are interlocked and we don't.

Q. There is no thirty-mile restriction on the part of the Nickel Plate you travel on now, is there?

A. No; that is a pretty good railroad.

Q. Forty-nine miles, isn't it?

A. I don't know. I would say yes.

Q. In other words, just about every factor that you mentioned was within the control of your company to correct, isn't that right?

A. Yes, but why should we spend the millions of dollars involved to do it when there is another line through Effner that provides the same thing?

Q. The point is, you could do it?

A. I doubt it. We are 67 miles longer that way, and that is a pretty good handicap.

[fol. 345] Q. A little better than two hours on a 30-mile restriction?

A. If you made it, but you can't run, I don't think, no matter what you do to that place.

Q. How long was the Pennsylvania once in control of this property jointly with the Burlington, do you know?

A. No. It was many, many years. I don't know exactly how long.

Q. Thirty-three, wasn't it, 1893 to 1926?

A. I would say that is about right.

Q. During that period of time did the property prosper?

A. No. Oh, there might have been a few years.

Mr. Lucas: Mr. Examiner, may I say the receivership started in 1917.

Mr. Broker: I understand that, but you still retained directors on the Board of Directors, didn't you?

Mr. Lucas: It was in receivership. I think that makes a totally different picture.

Exam. Albus: Do you know whether or not they maintained directors?

The Witness: No, sir.

By Mr. Broker:

Q. Then you were in control 20 years prior to receivership?

A. Well, we were involved in it, yes, as part owner.

Q. Do you know whether or not the Pennsylvania Rail-

road ever advocated the scrapping of the west end of the line?

[fol. 346] A. I do not. I heard it here this morning but I didn't know it.

Q. Do you know whether they ever made any representations that the property could not be operated profitably as an entirety?

Q. That is just what I mean.

A. No, I don't know whether they did, but I say if they did they were wrong.

Q. Can you have your records searched to see whether in the proceedings at the time of the receivership sale you people ever advocated anything like that publicly or otherwise?

A. I don't think it means anything here to go back that far. We are not talking about what happened—

Exam. Albus: I am not going to require him to furnish that information.

A. I think you are talking in the past.

Exam. Albus: That is too remote.

Mr. Broker: This party comes in and states it is the logical owner. It was an owner for 33 years, and I think it is quite relevant.

Exam. Albus: You can put that in your brief. Isn't that information available to you?

Mr. Broker: No, sir.

The Witness: How do you know it, then?

Exam. Albus: Just looked for it.

It is too remote, Mr. Broker. We have gotten an awful lot of things in here, but you have to put a stop someplace. [fol. 347] What is information you are asking for?

Mr. Broker: Whether or not the Pennsylvania ever advocated scrapping the west end of the line.

Exam. Albus: You want Mr. Symes to search the record to find out whether that has ever been done?

Mr. Broker: I don't want to go on a fishing expedition, but maybe there is somebody in his railroad who knows.

The Witness: I will try to find out.

Exam. Albus: I am not going to require it.

The Witness: It might be right, but I don't know whether it is or not.

By Mr. Broker:

Q. I don't want to put a burdensome task on you. It is not a fishing expedition, believe me. The point is, though, why, after such a record, even aside from the question of the scrapping of the road, which has not been established as a fact, should other parties such as the Nickel Plate come in and rely on representations as to logical ownership?

A. I think the facts speak for themselves. Look at that map there. It shows you very clearly why we feel that way.

Q. You are a part owner of many other roads, aren't you, with this multiple ownership?

A. It depends on what you call many. Yes, we have a part ownership in the DT&I, the RF&P, a lot of terminal companies.

Q. Lehigh and Hudson River?

A. Yes.

[fol. 348] Q. Do you consider them efficient companies?

A. The DT&R, of course, is a recent acquirement of the stock, I think 1950, which is approved by the Interstate Commerce Commission, again under certain stipulations. I don't think anybody can find fault with them. I think they are working out beautifully, the same as here. The L&H that was built was a bridge line built to serve New England by a certain group of railroads. As to whether it is efficient or not I don't know. I have never been too closely associated with the property.

Q. RF&P, do you consider that efficient?

A. Yes, I would say they are efficient, and it is very much a parallel to what we are talking about here, the B&O and Pennsylvania are the two principal connections on the north and the Seaboard and the Coast Line on the south. I mean that is the heavy volume. There is a bridge line between us.

Q. There are six railroads interested in that?

A. Six in the State of Virginia. There are seven ownerships. But the principal business on it is the B&O and Pennsylvania on the extreme east and the Pennsylvania and Coast Line at the extreme south end, very much like what we are talking about here.

Q. And there are six owners in the Lehigh and Hudson.

A. I think so.

Q. Jersey Central, Reading, Pennsylvania, Lackawanna, Erie and Lehigh Valley, that's about it, isn't it?

A. Yes; I thought there were six or seven, but if you [fol. 349] have it there, that's right.

Mr. Broker: No other questions.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Symes, you said there was a difference of 69 miles, I believe, between the two routes by use of the TP&W and by use of your own railroad into Peoria?

A. Sixty-seven, I think I said.

Q. That was between where and where?

A. Well, the first competitive point, I would say, would be probably Columbus, Ohio, and it is 67 miles longer from Peoria by Terre Haute than it is over the TP&W through Effner and Logansport. That is where they come to the common point.

Q. All right, how much difference in time on a shipment, starting out from Columbus and going via the TP&W against the one going via Terre Haute?

A. To where?

Q. Peoria.

A. A day.

Q. A day's time?

A. Yes.

Q. And you think that a day's time is enough to prevent that from being a competitive route?

A. These days it certainly is.

Q. And any other railroad similarly situated would not [fol. 350] be competitive either?

A. What is that?

Q. Any other railroad similarly situated would not be competitive?

A. Oh, you could call it competitive. I didn't say we weren't. I say we were slightly competitive, but as a reality, because of our service efficiency, we were not.

Q. It is either competitive or it isn't?

A. You can't be really competitive unless you match the service and we don't match it by a day.

Q. If you were told that the Rock Island took a day or more on its route from the west into Peoria via Silvis as against the Keokuk gateway, you would make the same answer, would you?

A. If it took—

Q. If it took the Rock Island a day or took longer as against the Keokuk Gateway, you would make the same answers, then, wouldn't you?

[fol. 351] A. I would have to. You would not be truly competitive with that service handicap.

Q. We would be competitive just as much as you are on the east end, isn't that right?

A. That is probably right.

Mr. Cassell: That is all.

Exam. Albus: Are there any further questions on cross-examination?

(No response.)

Exam. Albus: Is there any redirect?

Mr. Lucas: No redirect, Mr. Examiner.

Exam. Albus: Thank you very much. You are excused.

(Witness excused.)

OFFERS IN EVIDENCE

Mr. Lucas: May I now offer Exhibits H-14 and H-15.

Exam. Albus: Let the record show that Exhibits marked H-14 and H-15 are received at this time.

(Applicant's Exhibits Nos. H-14 and H-15, Witness Symes, were received in evidence.)

Mr. Lucas: Mr. Examiner, if we might now have the exhibits of Mr. Carpi distributed, who will be our next witness.

Exam. Albus: Very well.

FRED CARPI was sworn and testified as follows:

Direct examination.

Mr. Lucas: Mr. Examiner, he has just the one exhibit, [fol. 352] the blue book, which we will ask be marked for identification.

Exam. Albus. Let the record show the exhibit to be introduced through Mr. Carpi is marked for identification as H-16.

(Applicant's Exhibit No. H-16, Witness Carpi, was marked for identification.)

Q. Mr. Carpi, will you state your name and your position and your business address with the Pennsylvania Railroad Company?

A. My name is Fred Carpi. I am vice-president of freight sales and services and my address is Philadelphia, Pennsylvania.

Q. Will you state, please, for the record, within reasonable brief compass, but never the less so that we will have some basis of your traffic experience?

A. I have held an official position with the Pennsylvania Railroad since 1929, and my duties during that period have taken me into rate construction, solicitation, both freight and passenger, and industrial development and matters of that kind including administrative matters.

Q. Your present position, you have stated, is under the reorganization referred to in Mr. Symes' Exhibit?

A. Correct.

Q. But prior to the November 1, 1955, date you were vice-president in charge of traffic?

A. That is correct.

Q. And how long have you occupied that position?

[fol. 353] A. About six years.

Q. And prior to that what was your total experience in the traffic field?

A. About 20 years.

Q. Was there prepared under your direction an exhibit which has been marked for identification as H-16?

A. Yes, sir.

Q. Will you take up the exhibit before you give your testimony and just take each page and very briefly state what the page consists of?

A. Page 1 of my exhibit shows the distance and transit time from Peoria to Columbus via the Effner route and our Peoria branch. Note that the distance which is shown in the center of the page via the Effner route is 66 miles shorter, and the transit time almost 11 hours faster. This difference in transit time is obviously controlling in the movement of traffic.

Q. Mr. Carpi, may I interrupt, would you just take the exhibit and explain the lines on the left and on the top between the arrows?

A. Well, the line on the top is T. P. & W. to Effner, thence our line to Logansport, thence our line to Bradford and continuing to Columbus.

The line on the south is our Peoria branch to Farrington where it connects with our panhandle division, thence the main line clear into Columbus, through Indianapolis and Richmond.

[fol. 354] Page 2 is another illustration of the disability of the Peoria Branch. The distance from Peoria over the Peoria Branch to Farrington is 54 miles greater than from Peoria to Effner via the T. P. & W.

Mr. Symes has already elaborated on the physical disabilities of this route and I will not cover that.

Page 3 shows the short-line mileages between representative points via Chicago, Peoria and East St. Louis. It will be noted that to the central part of the West, the Effner route is generally shorter. I am referring now by Central west to Omaha and Kansas City which would apply with equal force to points like Denver and San Francisco.

Page 4 shows the distance via various routes between Peoria and selected eastern cities served by the Pennsylvania. I shall treat more fully on this later in my testimony.

Page 5 is a comparative statement of traffic handled in connection with our line via the Peoria Branch and the Effner Route. It will be noted that on beyond traffic that is competitive, the volume via the Peoria Branch is only 12 per cent of the total handled via the two routes. More specifically I refer to item 6 which shows that under the

Peoria—caption "Peoria Branch" the competitive traffic is 492 cars as contrasted with the column headed "Via T. P. & W.-Effner" which shows a figure of 25,735 cars.

Page 6 shows the freight schedules in effect via the route. [fol. 355] They provide a fully-competitive service. There is no counterpart to this via the Peoria Branch. Generally service via our Peoria branch is one to two days longer than via the Effner Route.

Page 7 reproduces letters from the general traffic manager of our company to his staff, outlining the position of the Pennsylvania with respect to competitive traffic insofar as the T. P. & W. is concerned. The general traffic manager of the Pennsylvania reports to me.

Pages 8 to 11, inclusive, reproduces an interchange of correspondence between myself and the vice-presidents in charge of traffic of the Wabash and the D. T. & I. These are self-explanatory.

Q. Now, Mr. Carpi, will you take up and proceed in your own way, please, your general testimony additional to your exhibit?

A. For years St. Louis and Chicago have been our principal gateways on traffic to and from the West. By the West I mean practically all the territory west of the Mississippi River except the extreme northeastern and southeastern portions. Both gateways have been used extensively on transcontinental traffic. St. Louis is particularly important on southwestern traffic, and Chicago on northwestern traffic.

Peoria has always been an important gateway for some lines, but not much of a factor to our company because of operational problems and, to a lesser extent, circuity. More- [fol. 356] over, certain segments of our Peoria Branch are not under our direct control. Our Peoria terminal facilities are on the Peoria & Pekin Union, and we must pay this carrier rental and trackage charges, as well as switching charges, to and from all industries and all interchange connections. Our access into the P. & P. U. East Peoria Yard is by trackage rights over the Nickel Plate route from Farmdale. From Maroa south to Hervey City it is joint with the Illinois Central. The first 15 miles to Decatur is by trackage rights over the I. C., and trackage rights are used to reach many Decatur industries. South of Decatur

for the seven and one-half miles to Hervey City the track is jointly-owned by our company and I. C. In view of the conditions described, it must be fairly apparent that it is not possible to make our Peoria Branch a competitive route on through East-West business.

During the time the T. P. & W. was strike-bound, we attempted to experiment with the possibility of making our Peoria Branch competitive. We established through train service. While we obtained some additional business, purely because of the strike situation we could not match competing services, and when the T. P. & W. resumed operations the new business that we had developed disappeared.

Upon acquisition of the T. P. & W. by Mr. McNear, a determined effort was made to capitalize on the potential of this route, particularly in bridging two important end-to-end carriers, namely, the Santa Fe and the Pennsylvania. [fol. 357] Such effort has been successful from the very moment Mr. McNear obtained our pledge of cooperation and armed with this pledge then proceeded to work out the connection with the Santa Fe at Lomax. It is also pertinent to point out that there has been quite a transition in the economy of the West, which had a direct bearing on the growth of traffic via the Effner-Lomax Route. For many years Chicago and St. Louis were the wholesale or marketing centers of the West. It is only within the last 25 years that through rates have been in effect between a large part of the West and the East. The former practice of moving through traffic on combination rates undoubtedly gave Chicago and St. Louis great advantages over Peoria. St. Louis and Chicago could transit all kinds of traffic at no extra charge. This caused those two routes to be preferred. In the past, our company has at times been handicapped through Chicago because of congestion. The Effner Route (T. P. & W.), lying athwart St. Louis and Chicago, offered us an additional and much-needed gateway. The rapid development of natural resources in the West, the influence of World War II, particularly the Pacific phases, the dispersion of industry with the consequent increase in population and production of goods, and the other factors previously mentioned have indicated quite clearly our need

for an additional gateway that can provide competitive service. The Effner Route (T. P. & W.) supplies this need. Financially, our company fares just about as well on traffic via the Effner Route via Chicago. Traffic over the Effner [fol. 358] Route has shown a remarkable growth over the years, and the business interchanged by the T. P. & W. with the Pennsylvania and Santa Fe is the keystone of its continued success.

The Pennsylvania would not be interested in promoting the growth of traffic via the Effner Route if there were an alien ownership or a division of the ownership beyond the two applicants, namely, P. R. R. and Santa Fe.

Up to now, we have maintained a friendly neutrality toward the T. P. & W. Provided we obtained a line haul, we never objected to the inclusion of the T. P. & W. as an intermediate or bridge line. Stated differently, there was no counter-solicitation against the T. P. & W. If we acquire half-ownership as proposed, we intend to change our policy. We intend to recognize Effner as one of our principal interchanges and place it on a par with Chicago and St. Louis. We will as heretofore, solicit via the gateway giving us the longest haul, but if other considerations such as time in transit, transit privileges, or shipper inclination favor another route, we will not work against Effner.

With large resources at our command, we believe we can help the T. P. & W. in many ways. For instance, we have had an industrial survey made of the line, from which we have concluded that there are opportunities for industrial development. We have a large and trained staff engaged in this important field, and our facilities would be made available to the T. P. & W. At present, only 28 per cent [fol. 359] of the traffic handled by the T. P. & W. originates and terminates on the line. We think and believe that this local traffic can be substantially increased through the development of new industries, with the assistance of our company and the Santa Fe.

It is very advantageous for the T. P. & W. to be owned by the two carriers with which it interchanges most of its traffic. Sixty-four per cent of the revenues derived by the T. P. & W. comes from the traffic interchanged with the Pennsylvania and the Santa Fe. The overhead traffic be-

tween these two roads is the only substantial volume on which the T. P. & W. obtains its maximum haul. A friendly attitude from these two carriers is obviously essential to its continued success. Such an atmosphere cannot be expected if the T. P. & W. should fall into alien hands or if the control were diffused. In the latter instance, there would be a case of everybody's business being nobody's business.

With diverse ownership, it would simply be unrealistic to expect the T. P. & W. to obtain from any one owner the type of support necessary to insure the continued growth of its business. With acquisition of the T. P. & W. by the Pennsylvania Railroad and Santa Fe, the T. P. & W. can be expected to maintain the aggressive sales and service policies which it has found so successful in the past. It will, as heretofore, continue to solicit available traffic by all of [fol. 360] its existing routes. It is obviously in the interest of the T. P. & W. that all of its existing channels be kept open, and this policy will in no-wise be affected or changed if our application is approved.

Mr. Lucas: Mr. Examiner, that completes Mr. Carpi's direct testimony.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Let the record show that we will recess until 9 o'clock tomorrow morning in this room.

(Whereupon, at 4:43 p.m., an adjournment was taken until 9 o'clock, a.m., Friday, February 3, 1956.)

[fol. 361]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

Pere Marquette Hotel,
Peoria, Illinois.

TRANSCRIPT OF HEARING—February 3, 1956.

Met, pursuant to adjournment, at 9:00 a.m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 363] PROCEEDINGS

Exam. Albus: The hearing will come to order.

We will continue with the testimony of Mr. Carpi. Have you completed the direct, Mr. Lucas?

Mr. Lucas: I said the direct had been completed. I have a couple of questions and Mr. Thomas has a few questions which would be considered as direct testimony.

Exam. Albus: Very well.

FRED CARPI resumed his testimony as follows:

Direct Examination (Continuing).

By Mr. Lucas:

Q. With respect to traffic that is routed by a shipper Pennsylvania Railroad-TP&W, how is that handled in respect to the junction?

A. Our people are instructed to route that traffic via Effner rather than via our Peoria branch.

Q. Have you developed any figures, perhaps, since you were on the stand yesterday, as to the split between or the proportion of our PRR traffic that is delivered to the TP&W?

A. Page 5 of my exhibit H-16 shows in line 6, column 1, that we interchanged 492 cars at Peoria. That includes interchange with all lines, but only 140 cars in that total went to the TP&W, so that when you consider the total traffic interchanged with the TP&W, so far as Peoria is concerned, it shows that about 99-plus per cent is handled by Effner.

[fol. 364] Q. Have you anything else to add as far as my inquiries are concerned, Mr. Carpi?

A. No, sir.

Mr. Lucas: Mr. Thomas.

Direct Examination.

By Mr. Thomas:

Q. Mr. Carpi, do you have any information on the interchange between the Pennsylvania and the Wabash at Logansport in connection with traffic the Wabash receives from or delivers to the Santa Fe?

A. Yes, sir.

Q. Could you comment on the volume of that interchange.

A. Well, it is really insignificant. I had our people make a study sometime ago of the traffic that we receive from the Wabash at Logansport and I asked specifically to determine what portion came from the Santa Fe with the Wabash as a bridge line. It runs around less than 50 cars a month.

Q. You say from the Santa Fe. Would it be to or from?

A. Both directions.

Q. Both directions.

A. There is really very little business at all from the Pennsylvania to the Santa Fe or the Wabash, we couldn't find any of that, so it was all eastbound.

Q. In your testimony you referred to a study of industrial sites along the TP&W.

A. Yes, sir.

[fol. 365] Q. By whom was that study made?

A. Well, shortly after—I should say it was made by Mr Cox head of your industrial department, I think he is assistant to the president, and Mr. Haffner, who is man-

ager of our industrial department in the Northwestern Region.

Q. What was the scope of that study?

A. It was very extensive. Shortly after this petition was filed I got in touch with the Santa Fe people and we agreed to make an intensive survey, industrial survey, of the TP&W. Every community was checked as to its potentialities, to the extent of its natural resources, such as gas, water, all utilities, also the labor market, as well as other factors that enter into industrial development. I have a copy of the study here. It is a very extensive study.

Q. Does it indicate whether or not the TP&W has some good potential sites for industry?

A. Oh, yes, particularly the Peoria area. It has tremendous possibilities.

Q. Mr. Carpi, I want to ask you this, suppose the traffic coming to the Pennsylvania off the TP&W-Effner were almost entirely or entirely from the Santa Fe through the Lomax interchange, as long as it got all that business, would the Pennsylvania be satisfied?

A. Oh, no. We have a very substantial interchange with the Rock Island, which we would want to preserve under [fol. 366] all conditions.

Q. That is true, I presume, of both the junctions that the Rock Island has with the TP&W.

A. I am thinking of the long-haul junction, Keokuk as well as Peoria. I believe we interchange more business with the Rock Island than any other road using the Peoria route.

Mr. Thomas: That is all I have.

Mr. Lucas: That completes the direct examination, Mr. Examiner.

Exam. Aibus: Thank you very much.

Cross-examination, please, Mr. Wheeler.

Cross Examination.

By Mr. Wheeler:

Q. Mr. Carpi, on page 2 of your prepared statement you state that in the past our company has at times been

handicapped at Chicago because of congestion. Will you please tell me when that occurred.

A. It occurred during the war and it occurred a couple of years ago. It occurs almost every time you have severe weather or a great volume of traffic.

Q. Was your company as handicapped at that time as a company, as a railroad, that does not have a connection with the TP&W?

A. I don't understand your question.

Mr. Wheeler: Read the question.

(The last question was read.)

A. I really don't understand what you mean by your question.

[fol. 367] Q. I gathered from your testimony you were indicating that the TP&W affords you an alternate route to Chicago.

A. Not to Chicago, no; to the west.

[fol. 368] Q. What is the pertinence of your statement, then, that your company has at times been handicapped through Chicago because of congestion?

A. That is the very point. We are trying to get to the west, or from the west to the east, and when Chicago is congested or in operating difficulties the Peoria route is very helpful to us.

Q. A railroad that does not connect with the TP&W does not have that alternative, does it, in times of congestion?

A. Oh, yes. There are many routes available.

Q. Well, just how? It could not connect with it except over some other railroad's lines, could it?

A. That is right.

Q. It could not go over its own line and go through the TP&W gateway, Peoria gateway, unless it had its own connections, could it?

A. No, that is not right.

Q. So as against you—

A. (Interrupting) No, I don't agree with your question.

Q. I am not asking you to agree with my question, I only said I want you to answer it.

A. I said I don't agree with your question, my answer is no to that.

Q. Your answer is no?

A. No, correct.

[fol. 369] Q. That the TP&W does not afford you an alternate gateway and not afford a road that doesn't connect with the TP&W and an alternate gateway to Chicago?

A. Any road that doesn't connect with the TP&W directly may have other routes which make the TP&W part of the route. There are thousands of routes available. A line doesn't necessarily have to connect with the TP&W to use that line.

Q. Are there any large eastern carriers that do not have, let us say, good routes via the TP&W that normally move their traffic through Chicago, or the bulk of their traffic through Chicago?

A. Yes, I would think that there is at least one line that I would think has a choice like that.

Q. What line is that?

A. The Erie Railroad.

Q. Now, Mr. Carpi, the TP&W has been and is presently available to you as an alternate route, is it not?

A. Yes, sir.

Q. And it will continue to be available to you regardless of who controls it, is that not true?

A. Yes, sir.

Q. Now, Mr. Carpi, on traffic moving to the west do you not also have during these periods of congestion at Chicago the alternate route over the Wabash to Kansas City and points west, available to you?

[fol. 370] A. Yes, but we don't use them.

Q. It is available to you, is it not?

A. It is available, yes. I'd like to make that clear. There's probably a couple of thousand routes available from, say, New York to Kansas City, in fact, as I recall it, there's ten thousand routes between New York and Dallas.

Q. How many gateways are there?

A. Speaking of Dallas destination?

Q. Yes, sir.

A. There is not less than 50.

Q. Not less than 50?

A. That is right.

Q. All right, those principal gateways, Chicago, Peoria, Decatur and St. Louis, East St. Louis?

A. Not to Dallas. They are important gateways.

Q. Dallas you have starting from Potomac yard, that is, Washington, working west, just to name the principal ones, you have Louisville, Cincinnati.

Q. I am thinking now of these midcontinent gateways.

A. If you speak of Kansas City, so far as we are concerned it would be Chicago, Effner and St. Louis.

Q. What about Decatur?

A. We don't interchange any traffic at Decatur to speak of with anybody.

Q. Let's talk in terms of the Wabash, then.

[fol. 371] A. I don't know what the Wabash interchanges at Decatur. Our interchange with the Wabash at Decatur is not very large.

Q. You interchange with the Wabash?

A. Oh, yes.

Q. What do you consider the Wabash gateway, Logansport?

A. Well, I like to consider it St. Louis.

Q. On their direct route, Mr. Carpi, between Logansport and Kansas City, what do you consider the gateway?

A. St. Louis.

Q. On the Wabash?

A. Yes.

Q. Then is that your alternate route when Chicago is congested?

A. Yes, we try to force it through St. Louis.

Q. Mr. Carpi, Mr. Symes testified that you owned 99 plus per cent of the Wabash, is that correct?

A. That is substantially correct, yes.

Q. And you tell me now that you do not solicit traffic or route traffic via the Wabash when you are congested at Chicago, is that correct?

A. I didn't say that at all.

Q. Will you please tell me what you did mean to indicate?

A. I said in time of congestions, if Chicago was congested, we would naturally try to force the business via St. Louis with the Wabash or any other carrier.

[fol. 372] Q. You do not give the Wabash the long haul between Logansport and Kansas City during those periods?

A. Not if we can help it.

Q. So you solicit against the Wabash?

A. Yes, sir, we do.

Q. And against their route, their long-haul route between Logansport and Kansas City?

A. Yes. I might say, Mr. Wheeler, Logansport is not their long-haul route. Buffalo is the Wabash's long-haul route and they are always trying to get the business to us at Buffalo and we try to get it to them at St. Louis.

Q. Mr. Carpi, did the Pennsylvania, or has the Pennsylvania benefited by the opening up of a fast freight service over the Wabash between Kansas City and Logansport?

A. I would say that it has benefited, yes, sir.

Q. Much?

A. Not too much because our solicitation forces always complain that we short haul ourselves when we opened the Logansport route. They always complained that we insist on business coming to us at either Chicago or St. Louis.

Q. So that any benefit that you derive or any benefit that is derived derives solely from the activities of the Wabash in soliciting traffic over that route as against St. Louis, is that correct?

A. Yes, sir, statistics show that.

[fol. 373] Q. Has your arrangement with the Wabash traffic-wise changed any since you acquired control of it?

A. I would say generally speaking no.

Q. The traffic arrangements are of long standing, is that correct?

A. They are the product—they are the evolution of over a period of years.

Q. And they are determined by the inherent economies of the long haul for the individual routes, is that correct?

A. Very much so.

[fol. 374] Q. I believe you said—there has been testified of record, and I wondered if you agree with it, that the T. P. & W. offers a competitive route to the Wabash between Kansas City and eastern ports.

A. Mr. Wheeler, the term competitive has many meanings, and it all depends on which side of the fence you are looking at.

Q. Let me change it. Would you regard the T. P. & W as a competitor of the Wabash?

A. Limited competitor, yes.

Q. But a competitor?

A. But a competitor, that is correct.

Q. You would have no doubt, however, that your Effner Gateway is competitive with the Chicago and St. Louis

A. Yes, sir.

Q. When you said yes, sir, you mean yes, sir, you have no doubt?

A. Yes.

Q. As between the Wabash and the T. P. & W. which will you prefer as a traffic arrangement?

A. It all depends what traffic you are talking about

Q. I am sorry.

A. It all depends on what traffic, what movement, you are talking about.

Q. I am talking of a movement to Kansas City from points, eastern points, on the Pennsylvania.

[fol. 375] A. Kansas City, we prefer the Wabash to St Louis, if we had our choice.

Q. Eliminating St. Louis for the movement. I am speaking of the Wabash Gateway between Logansport and Kansas City.

A. We would prefer the Effner route.

Q. You would prefer the Effner route?

A. Yes, sir.

Q. During the period following the strike on the T. P. & W. to which you adverted in your testimony, were no instructions issued to Pennsylvania traffic solicitors to state to shippers that the Peoria branch was competitive with Effner, the Effner Gateway?

A. I don't recall, but I would think we did. Subsequent events proved we were wrong.

Q. You say here the developments in recent years have indicated quite clearly your need for an additional gateway that can provide competitive service. Are you speak

ing of competitive service with Chicago and St. Louis or what?

A. I am speaking of the need for greater opportunities to meet the requirements of the shipping public.

Q. Well, when you say competitive, what do you mean, do you mean competitive with other gateways or other carriers?

A. Other carriers.

Q. What particular carriers did you have in mind?

A. All of them that operate in the east.

[fol. 376] Q. Again, Mr. Carpi, this Peoria Gateway is available to you whether you control it or not, is it not?

A. Yes, sir.

Q. Now, Mr. Carpi, if the Peoria Gateway is important to you, as you have indicated, why wouldn't you support it, even if the M. & St. L. controlled the T. P. & W.?

A. Well, we might if we could have the proper understanding, sir.

Q. What do you have in mind by proper understanding?

A. Well, we know, for example, with the T. P. & W., we know what their sphere of influence is, and we know that they are not working against us, and we have, every once in a while we sit down and discuss with them mutual problems, how we can best cooperate with each other.

Q. Does the M. & St. L. work cooperatively with you?

A. Yes, they have.

Q. You have had no problem on that score of lack of cooperation, have you?

A. No, I cannot say that we have.

Q. As a matter of fact, do not the Pennsylvania and the M. & St. L. solicitors cooperate in the solicitation of movement?

A. They do.

Q. Mr. Carpi, I am not quite clear what you intended to convey by this sentence in your testimony, "traffic over the Effner route has shown a remarkable growth over the [fol. 377] years and the business interchanged by the T. P. & W. with the Pennsylvania and Santa Fe is the keystone of its continued success." Did you mean to indicate by that that if you do not control the T. P. & W., you would close your Effner interchange?

A. I don't know what we'd do, but I do say this, that if the T. P. & W. lose that particular traffic, it would be in very serious difficulties.

Q. Well, that interchange business has been primarily the result of the solicitation efforts of the T. P. & W. and other connecting lines, such as the M. & St. L. in the past, has it not?

A. Largely with a benevolent attitude on our part.

Q. In the way of service?

A. Service and no counter solicitation.

Q. No counter solicitation?

A. Yes.

Q. Mr. Carpi, when you say no counter solicitation, does that take into account your prior statement that you do solicit for the St. Louis and Chicago first?

A. No, no. What I meant, Mr. Wheeler, was when your salesmen call on shippers and find that business is routed, has been committed, to the T. P. & W., we do not interfere with it.

[fol. 378] Q. Now, you have this statement, Mr. Carpi, which I am not clear about: "We will, as heretofore, solicit via the gateway giving us the longest haul, but if other considerations such as time in transit, transit privileges, or shipper inclination favor another route, we will not work against Effner." Does that mean that if a shipper does not favor another route you will work against Effner?

A. No, sir.

Q. Could you clarify that?

A. Well, what I meant by that was that left to our own resources we will try to get a St. Louis haul, otherwise I am going to put Effner on a parity with Chicago.

Q. You dealt with the question of industrial development on the TP&W, Mr. Carpi, you indicated that your facilities would be available to the TP&W. Would that be true as against a location on your line, that is, on the Pennsylvania Railroad?

A. Well, it wouldn't be a solicitation that, because we have no industrial sites to speak of in Illinois and consequently we would be in a position to really help the TP&W to a larger extent than most carriers.

Q. Supposing there was a choice by a potential shipper, a manufacturer, of a site in eastern Indiana as against a site in Illinois, the site in eastern Indiana being on the Pennsylvania Railroad and the site in Illinois being on the TP&W, which would your industrial development prefer?

[fol. 379] A. You say eastern Indiana?

Q. Yes, sir.

A. I can't conceive of a situation like that arising.

Q. Why not?

A. Because industry localizes its desired location much closer than that.

Q. Well, let's take western Indiana then.

A. Well, we have no sites in western Indiana.

Q. None in western Indiana?

A. Not beyond Logansport, no. Even there we are not too well situated.

Q. Wouldn't you, Mr. Carpi, prefer to locate a plant on your main line than on the TP&W line?

A. We certainly would.

Q. And that would be true after you obtained ownership of the TP&W as well as now?

A. Yes, but I want to emphasize what I said in my direct testimony, that the TP&W has a great potential for an industrial development in an area we don't serve, and we are going to really work hard for them. If we served that area, the situation might be a little different, but we have all the reason in the world to work with the TP&W.

Q. Getting back to eastern Indiana versus eastern Illinois—

A. Yes, sir.

Q. (Continuing) —is it your experience in connection [fol. 380] with the location of plants that industries do not consider locations as widely separated as that, if one has a greatly more desirable characteristic, one location, than another?

A. Generally speaking, industry, and industries that know their business, will pinpoint their selection within a radius of 10 miles. It is largely based on transportation costs, and they study their markets—we help them, we do a lot of that work ourselves.

Q. You think transportation costs is the most important single element in determining where an industry will locate?

A. It's one of the most important, yes, sir.

Q. And that is the experience of the Pennsylvania?

A. Well, I have been spending many years in industrial development, and from that experience I have found out that transportation cost is in many cases the controlling factor.

Q. Rather than the source of raw materials, labor and the like?

A. Well, the source of raw materials has something to do with the transportation costs.

Q. Then when you say transportation costs you are thinking of the incoming as well as the outgoing product?

A. Absolutely.

Q. In that connection, Mr. Carpi, how do you explain the location of many new plants in the Texas area since the war?

A. The very thing I have been describing, now, the transportation costs in the Texas area are very low. They have [fol. 381] the choice of water transportation to the eastern seaboard, they are able to reach the growing markets of the Pacific Coast.

Q. The same thing would be true of industrial development in the southern states?

A. Yes, sir.

Q. What about the Wabash now, Mr. Carpi, on your industrial development department facilities available to the Wabash?

A. Yes, sir.

Q. Does the Wabash use them?

A. At times.

Q. Do they work to get locations on the Wabash?

A. Well, when we find that we can not locate an industry we will tell the Wabash about it and ask them if they have any site to take and offer.

Q. Now, as between the Wabash and the TP&W, to which would your industrial development department refer such a potential shipper?

A. It would depend on the particular location the ship-

per was interested in, or the manufacturer, rather, was interested in.

Q. Let's say he was interested in a site in Illinois.

A. You have to define it a little more specific than that. I have never heard of anybody coming to me and saying I want to put a plant in Illinois.

Q. Let's say that we have two equivalent sites from the standpoint of transportation costs, now, which one are you going to recommend?

[fol. 382] A. Well, that is highly improbable. I can't conceive of a situation like that.

Q. Well, assume it with me in any event.

A. I don't want to answer on speculation.

Q. Assume with me that you have two such locations, which will your traffic department recommend, the site on the Wabash or the site on the TP&W.

A. Today?

Q. Yes, sir.

A. On the Wabash. Tomorrow if we get the TP&W, I'd have to consider all factors, and if I found from a shipper's, from a manufacturer's standpoint, the Wabash was more favorable, I'd support that, if the TP&W was more favorable, I'd support that. I want to repeat, I can't conceive a situation like that ever arising.

Q. Would the fact that you own 99 per cent of the Wabash and only 50 per cent of the TP&W influence your decision?

A. No, sir.

Q. Would the fact that you have a much larger investment in the Wabash influence your decision?

A. No, sir.

Q. Would the fact that the total line haul on a combination Pennsylvania-Wabash route influence your decision?

A. No. I think we'd be better off if it was on the TP&W.

[fol. 383] Pennsylvania Railroad.

Q. Supposing the total transportation bill that this industry would pay in a year would be paid in greater proportion to the combination Pennsylvania-Wabash Railroad than to combination Pennsylvania-TP&W Railroad, would that influence your decision in the location of that industry?

A. It probably would, yes.

Q. Mr. Carpi, you say it is very advantageous for the TP&W to be owned by the two carriers with which it interchanges most of its traffic. Can you tell me why that is true?

A. Because the Pennsylvania and the Santa Fe have the greatest potentials in the traffic in the country.

Q. Then that would mean that that would exclude the M&StL from ownership, would it not?

A. I would think M&StL ought to get on the bandwagon.

Q. Well, do you mean by that that the M&StL should be sold to the Pennsylvania?

A. Well, I think it would be a help to both of us.

Q. And that the M&StL should be excluded from acquiring another carrier if that other carrier happens to be excluded from acquiring another carrier in competition with a larger carrier than the M&StL.

A. Oh, I don't take that position. But I reiterate that with the Pennsylvania on the east, the largest originator of traffic in the country, with its huge captive traffic, and [fol. 384] the Santa Fe on the other side, developing a remarkable rate pace, it would be only natural for anybody to tie up with them, if they could.

Q. You think that the mere amount of traffic interchanged would be a determining factor?

Mr. Lucas: May I interrupt? May I have Mr. Carpi's last answer read back.

(Answer read.)

By Mr. Wheeler (continuing):

Q. —should be the determining factor, is that correct, Mr. Carpi?

A. I should think it would be the most important factor because, if anything, it establishes public convenience and necessity.

Q. That is a rather broad statement, Mr. Carpi. What do you conceive, what terms, in what connection are you using that term?

A. The use of the route indicates that it is a very popular route and a desired route. I don't know anything else

to establish a standard of public convenience and necessity but to show a value.

Q. Well, I thought you previously indicated, though, that the route would be available to you and the Santa Fe whether you controlled it or not?

A. It would be available but I am not sure that it would be available to us in a manner that we would like.

Q. Now, you are speculating in so stating, are you not? [fol. 385] A. At this time I am, because you are asking me to deal with unknown factors.

Q. And, Mr. Carpi, you have nothing in your past experience to indicate that that speculation that you have indulged in has any real basis?

A. Well, there's a lot of rumors.

Q. Well, let's get to those. What are the rumors you refer to?

A. I refer to the rumors that have been in the papers about the ambitions and activities of the M&StL. We don't know where they are going. We would like to have a firm understanding.

Q. So that's the primary consideration, then?

A. That is one of the considerations.

Q. And that is the one to which you referred in connection with this public interest, convenience and necessity?

A. No, no, Mr. Wheeler, I say this, the volume of traffic moving via any gateway indicates the importance and value of that gateway to the public at large.

Q. Yes, sir, and in that I don't think we are in disagreement, Mr. Carpi. But what we were talking about was the control of that gateway, not its mere existence, and you had said that the control of that gateway should be passed in all instances to the railroads that interchanged the greatest amount of traffic with that gateway road?

A. I would say that ought to be the first consideration. [fol. 386] Q. And you indicated that you didn't think the M&StL should have it because of rumors as to its ambition?

A. Oh, no. I said that is one of the reasons.

Q. That is one of the reasons?

A. Yes.

Q. What are the other reasons?

A. The other reason is that if you get more than two

owners of this property the ownership will become diffused and I don't think the property would pull together with the rest of them.

Q. Did you understand that the M&StL application is for multiple ownership?

A. I don't know what the M&StL's position is.

Q. We have asked for sole ownership so that multiple ownership isn't a factor so far as we are concerned—

A. (Interrupting) I still think the best interest of the TP&W would be by the approval of this application.

Q. I understand that, I am trying to get at the reasons for those conclusions.

A. I gave them to you.

Q. You have no others?

A. No, sir.

Q. Do you think a good reason, one reason for denying it, is rumors that the M&StL may be seeking to expand into Pennsylvania territory?

[fol. 387] A. No, I didn't say that.

Q. Well, what did you say?

A. I said one reason I'd hesitate to say to you what might happen in the future is because of those rumors.

[fol. 388] Q. You mean that if rumors continued to prevail—assume that the Commission approved the application of the M. & St. L. and rumors continued to prevail that the M. & St. L. was going to acquire the Monon, the Pennsylvania would then cut off its interchange at Effner?

A. We wouldn't cut off anything. We would probably revalue our solicitation activities.

Q. Your solicitation activities?

A. Yes, sir.

Q. Solely on the basis of rumor?

A. No. I suppose if that point was achieved, we'd certainly have a meeting with you and develop just what was in the wind.

Q. Mr. Carpi, you are aware, are you not, that the M. & St. L., the T. P. & W., or any other road cannot acquire control of another, such as the Monon, without Commission approval, are you not?

A. I am thoroughly aware of that.

Q. Do you believe that the Pennsylvania should seek to preclude the M. & St. L. from acquiring another railroad?

A. It all depends.

Q. Why do you say it all depends?

A. I don't know what you have in mind. I can't give you a blanket answer here.

Q. Don't you think that that problem should be, the question of whether or not the M. & St. L. or any other rail-
[fol. 389] roads should control another should be left to the Commission rather than to the dictates of the Pennsylvania or any other railroad?

A. Why, certainly, the Commission will decide it, but we have an opportunity to express our views about it to the Commission.

Q. Certainly. Now you say 64 per cent of the revenues derived from the T. P. & W. comes from traffic interchange with the T. P. & W. and the Santa Fe. Doesn't this traffic include that solicited by the M. & St. L. and other carriers?

A. Yes, sir.

Q. Now, you say a friendly attitude from these two carriers, referring to the Pennsylvania and the Santa Fe, is obviously essential to its continued success. Such an atmosphere cannot be expected if the T. P. & W. should fall into alien hands or if the control were diffused. Taking first the alien hands, did you have anybody, any railroad, in mind—

A. No.

Q. (Continuing) —in making that statement?

A. No, I didn't.

Q. If the M. & St. L. should acquire control of the T. P. & W. and continues its policy, its present and past policy of cooperation with the Pennsylvania in the solicitation of traffic, would your friendly attitude toward the T. P. & W. be changed?

A. I don't know.

Q. Why not?

A. Well, we'd want to think about it.

[fol. 390] Q. Well, what would you want to think about?

A. I'd want to think about it, when I talk with our Santa Fe or our connection at—on the western end at Lomax.

Q. Are you suggesting that if the M. & St. L. acquired it, you and the Santa Fe might boycott the T. P. & W. route?

A. I am not suggesting anything. I know there is a tremendous amount of traffic that moves between the Pennsylvania and the Santa Fe, for years it moved via Chicago, and a good bit of it now is moving via Lomax and Effner, and we value that traffic, and we are going to protect that traffic. Now, what we'd do, I don't know. We'd have to think it over.

Q. You value it and you want to protect it, and you said earlier that this gateway was important, particularly at times in congestion?

A. Yes, sir.

Q. All of those factors would weigh heavily, I assume, in your determination?

A. Yes, sir.

Q. Now, when you say if the control were diffused, I assume you refer to the fact that there would be multiple ownership?

A. Yes, sir.

Q. By multiple ownership you mean ownership by more than two?

A. Yes, sir.

Q. Now, you say with diverse ownership it would be unrealistic to expect the T. P. & W. to obtain from any [fol. 391] one owner the type of support necessary to insure its continued growth. When you say type of support, what do you have in mind?

A. The type of support that we would give, if we obtained this control.

Q. Does it again come back to this business, everybody's business being nobody's business?

A. Pretty largely, yes, sir.

Q. Do you have any reason to believe that acquisition of the T. P. & W. by the M. & St. L. could not be expected to maintain aggressive sales and service policies that have been successful in the past with respect to the Peoria Gateway?

A. No.

Q. Mr. Carpi, do you know what per cent of your total gross revenue is derived from cars interchanged with the T. P. & W.?

A. Of our total revenues?

Q. Yes.

Mr. Lucas: You mean total freight revenue?

Mr. Wheeler: Total freight revenues.

A. It would be less than half of one per cent.

By Mr. Wheeler:

Q. Do you have information as to the amount of money that is spent per annum by the Pennsylvania in advertising and solicitation?

A. Oh, I have a rough figure in my mind per annum.

Q. What is that figure?

A. That would be around—that includes passenger, it [fol. 392] includes the cost of printing tariffs, and things like that, and industrial development, it would run around $15,000,000 a year.

Q. Fifteen million?

A. Yes. But allocated to freight service it would be less than half of that, it would be less than a cent on a dollar of revenue. I think that is the lowest in the country, incidentally.

Q. Do you know what per cent of the M. & St. L. gross revenues is derived from interchange with the T. P. & W.?

A. No, I don't.

Q. Do you anticipate that your total traffic will be increased if you are given control of the T. P. & W.?

A. Total traffic via Effner?

Q. No, just total traffic of the Pennsylvania.

A. No.

Q. Mr. Carpi, you indicated earlier that some rumors concerning the proposed activities or expansion by M. & St. L. might have in the past and might in the future affect your attitude toward the M. & St. L. vis-a-vis the T. P. & W. Supposing the M. & St. L. were merely, supposing you were convinced that the M. & St. L., wanted to acquire only

the T. P. & W. in order to establish better service routes in connection with its own operation and that, and the lines of the T. P. & W., would that fact, that is, the establishment of those additional service routes caused you to be opposed to acquisition of the property by M. & St. L.?

[fol. 393] A. Oh, I'd want to consider those factors.

Q. I am not quite sure that I follow you.

A. I couldn't answer yes or no to that. I'd have to study them.

Q. Might it depend on where those service routes extended to, into what territory?

A. That would be one of the considerations, yes, sir.

Q. Mr. Carpi, has the Pennsylvania had car shortages during the past year?

A. Yes, sir.

Q. Serious ones at times?

A. Yes, I would say they were serious, particularly on certain types of cars, such as coal cars. Now, we did fairly well on boxcars because we terminate so much traffic.

Q. How do you stand on this A. A. R. formula that Mr. Gurley testified about? Are you up to snuff on that?

A. Well, there is some dispute between ourselves and the A. A. R. on that.

Q. But you have not complied with all the recommendations of the A. A. R.?

A. We think we have.

Q. But the A. A. R. doesn't agree?

A. That's right. That hasn't been resolved yet. It's in the process of discussion with the A. A. R.

Q. You had car shortages through a substantial part of 1955, did you not?

[fol. 394] A. Yes, I would say beginning with the middle of the year until the end of the year.

Q. How many solicitation officers do you have, traffic solicitation officers?

A. Officers?

Q. Offices.

A. Oh, I don't know.

Q. Can you furnish that information?

A. Yes.

Mr. Lucas: It's in the railway guide, is it not, Mr. Carpi?
The Witness: Yes, sir.
Mr. Lucas: Available for anybody to read?
The Witness: Yes, sir.
The official guide, you mean?
Mr. Lucas: Yes.
Mr. Wheeler: Can we refer to the official guide for that information?
Mr. Lucas: I see no objection to it.
Mr. Thomas: The Santa Fe information is on the back of Mr. Duffy's Exhibit H-9.
Exam. Albus: Very well.

By Mr. Wheeler:

Q. How many employees are so engaged?
A. In soliciting?
Q. Yes, sir, freight solicitation.
A. I don't know, because a good many of them divide [fol. 395] their time between freight and passenger, but I would judge it is—exclusively on freight it would be less than three hundred.
Q. And how many would fall into the joint category in addition thereto?
A. I don't know.
Q. Approximately?
A. I don't even know approximately.
Q. Could you ascertain that?
A. Oh, that could be ascertained.
Q. And supply that information for the record?
A. If counsel agrees to that.

Mr. Lucas: Mr. Wheeler, may I ask Mr. Carpi a question that will probably clear that up?
Mr. Wheeler: Yes.
Mr. Lucas: The offices listed in off-line in the railway guide, do some of them include both passenger and freight?
The Witness: Yes, sir.
Mr. Lucas: But is the listing there complete as to both services?
The Witness: Yes, sir. But it is rather difficult, Mr. Lucas—

Exam. Albus: The number of employees aren't listed. That is the question now.

The Witness: Not only that, Mr. Examiner, but some of these employees some days spend all their time on pas-
[fol. 396] sengers and some days all their time on freight. It is pretty hard to define.

By Mr. Wheeler:

Q. I understand that.

A. What do you want?

Q. I just want all the employees who spend all or part of their time in freight solicitation.

Mr. Lucas: Mr. Examiner, I wonder if Mr. Wheeler would submit that to us in writing. We'd like to be very clear as to what he wants and be very sure we supply what's asked for.

Exam. Albus: Will you do that, Mr. Wheeler?

Mr. Wheeler: I certainly will.

Exam. Albus: Thank you.

[fol. 397] By Mr. Wheeler:

Q. If you acquire control of the TP&W, will you advise your traffic solicitors that Effner is to be placed on a parity with St. Louis and Chicago with respect to active solicitation of freight?

A. Yes, sir.

Q. Despite the fact that your long haul is to St. Louis?

A. Yes, sir.

Q. How long does it take to make a direct interchange in Chicago between the Santa Fe and the Pennsylvania?

A. How long?

Q. Yes, sir.

A. I don't know.

Q. Isn't that a very fast interchange?

A. I assume so, but I am not familiar with the terminal phases at Chicago. We have a direct connection with them if that is what you have in mind.

Q. Mr. Carpi, will you also place the Wabash route between Logansport and Kansas City on a parity with the route via Effner?

A. No, sir.

Q. You will not?

A. No, sir.

Q. Why not?

A. Because it doesn't give us as much revenue as we obtain by the other routes. Let me say this to you and perhaps it will help clear up a few things. Our inter-[fol. 398] change with the Wabash at Logansport in the year '54 was 20,000 cars; of that 20,000 cars—21,000, no, 20,000, almost 18,000 were eastbound, so it leaves a little over 2,000 westbound. A lot of that is traffic that is local to the Wabash. There is hardly any business interchange with the Wabash, competitive business, westbound, to Logansport.

Q. Well, Mr. Carpi, doesn't St. Louis give you a longer haul than Effner?

A. It certainly does, and our people will try under certain conditions to get the business via St. Louis.

Q. But you said a moment ago that if you owned the TP&W—

A. Yes, sir.

Q. (Continuing) —controlled it, 50 per cent interest in it, you would solicit Effner on the same basis as St. Louis and Chicago.

A. No, no. I said that we would classify Effner on the same basis as Chicago and St. Louis, but I repeated several times to you this morning, and also in my direct testimony, that left to our own resources we will try St. Louis.

Mr. Wheeler: That is all.

Exam. Albus: Does that complete your examination?

Mr. Wheeler: That is all. Thank you.

Exam. Albus: Very well.

Mr. Cassell: May we interchange order again?

Exam. Albus: Yes.

[fol. 399] Cross examination.

By Mr. Broker:

Q. Left to your own resources, Mr. Carpi, what does that mean?

A. If we can control the traffic.

Q. In other words, you will favor St. Louis over Effner?

A. Yes, sir.

Q. If you succeed in your application here?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. You said earlier during the cross-examination that if another railroad should get control of the TP&W that the routes, your routes, might not remain available in the way you would like. What do you mean by that?

A. I don't remember saying that. Will you ask me the question that you want?

Q. Well, do you think that if another railroad gets control and you are excluded that the routes might be available in the way you would like?

A. Well, the routes will always be available. It is a question of whether we will foster the route.

Q. Well, what wouldn't be available if the route is open?

A. I don't know.

Q. Service?

A. I don't know. I don't know what you have in mind.

Q. I am trying to find out what you had in mind. Why [fol. 400] then, do you object to the M&StL. getting control of this railroad?

A. Well, the reasons I stated in my direct testimony.

Q. I didn't understand that your direct testimony was framed with the M&StL. in mind.

A. I think it was framed with everybody in mind.

Q. I am trying to find out the reason why control by the M&StL. would not be satisfactory to the Pennsylvania, despite concurrence by that railroad and conditions.

A. I stated the reasons in my direct testimony. I will stay by them.

Q. Could you specify where in your direct testimony you cover that? You have a copy of it, I am sure.

A. Well, the last paragraph, if you wish, and a couple other places.

Q. That covers diverse ownership. I am talking about sole ownership by the M&StL.

A. Well, diverse is the same thing.

Q. Oh, diverse ownership is the same as sole ownership?

A. Yes, I consider it so. "Diverse" in the sense I use it there covers any and all.

Q. Any and all that you don't participate in, you mean?

A. Yes, that is right.

Q. What is the purpose in your acquisition, is it to protect what you have?

A. Mr. Broker, I can't express it any better than our president did yesterday. We were perfectly happy the way [fol. 401] things were going, but when we learned that that situation couldn't continue we thought we ought to protect our interests.

Q. So you are in there to protect your interests?

A. Yes.

Q. How is your interest protected if the Nickel Plate is in the picture?

A. That is also covered in my direct testimony.

Q. What I am getting at is if you are only seeking to preserve what you have, why do you object to the Nickel Plate coming into the picture?

A. For reasons stated in my direct testimony.

Q. Will you point out the reasons, please?

A. Well, the last part of page 6 and keep on reading to the end.

Q. I have only three pages.

A. Well, mine was double-spaced, I guess. Begin with the paragraph—

Mr. Cassell: That is all all of us got.

By Mr. Broker:

Q. Where would that be, which paragraph?

A. I am trying to find it for you. Beginning with about the middle of the first paragraph on the top of page 3.

Q. "The overhead traffic between these two"?

A. No; that sentence "Such an atmosphere cannot be expected if the TP&W should fall into alien hands or if the control were diffused."

Q. Are we an alien?

[fol. 402] A. No, but I say you are diffused.

Q. That contention there goes to the efficiency of opera-

tion, doesn't it, rather than to the question of protecti of what you now have?

A. No, I wouldn't limit that to that.

Q. You would not?

A. No.

Q. The diffusion of ownership does not protect you, that right?

A. We don't think it does.

Q. Now, why not?

A. Because we don't think it does. It is a matter of—

Mr. Broker (interrupting): I think I can have a bett answer than that, Mr. Examiner.

Exam. Albus: That answer will stand. I think the re ord is clear on what they mean by "diffusion", by "diver ownership".

Mr. Broker: I would like to find out what element t Nickel Plate adds that lessens the protection of the Pen sylvania and what it now has.

Exam. Albus: Can you answer that question?

The Witness: Yes.

A. As I understand it, there are quite a number of ca riers in the same position as the Nickel Plate, they wan to get into this thing, and we believe that it is not for th best interests of the TP&W or the applicants to have tha [fol. 403] control diffused.

By Mr. Broker:

Q. Does it lessen your protection in what you now have

A. We think so, yes.

Q. Would you turn to Exhibit H-5, which I understan is a basic exhibit for all Pennsylvania and Santa Fe wi nesses.

A. All right, sir.

Q. Page 16.

A. Yes, sir.

Q. If you will look at columns 5 and 6, it shows that th Santa Fe cars interchange to the PRR during the yea ended June 30, 1955, totaled 12,526 cars. That is right isn't it?

A. I assume so.

Q. Well, there is no question as to the accuracy of it.

A. No; I mean, I didn't work the figures up, but I assume they are correct.

Q. I am assuming they are correct, too.

Mr. Broker: They are correct, aren't they, Mr. Lucas?

Mr. Lucas: Yes.

Exam. Albus: There is no doubt but that is what the exhibit shows.

Mr. Lucas: We stand on those figures.

By Mr. Broker:

Q. Now, the Nickel Plate, just below that, in the year ended June 30, 1955, handled 9,890 cars, that is right, isn't it?

[fol. 404] A. Yes, sir.

Q. Now, it is only a difference of 2,636 cars, is that right?

A. If you have figured it out, I will take your word for it.

Q. Don't you think the Nickel Plate has a substantial interest in the TP&W, too?

A. I think it has.

Q. And don't you think it is entitled to be protected?

A. It will be.

Q. But if this element of ownership adds something, how will we be protected?

A. Well, we have announced that condition under which we would accept if this application was granted.

Q. But you won't accept the M&StL with the same conditions, will you?

A. No, sir.

Q. Why?

A. I have stated the reasons why.

Q. Is it because ownership adds something to the protection of a party?

A. Well, ownership adds a sense of security, which is very important to us.

Q. It is important to us, too.

Now, just what percentage of the through Santa Fe-TP&W-PRR traffic, what does that bear to the total number of cars handled by the TP&W, do you know?

[fol. 405] A. Well, I guess we could figure it out. I don't

have it here. I don't have it. I will have to supply it to you, if you want it.

Q. Will you turn to page 5 of this same exhibit, H-5.

A. Yes, sir.

Q. Column 10, first line. Traffic bridge between the Santa Fe and the PRR for the year ended June 30, 1955, a little less than 11 per cent, isn't that right?

A. A little more than 1 per cent.

Q. 10.82?

A. No. I am looking at 11.8.

Q. 11.08?

A. Yes, sir.

Q. Well, that is not the traffic that moves through Lomax and Effner—

A. (Interrupting) I beg your pardon. You are just talking about column A or line A. Yes, ten eighty-two, that is correct.

Q. Santa Fe, Lomax-TP&W, Effner-PRR, that is just a little under 11 per cent of the total traffic, isn't it?

A. That is correct.

Q. And the Nickel Plate is not too far behind in that, is it?

Mr. Lucas: Wait a minute, Mr. Broker—

Mr. Broker: Go ahead.

Mr. Lucas: Percentages and cars don't mix very well. Are you contending that the figure you pointed out previously of 9,890 is to be compared with the percentage of the traffic bridged?

[fol. 406]

By Mr. Broker:

Q. Well, what I am getting at essentially is that we have made a contribution to the TP&W, too.

A. I haven't denied that.

Q. As a matter of fact, earlier you testified about industrial development and you said that the TP&W had property in the Peoria area.

A. I did.

Q. Where is that located?

A. Well, I have a map I'd like to show you if you'd like to look at it.

Q. Are you thinking of East Peoria particularly?

A. And West Peoria.
Q. Yes.
A. I guess you'd call it West Peoria.
Q. Is some of that around Farmdale, the Farmdale interchange between the Nickel Plate and the TP&W?
A. Well, I wouldn't know. I have the map showing the property if you'd like to look at it.

Exam. Albus: We will take a 10-minute recess.

(Short recess.)

[fol. 407] Exam. Albus: The hearing will please come to order.
We will continue with the cross-examination of Mr. Carpi.
Mr. Broker, please.

By Mr. Broker:

Q. Mr. Carpi, to shorten these questions about industrial development, do you know whether or not the Nickel Plate is presently cooperating with the T. P. & W. in the development of property in East Peoria?
A. No, I don't.

Mr. Broker: We will cover that on our direct testimony to shorten this.
Those are all the questions we have.
Exam. Albus: Thank you very much.
Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. What are the principal junctions of T. P. & W. west of Peoria with western lines?
A. West of Peoria?
Q. Yes.
A. Keokuk and Lomax.
Q. How about Bushnell and Canton?
A. Well, I don't believe—I don't know.
Q. Well, don't they have a connection with the Q?

A. Oh, yes.

Q. At Bushnell and Canton?

A. Yes.

Q. Isn't your division the same on traffic that comes [fol. 408] through the Effner Gateway regardless of which one of those junctions the traffic comes on or goes out on the T. P. & W.?

A. Substantially so, yes.

Q. Don't the division break over Peoria?

A. Yes, but it depends upon a destination beyond.

Q. I mean assuming the same destination.

A. Oh, yes, yes.

Q. So it doesn't make any difference which one of those junctions are used, your division is the same if it is going the same place?

A. That is right.

Mr. Cassell: That is all.

Mr. Wheeler: Mr. Examiner, I have a couple of questions I want to ask before I forget.

Exam. Albus: Very well.

Further cross examination.

By Mr. Wheeler:

Q. Mr. Carpi, you gave us some information with respect to the interchange with the Wabash at Logansport.

A. Yes, sir.

Q. Can you give us the same information with respect to Fort Wayne?

A. Fort Wayne, we received—this is '54—4,214 cars and delivered 3,350.

Q. How about Toledo?

A. Toledo, well, we don't have that, Mr. Wheeler. The [fol. 409] reason for it is that we do not have a direct interchange with the Wabash. The interchange is made through the Toledo terminal or Nickel Plate.

Q. Do you know approximately what it is?

A. Oh, I would say it would run about 25 hundred cars each way a year.

Q. How about Buffalo?

A. Buffalo, we receive from the Wabash 7,568 cars and deliver to the Wabash 713 cars.

Q. Decatur?

A. Decatur, we receive from the Wabash 785 cars and deliver to the Wabash 1,100 cars.

Q. How about Detroit?

A. Detroit, we receive from the Wabash 530 cars and deliver to the Wabash 94 cars.

Q. Lakeville, Indiana?

A. Lakeville, Indiana, 157 cars both ways.

Q. Have we now covered all of the important ones?

A. Well, there is Walcotville.

Q. All right.

A. Walcotville is 997 cars. Chicago, didn't have Chicago. Do you want Chicago?

Q. Yes, I'd like Chicago.

A. Chicago is 2,713 cars received from the Wabash, 3,247 cars delivered to the Wabash.

[fol. 410] Q. Now, is that traffic that moves on that—where would that traffic be coming from and going to?

A. What interchange are you speaking of?

Q. Chicago.

A. That could be western traffic. It could be central Illinois traffic, speaking of one end of the line.

Q. Yes.

A. It could be even southwestern traffic.

Q. Do you know whether or not it is predominately western or southwestern traffic?

A. I would think it would be predominately Illinois traffic.

[fol. 411] Q. At points west of Decatur?

A. No, I would say all of Illinois would be a natural gateway for that traffic.

Q. Now, could we have the figure for St. Louis or East St. Louis, whichever you have?

A. St. Louis or East St. Louis we receive from the Wabash 3,536 cars and deliver to the Wabash 4,374 cars.

Q. Those are all of the substantial interchanges?

A. They are all, and those figures I gave you are for the year 1954.

Q. On your Exhibit H-16, page 3,

A. Yes, sir.

Q. Refer to the note at the bottom on the right-hand side of the page. It says, "Indicates shortest distance between points shown." Now, that is not the short line mileage so called, is it?

A. Yes. Not the working mileage, the short-line mileage.

Q. Is it the shortest line mileage?

A. The shortest mileage on which rates are made but not necessarily the working route.

Q. Do you have the mileages for Omaha and Kansas City via the Wabash?

A. No.

Q. Why did you omit those?

A. Why, Mr. Wheeler, this doesn't show the mileage via [fol. 412] any route. These are the short-line mileages using the shortest route irrespective of conditions or operating conditions. This is merely intended to show the relation of the TP&W route with respect to these other gateways.

Q. It doesn't mean, then, the Pennsylvania line?

A. Oh, no, no. Well, let's take from New York to Chicago, shown 890 miles. That may be made up of three routes.

Q. None of which might include the Pennsylvania?

A. Right.

Q. Now turning to the next page, what are those mileages via competitive routes between Peoria, Illinois, and selected eastern cities on the Pennsylvania Railroad designed to show?

A. Well, they are designed to show that our Peoria branch is a circuitous route. One of the reasons that we advanced is to show that it is not a competitive route.

Q. Now, as to Indianapolis it is not the circuitous route, then?

A. Well, it is pretty near so. You see, Indianapolis New York Central is 211 miles.

Q. So far as you are concerned it is not, though, is it?

A. No.

Q. So far as the Pennsylvania is concerned?

A. No.

Q. Mr. Carpi, will you turn to page 7.

A. To 7?

[fol. 413] Q. Yes, sir.

A. All right, sir.

Q. Refer to the second paragraph of the letter signed by Mr. W. Mel. Pomeroy.

A. Yes, sir.

Q. Wouldn't this letter have been much less ambiguous if the words, and I quote, "When conditions justify," were omitted?

A. No; no, indeed.

Q. What do you believe those words mean as used in this—

A. (Interrupting) Uncertain conditions traffic couldn't move that way, either, because the shippers didn't want it or there was some peculiar thing associated with the movement.

Q. This could mean a thousand and one things, could it not?

A. It could.

Q. Who is Mr. Pomeroy?

A. He was at the time these letters were written general traffic manager. He is now retired.

Q. Are you familiar with the industrial properties that the Wabash has on its line?

A. No, not generally.

Mr. Wheeler: I have no further questions.

Exam. Albus: Thank you very much.

Is there any redirect?

Mr. Lucas: Just a few questions, Mr. Examiner.

Exam. Albus: Very well.

[fol. 414] Redirect examination.

By Mr. Lucas:

Q. Mr. Carpi, the shortest distance between points that Mr. Wheeler asked you about, is that not the customary formula used by the Commission in rate cases, the shortest possible route over which carload traffic could be transferred or could be transported theoretically without transfer of lading?

A. Yes, sir, I tried to make that clear. Apparently I didn't.

Q. And that is what you said that that is on what the rates are based?

A. Yes, sir.

Q. The statistics that you gave of interchange between the Pennsylvania and the various interchange points with the Wabash, did those statistics, did those carload figures include switching?

A. Yes, oh, yes.

Q. Mr. Wheeler asked you about a statement in your direct examination of traffic over the Effner route has shown a remarkable growth over the years and the business interchanged with the TP&W with the Pennsylvania and the Santa Fe is the keystone of its continued success. That was your direct testimony, and I thought his questions seemed to try to confine it to the M&StL. That statement was not confined on your direct testimony to the M&StL. only, was it?

A. No, sir.

[fol. 415] Q. I mean there are other connections there that have contributed with the TP&W, I mean.

A. Yes.

Q. In addition to the M&StL?

A. Oh, yes, certainly.

Q. There has been evidence on the part of one or two witnesses as to the importance of this gateway at times of congestion at Chicago. Is there also an importance as to the potential defense of the country in having this gateway available?

Mr. Wheeler: Mr Examiner, I object. I think this goes beyond anything on direct or anything on cross.

Exam. Albus: I will sustain the objection.

Can you reframe the question, Mr. Lucas, please.

By Mr. Lucas:

Q. Does the existence of the Effner and the Peoria gateway have any value from the standpoint of the furtherance of the transportation policy in respect to public defense?

A. Yes, sir.

Q. Might it also—

A. (Interrupting) That was demonstrated during the war.

Q. Exactly, that's right. And it could be demonstrated again in the event of unfortunate conditions in the future, could it not?

A. Definitely so.

Q. Might it also be available if there were some strike [fol. 416] conditions that would affect either St. Louis or Chicago?

A. Yes, sir.

Mr. Broker: Excuse me, is there any issue here about the closing of the gateway?

Mr. Lucas: No, just the reverse, Mr. Broker. I mean my questions are intended to have the implication of facts, as a matter of fact, of just the reverse, its availability under emergency conditions.

Mr. Broker: But it is available now, you agree to that.

Mr. Lucas: That is correct. That is right.

Exam. Albus: My only objection is the questions are too leading.

Mr. Lucas: Well, I think I have heard a few before.

Exam. Albus: Oh, definitely, sure. That is the only reason we have made as much progress as we have.

Mr. Lucas: I don't wish to offend in that respect, Mr. Examiner.

Exam. Albus: No, that is all right.

By Mr. Lucas:

Q. Mr. Carpi, there has been quite a little discussion as to the value of the M&StL singled out alone what would be the value to the M&StL if the applicants have control, in your opinion.

A. If we obtain approval of this application I think the M&StL will materially benefit because of our policy to place Effner on the same basis as Chicago.

[fol. 417] Q. Will you turn, please, to Exhibit H-5.

A. Yes, sir.

Q. Turn, please, to page 16 to which Mr. Broker directed your attention.

A. All right, sir.

Q. In 1955 he pointed out in respect only to Santa Fe cars connecting with the TP&W, there was 9,890 Nickel Plate cars compared with 12,526.

A. That is correct.

Q. Now, will you turn, please, to page 43.

A. All right.

Q. And in the last bracket on the right-hand side, column 8, where do you find the Nickel Plate in that setup in respect to the TP&W gross revenues?

A. Pennsylvania ranks first and Nickel Plate ranks sixth.

Q. So that there is a substantial difference, is there not, between revenues and cars interchanged, if you take the total revenues of the TP&W, than if you take only the Santa Fe cars?

A. It is very substantial. Ours is five times greater.

Q. What is the situation with reference to the M&StL as to where its traffic reaches the TP&W?

A. At Peoria.

Q. So that the haul—is in what respect as compared to the Santa Fe-PRR haul?

[fol. 418] A. Of course the Santa Fe-PRR is end to end and M&StL is right in the middle.

Mr. Lucas: That completes the redirect.

Mr. Thomas: No, I have a question or two.

Redirect examination.

By Mr. Thomas:

Q. Mr. Carpi, you testified at some length about the policies as to location of industry on the TP&W if this plan goes through.

A. I did.

Q. Do you think that plan will benefit the Pennsylvania?

A. Yes, sir.

Q. In what way?

A. If we succeed in locating some industry on the TP&W, particularly at Peoria, it will produce additional traffic to the Pennsylvania.

Q. And you would expect that that traffic would move or at least you would hav an opportunity to get that traffic through the Effner gateway?

A. I would certainly hope so.

Mr. Thomas: Thank you.

Recross examination.,

By Mr. Wheeler:

Q. That would only be on eastbound traffic?

A. Yes.

Q. You didn't mean to indicate by your testimony on this defense or strike business that if the Pennsylvania [fol. 419] would close the Effner gateway in the event it was not successful in gaining control of the TP&W?

A. No, I didn't intend that.

Mr. Wheeler: That is all.

Recross examination.

By Mr. Broker:

Q. You don't suggest that we all wouldn't be interested in national defense?

A. No, sir.

Exam. Albus: I think that is all, Mr. Carpi. Thank you very much. You are excused.

(Witness excused.)

Exam. Albus: Is there any objection to the receipt of Exhibit H-16 for identification?

(No response.)

Exam. Albus: It is now received.

(Applicant's Exhibit No. H-16, Witness Carpi, was received in evidence.)

Mr. Lucas: Mr. Examiner, I would now like to call Mr. Craig, please.

[fol. 420] R. V. CRAIG was sworn and testified as follows:

Direct examination.

By Mr. Lucas:

Q. Mr. Craig, will you state your name and the company with which you are connected and the capacity in which you are connected with that company.

A. My name is R. V. Craig. I am general traffic manager of Allied Mills, with headquarters in Chicago, at 141 West Jackson Boulevard.

Q. Will you state for the record the number of plants that Allied Mills has and their several locations, please.

A. I don't remember the number of them, Mr. Lucas, but we have plants at Cozad, Elm Creek and Darr, Nebraska. Those are alfalfa meal plants.

At Omaha, Nebraska, that's mixed livestock feed and soybean meal.

Mason City, Iowa, which is mixed feed.

Peoria, Illinois, which is mixed feed and a two million bushel elevator.

Taylorville, Illinois, soybean plant.

East St. Louis, Illinois, mixed feed plant.

Fort Wayne, Indiana, mixed feed plant.

Greenville, Ohio, which is a small flour and cereal unit.

Buffalo, New York, mixed feed plant.

Portsmouth, Virginia, mixed feed and soybean meal plant.

[fol. 421] And then we have plants at Memphis, Tennessee, and Gainesville, Georgia.

Q. Are you in the process of opening any new plants or are there any in prospect?

A. Yes. We are opening a new plant the 15th of March at Eversea, Pennsylvania.

Q. That is near what point, may I ask, Mr. Craig?

A. It is 40 miles southeast of Pittsburgh.

Q. And located on what railroad, please?

A. Joint on the B&O and Pennsylvania.

Q. Have you anything else to add as to the plant setup, so to speak, of the company?

A. No, I don't think so.

Q. Now, will you give us briefly, if you please, your traffic experience. How long has it existed?

A. Well, it is about 39 years, 28 of which have been in the grain and grain products and soybean processing business, or rather 36 of which. I have had my present position for 28 years and for eight years before that I was traffic commissioner of the Buffalo Corn Exchange at Buffalo, New York.

Q. Are you a member of any committees, executive committees or otherwise?

A. I have been a member of the executive committee of the National Industrial Traffic League since 1928 and a member of its outlook and policy committee since 1944. I [fol. 422] am also a member of the traffic executive committee of the American Feed Manufacturers Association; and the same, that is, in the traffic committee of the National Soybean Processors Association.

Q. Have you in the years past at any time served as a consultant for the Offices of Defense Transportation?

A. I was a consultant for the Offices of Defense Transportation from January 5, 1942, until the last of 1948, and then I was a consultant for the—I have forgotten the name of it, but Mr. Knudsen was director during the Korean incident.

Q. In connection with the six years or so under the Offices of Defense Transportation, that was at the time of the administration of Commissioner Eastman?

A. Commissioner Eastman.

Q. And did you have there any contact with matters of movement of traffic and car supply?

A. I had three assignments there, that is, WLC assignments. I never was fulltime with them. And I was consultant for the Division of Traffic Movement. That was rail traffic movement which had to do with the movement of traffic by rail and a car supply. And I was a member of a formalized ODT committee handling the movement of alcohol for synthetic rubber and black powder and was an over-all consultant for Mr. Eastman, later Colonel Johnson, handling all transportation matters except busses, airplanes and intracity transportation.

[fol. 423] Q. Mr. Craig, in the course of your 28 years in your present position and as the traffic expert of the company, do you serve in any capacity in connection with the location of plants, selection of industrial sites?

A. Yes. Our business is operated about 90 per cent under what is called milling and transit arrangements or mixing and transit arrangements. Therefore, the transportation charges are extremely important. I have the responsibility for locating the area and the city in which we will locate and the railroad on which we locate.

Q. Are you familiar with the application of the Santa Fe and the Pennsylvania Railroad in this proceeding?

A. Well, in a general way, yes.

Q. Do you have some views that you would care to express to the Examiner and the Commission with reference to the application of those two companies for acquisition of control of the TP&W?

A. Well, Mr. Lucas, I want to say at the start that I am not interested insofar as this proceeding is concerned in the Pennsylvania Railroad or the Santa Fe Railroad or the Nickel Plate or the M&StL or Rock Island or any of the rest of them. I am interested in the TP&W Railroad and I am interested in that because of the importance of that railroad to Allied Mills' Peoria operation, particularly, and the importance of that railroad to our other operations, [fol. 424] particularly Fort Wayne, Buffalo, and Portsmouth, and because of that I am in favor of the, or rather I think it is in the best interests of the TP&W Railroad that the application here be granted to the two applicants that have purchased, as I understand, the control of the stock.

We have three different types of business which is routed via the TP&W Railroad: (1), and the biggest portion of it is the outbound business going to points east of Peoria. Over 90 per cent of that is routed in connection with the Pennsylvania Railroad, over 90 per cent of the outbound business that we give the TP&W here is routed in connection with the TP&W Railroad at Effner.

The next interest we have in routing traffic via the TP&W is business originating in the south, which is molasses and super phosphate, originating in Florida and

Tennessee, and that will come in connection with various roads, then TP&W into Peoria.

The third is overhead or bridge traffic, and in our particular case it consists mainly of alfalfa meal from our plants in Nebraska, going to Buffalo, Fort Wayne, and Portsmouth. The division of that traffic between the applicants outbound, that is, east of Peoria, is about 50-50 between the Pennsylvania and the Nickel Plate; inbound it is Santa Fe, Lomax, and Rock Island, Keokuk, and the TP&W, on the west end of it.

I don't have any figures or any idea how that divides.

[fol. 425] I would like to say two other things, I think. One is that during the time that the TP&W had a strike and were not operating Allied Mills, lost a number of their accounts in northwestern Indiana because we couldn't get the service over any other railroad that we could get the TP&W-Pennsylvania, and we lost them to people who were trucking out of Chicago. The amount of traffic that we route via the TP&W has increased steadily ever since 1947. I didn't take either '45 or '46 because '46 was affected drastically by the strike, and if my memory serves me right '45, a portion of that was, but in 1954 the Allied traffic routed via the TP&W was five times what it was in '47 and twice what it was in 1951.

I think I should say further that insofar as our business, and I want it understood that I am talking only about the things that come within my own knowledge, which is Allied Mills business, the Pennsylvania Railroad since 1947 has not solicited eastbound business from me, that is, the eastern business, rather, direct via the Pennsylvania. We do route some business direct here out over the Pennsylvania; and that is southern Indiana or it is on the Pennsylvania Railroad.

I think that is all I have, Mr. Lucas.

Q. And that last was addressed to Peoria particularly, Mr. Craig?

A. I am talking about Peoria, yes.

Mr. Wheeler: May I have the last question and answer read?

[fol. 426] Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Is there any further direct examination of Mr. Craig?

Mr. Lucas: Yes.

By Mr. Lucas:

Q. Mr. Craig, did I understand you to say that that co cluded what you desired to present here today?

A. That is right.

Mr. Lucas: That concludes it, Mr. Examiner.

Exam. Albus: Cross-examination, Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. I gather, Mr. Craig, Allied Mills has plants on t Pennsylvania and on the Santa Fe?

A. No plants on the Santa Fe.

Q. No plants on the Santa Fe?

A. That is right.

Q. But plants on the Pennsylvania?

A. One, Fort Wayne, Indiana.

Q. How about this Everson plant?

A. That is a joint Pennsylvania-B&O operation, and has not started operations.

Q. Did the Pennsylvania solicit the location of the plan at Everson?

A. Yes, so did the B&O.

Q. Mr. Craig, would it be fair to summarize your state [fol. 427] ment by saying that you are interested in service

A. Well, I am certainly interested in service. I certainl am interested in service.

Q. You have no plants located on the M&StL, do you

A. No.

Q. And you are not familiar, therefore, with the servic that the M&StL now provides on their line?

A. Well, I am familiar with the service that the M&St provides, as an illustration, from Minneapolis to Peoria because we give them business.

Q. You are familiar with the fact that that is a goo fast service, are you not?

A. It is a good fast service, yes, sir.

Q. Do you have any reason to believe, Mr. Craig, that the service that the M&StL would provide on the TP&W would be other than good fast service if it were to obtain control of that property?

A. I can't see where the M&StL would have any interest in maintaining the TP&W west of Peoria.

Q. And that is the basis upon which you believe that the Pennsylvania-Santa Fe application should be preferred?

A. Yes.

Q. You have no question about the competence or ability or the management of the M&StL to provide fast, efficient service, do you?

[fol. 428] A. I have none. They have good service.

[fol. 429] Q. If it were shown that service to, that improved and faster service routes, would result from the acquisition of the T. P. & W. via the M. & St. L., might that alter your opinion with respect to its acquisition by the M. & St. L. as against the Pennsylvania-Santa Fe?

A. Well, it wouldn't alter my opinion that Allied Mills needs the T. P. & W. and needs a strong and financially healthy railroad there, and that will best be accomplished by the Santa Fe-Pennsylvania. That is my present opinion.

Q. That is your present opinion?

A. Yes.

Q. And no testimony with respect to improved service and routes that was introduced by the M. & St. L. would alter that, is that correct?

A. You mean as to what you contemplate doing?

Q. Yes, sir.

A. I don't think testimony as to what you contemplate doing would change it, no.

Q. Have you discussed with the M. & St. L. their plans with respect to the operation of the T. P. & W. in the event they acquire control of it?

A. No, sir.

Q. Mr. Craig, what reason do you have to believe that the financial condition of the T. P. & W. would in any way be impaired if it were controlled by the M. & St. L.?

[fol. 430] A. Oh, that's your statement, not mine.

Q. You didn't so intend to—

A. (Interrupting) I didn't say that.

Q. Well, I thought you indicated that the financial condition of the T. P. & W. was an important consideration in your judgment.

A. I do, I said that.

Q. But you did not consider it, consider what the financial condition of the T. P. & W. would be if it were acquired by the M. & St. L.?

A. I did not.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Mr. Craig, T. P. & W. now is a railroad having some 16 connections with other main line railroads, doesn't it?

A. That's as I understand it.

Q. And do you find the fact that it connects with those 16 railroads of value to you in your business, having all those gateways available, routes?

A. Not all of them, Mr. Cassell, but in a general way the answer to your question would be yes.

Q. The T. P. & W. at the present time is an independent railroad not owned by any other railroad, isn't it?

[fol. 431] A. That is correct. And I would prefer that it stayed in that way but that doesn't seem possible.

Q. Well, there has been a good deal of testimony that a number of people have that same preference. That being so at the present time it cooperates equally with all of those connections, so far as you know, doesn't it?

A. In so far as the ones we use that is true, yes, sir.

Q. Are you familiar with the fact that the Rock Island has a connection at Keokuk with the T. P. & W.?

A. Yes, sir, we use it regularly.

Q. And the Santa Fe has a competitive connection at Lomax?

A. Well, they have a connection at Lomax. You are probably in a position to know how competitive it is better than I am

Q. I expect we experience it more directly than you do. But from your experience as a traffic man, and there is a map behind you that might assist you in refreshing your recollection, it shows the Santa Fe system west of Peoria in red, and I think you have a general knowledge of the location of the Rock Island Railroad. Isn't the Santa Fe and the Rock Island, aren't they in competition on business to and from the east and west?

A. No, you remember, I confined myself to those things within my own knowledge, which is Allied Mills' business, and I would say that that competition was pretty small as far as Allied Mills' business is—

Q. (Interrupting) I mean just generally. You are qualified, which we all know, as a traffic man of very wide experience, and I believe you are generally familiar with the two systems, the Rock Island and the Santa Fe, aren't you? [fol. 432]

A. Yes, in a general way.

Q. And wouldn't you say from your experience and knowledge of traffic matters that those two railroads are in competition?

A. I would say in certain areas they are, yes.

Q. And that would apply to the Lomax and Keokuk Gateways?

A. Depending upon your origins.

Q. Do you specify junctions on your routing?

A. Yes, sir.

Exam. Albus: Is that more or less general in your particular type of business?

The Witness: In our type of business it is general, Mr. Examiner.

Exam. Albus: Is there any reason for your doing that?

The Witness: Well, there are two reasons for doing it, and the one—I am talking not only about this proceeding but overall is the question of your milling in transit privileges, or mixing in transit privileges. The other, which would apply to everyone, would be your question of service.

Exam. Albus: Thank you.

By Mr. Cassell:

Q. I take it from the questions you have already answered the reason you are appearing here is primarily for the purpose of preserving the service to you that you now have available, isn't that right, via the T. P. & W.?

[fol. 433] A. I think I answered that in answer to Mr. Wheeler, Mr. Cassell, and I don't know as I care to elaborate on it.

Q. Isn't that a fair statement?

A. I said that I was interested in a very strong and financially healthy T. P. & W. Railroad that could give us service on both our business, both to and from Peoria and our overhead business, yes, sir.

Q. You don't see any reason why the T. P. & W couldn't continue to give you that service today, do you, with its present management and resources?

A. They have done very well up to now.

Q. You don't see any reason why they couldn't continue to give that service, do you?

A. I don't. Under present management you said?

Q. Yes. Now, since the Rock Island connects with the T. P. & W. at Lomax, or rather at Keokuk, it certainly would have no reason for being otherwise interested than in maintaining the railroad as strong as possible east of Peoria, it needs that as a junction and gateway, doesn't it?

A. Will you read that, please?

(Question read.)

A. East of Peoria; yes.

By Mr. Cassell:

Q. And similarly it needs it west to maintain its service route from Keokuk to Peoria, doesn't it?

A. Well, Mr. Cassell, as I say, I am going by our own [fol. 434] business, and I check back nine years and we had never routed a car of freight via—coming into Peoria via Rock Island-Keokuk and the T. P. & W., they had all come into Peoria Rock Island direct. Conversely, every car that originated west of the Mississippi River, if it was Santa Fe, it come in Lomax and the T. P. & W. I am not saying that is typical. I am saying that is our experience.

Q. Do you know whether or not the Santa Fe has any service route direct into Peoria other than Lomax, T. P. & W.?

A. Well, they reach Pekin.

Q. That isn't a service route, though, is it, to Peoria?

A. I don't know.

Q. In those locations where you do have Rock Island service, have you found it generally a railroad interested in giving good service and with an active, alert, progressive management?

A. The Rock Island?

Q. Yes.

A. Well, I think the Rock Island is improving every month, and I think that you could now say that they are giving good service, yes, sir.

Mr. Cassell: That is all.

Exam. Aibus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. The location in Peoria is on the T. P. & P. U., isn't it?

A. That is correct.

[fol. 435] Q. Do you get good service from the P. & P. U.?

A. Yes, sir.

Q. And your location at Buffalo is on the Nickel Plate?

A. That is correct.

Q. Do you get good service there?

A. Very good service.

Q. Thank you. Now, the prosperity of the T. P. & W. has been based on a neutrality, hasn't it, plus an aggressive management? Do you know?

A. I don't know. I have a slightly different idea, but I don't know.

Q. Would you consider that the continuance of neutrality among its connections would be important?

A. Yes, sir. I would consider it would be important that those connections be kept open and the same service that

is being provided now for those connections continue to be provided.

Q. Did you hear testimony expressing opposition to neutrality by any of the applicants or weren't you here, Mr. Craig?

A. No, I just came in this morning. I had an occasion to read some testimony last night as a matter of curiosity, but it didn't have anything to do with neutrality.

Mr. Broker: I have no other questions, thank you.

Exam. Albus: Any further questions of Mr. Craig? Mr. Cassell.

Further Cross examination.

[fol. 436] By Mr. Cassell:

Q. Mr. Craig, don't you have a substantial volume of overhead business that routes Rock Island, Keokuk, T. P. & W. and east?

A. Well, yes, we have a regular movement of it. How substantial it is I don't know.

Q. And the business which you spoke of which came in Rock Island direct was local to Peoria, it was not the overhead business?

A. It was local to Peoria, yes. Overhead business Rock Island, Keokuk, all goes Rock Island, Keokuk and out over the Pennsylvania and the Nickel Plate, depending on where it is going.

Q. Could you tell us what the origins are of that business that comes in Rock Island direct rather than through the Keokuk Gateway?

A. Well, it will originate at Cozad, Elm Creek and Darr, Nebraska, and it will originate at Des Moines and Cedar Rapids, Iowa, and Minneapolis, Minnesota.

Mr. Cassell: I am much relieved. Thank you.

Exam. Albus: Are there any further questions?

(No response).

Exam. Albus: You are excused, Mr. Craig. Thank you very much.

(Witness excused.)

Exam. Albus: Do you have a short witness?

Mr. Bagge: Yes.

[fol. 437] I would like to call Carl Abernathy.

Exam. Albus: Mr. Abernathy, please.

[fol. 438] Carl M. Abernathy was sworn and testified as follows:

Direct examination.

By Mr. Bagge:

Q. Would you state your name, please.

A. Carl M. Abernathy.

Q. And where do you reside, sir?

A. 916 East Fairbanks, Peoria, Illinois.

Q. What is your business or occupation?

A. I am assistant traffic manager of the Keystone Steel & Wire Company at Peoria.

Q. Have you had any professional training in the field of traffic management?

A. I studied four years at the University of Maryland. I was awarded a Bachelor of Science Degree in 1951.

Q. How long have you been associated with Keystone?

A. Five years.

Q. Mr. Abernathy, would you describe the location of Keystone in a general way.

A. Our plant is located at Bartonville, Illinois, near Peoria, on a site comprising about 913 acres, of which 40 acres are leased to other companies. The plant includes steel mills, wire mills, machine shop, administration building, power house, which together have an aggregate floor area of more than 1,391,280 square feet. It is a steel plant.

Q. Would you describe the nature of the business.

[fol. 439] A. The Keystone Steel & Wire Company is engaged in the manufacture of steel by the open hearth process. Our finished steel is manufactured from purchased scrap iron and pig iron. Included in our steel plant are four 175-ton open-hearth furnaces, soaking pits for reheating ingots before rolling, blooming and billet mills for rolling steel into billets of various sizes, and a con-

tinuous nineteen-stand, multiple-strand rod mill for rolling rods from which wire is drawn. The wire mills include buildings which house facilities for cleaning, drawing, annealing, galvanizing, bundling and fabricating wire. Capacity is sufficient to draw into wire the entire output of the rod mill, and there is ample fabricating equipment to process all the drawn wire produced into finished products.

Q. How large an increment does Keystone represent here in Peoria?

A. Approximately 35 to 40 million dollars.

Q. Would you describe in a general way, Mr. Abernathy, the percentage of your total outbound and inbound traffic which moves either by truck or by rail?

A. Our outbound traffic at present is divided roughly as follows: 55 per cent via rail, 45 per cent via truck.

Q. On inbound movements, would you describe that, please.

A. You just want via rail and truck?

Q. Yes.

[fol. 440] A. Our inbound material is almost 95 per cent by rail.

Q. Would you describe briefly what you might characterize as your truck markets and your rail markets.

A. Our shipments via truck are primarily those within the states of Ohio, Indiana, Michigan, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Nebraska, North and South Dakota. I would like to say that all of our shipments into this territory do not move by truck.

Q. I see. Is it fair to say that you are to a large extent dependent upon rail service, particularly for the inbound movement of your raw materials and for the distribution of your products?

A. That's a fair statement.

Q. Would you describe the extent to which you use the TP&W as an originating, terminating or intermediate carrier.

A. During 1954 we shipped 346 carloads via the TP&W and received 703, for a total in 1954 of 1,049 carloads.

We shipped 278 carloads and received 440, for a total of 718 during 1955.

Q. How long a period of time has Keystone made such use of the TP&W?

A. According to our records, we have used the services of the TP&W Railroad in excess of 40 years.

Q. What particular factors motivate you to route traffic via the TP&W?

[fol. 441] A. We use the TP&W primarily as a fast service carrier. For example, we maintain a warehouse in Los Angeles, California, and the best service to Los Angeles that we have found is via TP&W-Santa Fe.

Q. Are you familiar with the application of the applicant Santa Fe and Pennsylvania Railroads, in this proceeding?

A. I am.

Q. Are you acquainted with it, have you read it?

A. I have.

Q. Would you state what the position of Keystone is in connection with the application pending before this Commission, what your position is?

A. I am personally and my company, as an industry, is very definitely in favor of the application of the Santa Fe and the Pennsylvania Railroads to acquire control of the TP&W.

Q. Would you state the basis for your position.

A. When we were informed of the application of the Santa Fe and the Pennsylvania Railroads to acquire control of the TP&W we asked for a copy of the application. After a careful consideration of matters presented in their application and other relevant factors, we recommended to our executive committee that we support the application. We were so directed by our executive committee. Since we are engaged in selling our products in the national market, we are interested in a sound transportation system. Control of the TP&W Railroad by the Pennsylvania [fol. 442] and the Santa Fe railroads would certainly strengthen the transportation economy as a whole. In addition I believe that control of the T. P. & W. by the Santa Fe and Pennsylvania railroads is a natural, since the major portions of the T. P. & W. was carload freight and revenues are derived from traffic interchanged with one or both applicants.

Another reason we support the applicants is their promise to retain the T. P. & W's local management. Easy access to the T. P. & W. people is of inestimable value to us. We

are fearful that our service via this route would suffer if the local management were eliminated.

Q. Are there any other reasons for your support of the position of the applicants?

A. We are interested in the continued stability of the T. P. & W. Railroad and the shippers' assurance of this continued stability.

Q. With reference to the position of the other railroad intervenors in this proceeding, Mr. Abernathy, let me state this first: Was your company and were you familiar with the position of the applicant M. & St. L. Railroad at the time that you took this position?

A. We were.

Q. And were you familiar with the position of the other railroad intervenors seeking a partial ownership?

A. Not at the time we decided to support the applicants.

Q. Has that knowledge since that time come to your [fol. 443] attention and come to the attention of your management?

A. It has.

Q. And has your position changed in this connection?

A. No, it has not.

Q. Has the matter been fully discussed since the first time the position was taken by your board?

A. Yes, it has.

Q. Now, would you state, having in mind that your two basic needs which you have stated is a preservation of direct access to local management, and having in mind further the fact that your second need was to provide for the stability of the T. P. & W. as a separate operating entity, would you state whether or not these needs would best be served by the position taken by any of the other railroad intervenors?

Mr. Wheeler: Mr. Examiner, I think this is getting far too leading.

Mr. Cassell: Yes, I think the witness ought to do a little of the testifying.

Mr. Wheeler: Mr. Examiner, I should like to state at this time, while I am not going to object with respect to this witness, if the Santa Fe is going to produce witnesses

with prepared statements, I think they should comply with the Commission's rules and distribute them.

Exam. Albus: I agree with you.

Mr. Bagge: I withdraw the question.

[fol. 444] Exam. Albus: Thank you.

By Mr. Bagge:

Q. What is your position, having in mind, these two objectives, what is your position with regard to the other railroad intervenors?

A. We feel that our needs can best be obtained by the application here under consideration.

Q. Now, in connection with your use of the T. P. & W. as a bridge or originating carrier, did you or has your company ever had occasion to route traffic over the T. P. & W. and then over any other carriers, east or west?

A. There are occasions.

Q. Particularly with reference to Keokuk, has your company ever routed traffic to either the Rock Island or the Burlington at Keokuk, Iowa, from the T. P. & W.?

A. We have.

Q. Is there any reason for you to believe that that gateway would be prejudiced in any respect by the granting of this application?

A. I can see no reason.

Q. Why?

A. If the Keokuk Gateway is eliminated, we have Rock Island service available at Peoria. We can use the C. B. & Q. from Peoria. There are other service routes from Peoria which probably aren't quite as satisfactory for our needs. But I think that answers the question.

[fol. 445] Q. The fact of the matter is that—

Exam. Albus: Let him tell you what the facts are.

Mr. Bagge: All right.

By Mr. Bagge:

Q. Is the same condition true, Mr. Abernathy, with respect to other carriers whom you might interchange from the T. P. & W. on the east?

A. They are.

Mr. Bagge: Thank you.

That is all I have of this witness.

Exam. Albus: Let the record show a recess until 1:30.

(Whereupon, at 12 o'clock, noon, a recess was taken until 1:30 of the same day.)

[fol. 446] AFTERNOON SESSION 1:30 p.m.

Exam. Albus: The hearing will please come to order.

We will continue with the cross-examination of Mr. Abernathy.

Mr. Wheeler, please.

Cross examination.

By Mr. Wheeler:

Q. Mr. Abernathy, did the Santa Fe approach you in connection with their application?

A. They explained to us what they proposed in their application.

Q. Did they ask you to support it?

A. They did.

Q. Did they give you any information with respect to the M&StL application?

A. None that I recall.

Q. Did they indicate to you any of the plans of the M&StL with respect to the TP&W?

A. No.

Q. They made no statements with respect to the M&StL?

A. No, they didn't.

Q. Did they tell you that M&StL planned to abandon the west end?

A. No.

Q. Was your conclusion or the conclusion of your company based in any part on such thinking?

A. No, it wasn't.

[fol. 447] Q. Did you look at the M&StL application?

A. I have seen portions of it.

Q. Where did you obtain those?

A. I don't recall where it came from. It was received in our office, either in our executive department or in the traffic department.

Q. Do you know whether or not that was sent to you or handed to you or brought in there by the Santa Fe?

A. No, I don't.

Q. It just appeared there?

A. That is right.

Q. Did you contact any M&StL official with respect to this application?

A. No, I didn't.

Q. Or their plans with respect to the TP&W?

A. No, I haven't.

Q. Do you know whether anyone in your company has made such contact?

A. Not to my knowledge.

Q. You do ship over the M&StL, do you not?

A. We do.

Q. Has their service been satisfactory?

A. It has.

Q. Do you have any reason to doubt the ability of the M&StL to operate the railroad with good service, good [fol. 448] public service, rate service?

A. No, I don't.

Q. Mr. Abernathy, as I recall your testimony, it showed a sharp decrease in the use of the TP&W in recent years?

A. No, I don't—there was a decrease last year but that was competition—I mean other forms of transportation.

Q. That is what I am talking about. You are making a good many shipments or receiving materials at your plant by barge now?

A. That is right.

Q. You are making far more extensive use of barges than you did heretofore?

A. There has been an increase.

Q. Isn't it a sharp increase with respect to tonnage?

A. Yes, I would say it considered sharp.

Q. And I believe you testified you make extensive use of trucks?

A. Yes, we do.

Q. Do you have immediate access to the top management of the Santa Fe Railroad in connection with your shipments to the West Coast?

A. To the top management?

Q. Yes.

A. No, we don't.

Q. Does lack of that immediate access to them interfere with the service you receive from them?

[fol. 449] A. Most of our shipments to the West Coast are routed TP&W-Santa Fe.

Q. Yes.

A. And on those shipments we have access to the top management in Peoria of the TP&W, and they in turn, I presume, have access to the top management of the Santa Fe.

Q. But you, do you have it?

A. No, we don't.

Q. And you don't know whether or not they in connection with each of your shipments contact top management of the Santa Fe, do you?

A. No, I don't.

Q. And you have never had any trouble with service on the Santa Fe as a result of that?

A. No.

Q. Now, you stated that you thought it was in the interest of sound transportation system for the Pennsylvania and the Santa Fe to acquire control of the TP&W. Now, I assume that that system that you refer to includes both truck and water transportation as well, is that correct?

A. That is right.

Q. Is it your opinion that it would be in the interest of sound transportation system for the M&StL to be severely weakened traffic-wise and revenue-wise?

A. Would you repeat that, please?

[fol. 450] (Question read.)

A. I don't see that that's involved.

Q. Well, could you answer the question, though? Assume with me that it is involved, and could you then answer the question?

A. I would say that it isn't, if such is the case.

Q. Would you disagree that a sound transportation system is furthered by strengthening the smaller or weaker railroads?

A. Yes, that is a safe assumption.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell, please.

Cross-examination.

By Mr. Cassell:

Q Mr. Abernathy, I believe you said two things that influenced your system, one was local management and the other was volume of interchange?

A. Volume of interchange?

Q. Yes.

A. That is right.

Q. Were those the reasons you gave?

A. The two principal reasons.

Q. What other reasons?

A. The strengthening of the TP&W by ownership by two of the country's largest systems.

Q. Isn't the TP&W in pretty good shape right now?

A. Yes, they are.

Q. Haven't they been able to provide all the service you need?

[fol. 451] A. That is right.

Q. Do you see any reason to believe that they are going to be in financial difficulty or not be able to meet their transportation commitments?

A. No, I don't.

Q. You know of no financial reasons, then, for their needing strengthening?

A. Not at the present time.

Q. You don't foresee any, do you?

A. No, I don't.

Q. You said at the time your company made its original decision you were not aware of the intervention of either the Rock Island or the Nickel Plate, that that came after your original decision. Do you know what the plans of the Rock Island are in regard to this acquisition?

A. No, I don't.

Q. As a matter of fact, what you are interested primarily in is transportation for your company, isn't it?

A. That's right.

Q. And the preservation of that in its present form, isn't that right?

A. That's right.

Q. And if the Rock Island were intent on preserving the TP&W in its present form, that would be what you'd want, isn't that right?

[fol. 452] A. We are interested in having the TP&W maintain in its present form, that is correct. It is our opinion, it is my opinion and the opinion of my company, that that can best be done by the applicants in this proceeding. Does that answer your question?

Q. No, I don't think so. If the Rock Island were going to retain the present management and leave the TP&W corporation intact with all of its officers as they now have today and fully subscribe to that just as has the Santa Fe and Pennsylvania, wouldn't that give you what you want?

A. I still think that my answer to the question should be sufficient.

Q. If the management remains intact, that is what you want, isn't it?

A. Well, we were thinking more of the natural connection of the TP&W.

Q. Now, let's just talk about the management end of it first. That was one of the two things you had in mind?

A. That is right.

Q. If that were left intact and the corporation preserved and the present officers were here that's what you want, isn't it?

A. That is one of the things, yes.

Q. So as far as that is concerned it wouldn't make any difference to you who the stockholders of the TP&W were so long as that condition remained, isn't that right?

[fol. 453] A. If the TP&W were maintained in its present condition that's right.

Q. Neutral and independent with the local management?

A. That is right.

Q. So you wouldn't care, then, who the stockholders were

A. That is correct, under those conditions.

Q. Now, the other thing that concerns you is the question of interchange. Did you hear the testimony here the last two days?

A. No, I did not hear it all.

Q. What was the source of your information in regard to the volume of interchange of the TP&W?

A. I don't know the number of the exhibit. It was the data introduced by Mr. Gurley.

Exam. Albus: It was Exhibit 4 or 5.

Mr. Thomas: H-5 it was.

By Mr. Cassell:

Q. Did your company know what the volume of the interchange was when you made your decision to support this?

A. We didn't have the exact statistics but we had in a general way we knew what the conditions were.

Q. One of the facts which appeared in the testimony of the Santa Fe was that it solicited against the Lomax gateway and for its long haul on Chicago and as a result all the traffic that moves through the Lomax gateway is the result of the TP&W's own efforts, did you know that?

[fol. 454] A. No, I didn't.

Q. Wouldn't that make a difference in your decision as to this interchange business?

A. As I understand it, the Santa Fe, Mr. Gurley has entered into the record, that they will solicit via Lomax as well as via Chicago.

Q. That's for the future, but I am talking about the past now, what they have been doing.

A. What they have been doing?

Q. Yes. Now, you said you based it on the premise they have the big interchange today?

A. Yes.

Q. Isn't that right?

A. That's right, that's their predominant move.

Q. That didn't come by the Santa Fe's efforts but in spite of it. Now, does that make any difference to you in your opinion?

A. No, it doesn't matter to us at all.

Q. Then why does it make any difference to you what the volume of interchange is?

A. Well, since that's where the major portion of the [illegible]'s revenue is concerned it would seem to us that that's where their major field of interest lies.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker, please.

Cross examination.

[fol. 455] By Mr. Broker:

Q. You are interested in maintaining a strong neutral railroad, aren't you?

A. That's right.

Mr. Broker: No other questions.

Exam. Albus: Are there any further questions on cross examination?

Mr. Wheeler: I have nothing.

Exam. Albus: Redirect.

Mr. Bagge: Yes.

Redirect examination.

By Mr. Bagge:

Q. Mr. Abernathy, what in your opinion would be the effect on the two objectives which you have indicated with the basis of your decision for supporting us by the acquisition of several of the railroads involved in this proceeding and ownership in the TP&W, that is in terms of stability of the two points that you raised?

A. I think multiple ownership in this case would have the resulting dilution of management control on the TP&W people. We would not have the direct access to the top management, they would not have the authority to make decisions. I think that is our primary objective.

Mr. Bagge: That is all I have.

Exam. Albus: Is there anything further?

Mr. Broker: Yes, sir, this brings in a new thing.

Recross examination.

[fol. 456] Mr. Broker: First of all I don't think it is clear on which railroad they are located.

Exam. Albus: You may ask him.

A. We are served by the P&PU, the Peoria Terminal and the C&NW.

By Mr. Broker:

Q. You testified, if there were numerous owners, more than two that you would not have access to the management?

A. Well, we would have the direct access to management, that's true, but I don't think under multiple ownership more than two owners, I don't think that local TP&W management would have the authority that they have now or that they would have under this proposal.

Q. You think that the Pennsylvania and Santa Fe would delegate more authority than would many owners, in other words?

A. I believe that's right.

Q. You are served by the P&PU. That is owned by five or six railroads, isn't it?

A. That is right.

Q. It is an efficient railroad, isn't it?

A. It is.

Q. Do you have any trouble having access to Mr. Willingham, let's say?

A. None whatsoever.

Mr. Broker: No further questions.

[fol. 457] For the record, he is president, I believe, of the P&PU.

Further redirect examination.

By Mr. Bagge:

Q. Mr. Abernathy, in your mind is there a distinction of character of railroad involved in the P&PU and the TP&W?

A. There is quite a distinction. The TP&W is a line haul railroad and the P&PU is a switching railroad.

Mr. Bagge: That is all.

Further recross examination.

By Mr. Cassell:

Q. What difference does that make?

A. There is a considerable difference, I would imagine, in providing line haul service and switching service.

Q. What's that got to do with management and their independence?

A. Not being a railroad man I don't know.

Q. Then do you wish to withdraw your statement.

Exam. Albus: No, the statement will stand. Do you want to continue to argue with him?

Mr. Cassell: No.

Exam. Albus: Thank you very much, Mr. Abernathy. You are excused.

(Witness excused.)

[fol. 458] Mr. Bagge: At this time, Mr. Examiner, one of the intervenors, for purposes of convenience, would like to appear.

Exam. Albus: Very well.

Mr. Safford: My name is Verle Safford and I am appearing as an attorney for the Peoria Association of Commerce. I should like to present Herbert Johnson, Executive Vice-President of the Peoria Association of Commerce, as our witness.

Exam. Albus: You have entered your appearance?

Mr. Safford: Yes, sir, I have.

HERBERT N. JOHNSON was sworn and testified as follows:

Direct examination.

By Mr. Safford:

Q. You may state your name, please.
A. Herbert N. Johnson.
Q. Where do you reside, Mr. Johnson?
A. I reside at 800 West Melbourne. Our office is located at 307 First National Bank Building.

Mr. Thomas: May I interrupt to make a suggestion that the counsel take my place so that the witness may then look toward this direction.

Exam. Albus: I think that would be better, so that the witness will face the reporter.

By Mr. Safford:

Q. What is your official position with the Peoria Association of Commerce?
A. I am executive vice-president of the Peoria Association [fol. 459] tion of Commerce, an intervenor in the proceeding, under action of the Interstate Commerce Commission permitting leave to intervene dated August 2, 1955.
Q. How long have you been on the staff of the Peoria Association of Commerce?
A. I have been on the staff of the Peoria Association of Commerce since May 1, 1953.
Q. Prior to that date, Mr. Johnson, with whom were you associated?
A. For a little more than 10 years prior to that date I was personnel and community manager for R. G. LeTourneau.
Q. During that period of 10 years that you have testified about, Mr. Johnson, were you active with the Peoria Association of Commerce as a member of the Association?
A. Yes, I have been active in the affairs of the Association of Commerce for about 15 or 20 years. I served as a director for 3½ years, vice-president for a year, as chairman of a number of their committees and chairman of their

public affairs council before being employed as a staff member.

Q. Mr. Johnson, will you state the number of members, the object of your association and its chief activities in this community.

A. Our Association of Commerce is represented by approximately 2,875 members representing industry, various professions and business. The general objective is to serve the civic, economic and social welfare of the entire Peoria [fol. 460] area citizenry. We have two activities in which we are very much interested. One is industrial development. The other is annexation and the growth of the city of Peoria.

Q. And where do these activities rate in importance as far as the Association is concerned?

A. On a poll of our membership, industrial development rates second.

Q. Mr. Johnson, I should like at this time to have your testimony as relates to the geographic location of the city of Peoria and a statement as to the business interests represented here in our community.

A. Peoria is located on the Illinois River, approximately equidistant from St. Louis and Chicago, at an altitude of 488 feet. It is 160 miles northwest of the center of population of the United States, which is a significant feature in our retailing activities, since we draw upon a 16 county area. We have 108,000 employees in the metropolitan Peoria area, which covers two counties, Peoria County and Tazewell County. They are employed in approximately 200 industries throughout the metropolitan area and also employed in business and self-employed.

Peoria is the eighth largest hog center in the world and also has a very active livestock market. During 1954 the saleable receipts amounted to over seventy-two million dollars.

We also have a tremendous grain market for use by local [fol. 461] industries, and in 1955 15,473 cars of grain were received in the area.

We, therefore, in carrying out the objectives of our association, are very much interested in the source of raw

material and the distribution of our manufactured products.

Q. Mr. Johnson, going back to your organization, just state for the record how it is governed or controlled, by what type of body.

A. We have a board of directors composed of 18 people representing the professions and industry and business. In addition to 18 directors, we have 5 officers who are elected by the board. Then, we have ex-officio directors that serve on the board. So we have a total number at the present time of 27 people. The vice-presidents each serve various departments within our organization and this body is responsible for policy of the Association. I am directly responsible to the Board of Directors for the administration of the Association.

Q. And any action taken by the Association of Commerce, City of Peoria, for and on behalf of its membership is taken by this governing which you have just testified about?

A. Yes, except that our committees are permitted to take any action that's within the objectives of the Association.

Q. Calling your attention to the month of July, 1955, I will ask you whether or not the matter of the application of the Santa Fe and Pennsylvania Railroads directed to the [fol. 462] Interstate Commerce Commission for leave to acquire the capital stock of the TP&W Railroad was brought to the attention of your board of directors.

A. Yes. At their meeting of July 18, 1955, the board approved a petition to the Interstate Commerce Commission for leave to intervene in full support to the application of the Santa Fe and Pennsylvania Railroads for approval of their joint acquisition of control of the TP&W through the purchase of their capital stock.

Q. And pursuant to that action, what did you do, as executive vice president, relative to preparing an intervening petition?

A. We prepared the petition, since I was directed to do that by the board, and it was filed on July 22, 1955.

Q. I will ask you whether or not the position that the Association of Commerce took relative to the application of the Santa Fe and Pennsylvania Railroads was stated in your petition to intervene.

A. Yes.

Q. I will ask you to state for the record what were the motivating reasons for the stand or position which your Association took.

A. Well, the officers and directors, after considerable study and inquiry, used as a basis for the position which they took the factors contained in the application of the Santa Fe, the Pennsylvania, which appears in Exhibit 7-D. [fol. 463] Section 3. I will be glad to read those, if you would like.

Exam. Albus: No. They are already in the record.

By Mr. Safford:

Q. You testified a moment ago that your Association was exceedingly interested in industrial development for the city of Peoria and environs. Is that correct?

A. Yes, sir.

Q. What was the position of the Association of Commerce as relates to its industrial development from the standpoint of the application pending at this time?

A. Well, the position of the Association, Mr. Safford, is divided into three different parts. The first part, and I read from our petition: Under joint ownership by Santa Fe and Pennsylvania, the TP&W, as an independently operating railroad, can continue its active role in support of the Association of Commerce program for the industrial development and growth of the greater Peoria area and central Illinois.

Q. Just develop that stand further, if you will, Mr. Johnson.

A. Well, the reasons for this petition, as brought out in the discussions in coming to this position, is (1) that the TP&W has approximately twenty-seven hundred acres of industrial land and (2) that Mr. J. Russell Coulter, president of the TP&W, serves on our Association's industrial advisory council.

Q. Pardon me, I would like to interrupt you there, Mr. Johnson. Just state for the record the function of this committee to which you are now referring.

[fol. 464] A. The Association of Commerce industrial advisory committee is composed of some twelve to fifteen individuals representing finance, banking, realtors, warehousing, utilities and transportation. This committee is subject to call at any time that we feel it necessary, which is quite frequent, to discuss the proper approach to an industrial development prospect, and we seek their counsel and advice.

As brought out, one of the reasons here, it was felt with the TP&W management represented on this committee that it would be very helpful and useful.

Q. Has Mr. Coulter and top officials of the TP&W cooperated in this regard with the Association?

A. Yes, very much so.

Q. Is the Association of Commerce interested in seeing the TP&W continue to operate in Peoria as an independent agency?

A. Yes, Mr. Safford. We are interested in industrial development, we certainly are interested in maintaining the home office of the TP&W in Peoria, with over six hundred employees.

Q. And you have, as you stated, gotten invaluable assistance from the TP&W and its officials in your rezoning of industrial land and in the matter of acquiring industrial properties, helping in acquiring industrial properties?

A. Yes, and they also substantially contributed to our industrial development survey and also assisted in its preparation by furnishing information. They also took a [fol. 465] very active part by appearing before the Peoria County zoning board of appeals in an effort to have over 6,000 acres of ground rezoned for industrial use.

Another point for the board taking the position which I have outlined is that we in Peoria are very interested in maintaining Peoria as the second city in Illinois.

Q. Mr. Johnson, how, in the opinion of your association, will the joint ownership of the TP&W Railway by the Santa Fe and the Pennsylvania insure continued growth of your industrial area?

A. Another position that we took, as stated in our petition, is ownership of the TP&W by the Santa Fe and Pennsylvania insures continued growth of through traffic and

permits stronger interest in industrial development in the area.

Q. Develop that answer further, if you will, please.

A. One of the reasons was that it provides through traffic from coast to coast.

The second reason is the reputation of the Santa Fe and the Pennsylvania and the success they have met in industrial expansion in other areas.

The third one is the reception and interest we have received when calling upon their representatives in connection with our industrial development activities.

Q. Have those two roads assisted you in your industrial development activity?

A. Well, our industrial development plan isn't too far [fol. 466] along, but on our first contact and subsequent contacts they have been very cooperative.

Q. What effect do you feel would be had upon the TP&W Railway without the prospective ownership by the petitioning railways to this application?

A. Would you repeat that question, please.

(The last question was read.)

A. I don't quite understand that question.

Q. Do you contemplate that the TP&W would be adversely affected by failing to receive assistance from the Pennsylvania Railway and the Santa Fe Railway?

A. Yes.

Q. And you feel that the ownership by these two roads would be of material aid to the present TP&W Railway as operated?

A. Well, another one of the points that, the reason for the board taking this position, from the traffic interchanged by the two roads with the TP&W, it would appear that the TP&W without this assistance wouldn't be quite as successful.

Q. And that conclusion is reached by facts and data which you have studied, which relates to freight transportation?

A. I haven't studied it myself. I am trying to outline herein various points that I observed in discussion by the board and officers in coming to these positions.

Q. And are there any other reasons why the position that you have been testifying about was taken? If there are, you [fol. 467] might state them.

A. Well, of course, the Association of Commerce, Mr. Safford, is very much interested in industrial development in the area. They embarked upon this program a little over two years ago. We are now in the third year. When we first engaged in this program we established an industrial development department. We then studied other cities throughout the United States by personal visit and through correspondence to try to pick up what factors we might best use and which ones we might delete. It was at that time that we came to the conclusion that we lacked industrial land and embarked upon a program to secure more land zoned for industrial use. As I mentioned earlier, the TP&W appeared before the zoning board, along with ourselves, and I do want to bring out that most of the railroads in the area were cooperative with us, very cooperative, in securing information in connection with that program.

We then prepared an industrial survey of the metropolitan area. We are now in the process of distributing this information and making various contacts.

Now, we are primarily interested in industrial development because we are looking ahead to 1960 and thereafter when the largest group of marriageable and workable people will come over the market. We also have a surplus of female skilled labor that we could put to use. We are interested in a 50-mile area, not just the city of Peoria, and [fol. 468] the facilities that might be available in this 50-mile or more area. I won't limit it just to 50 miles.

Another one, as a final reason, I observed, in the board taking this position, that is, the three roads, the Santa Fe, the TP&W and the Pennsylvania, are complementary, one to each other, which would provide this straight-line through traffic from coast to coast, and it seemed quite apparent to them that with the 50 per cent interest in the TP&W they would do everything within their power to maintain that road.

Q. Mr. Johnson, since the action of your board of directors taken on or about the 18th of July 1955, has your

board kept informed as to developments pertaining to the pending application?

A. I wonder if I might read the third position of the board before we get into that.

Q. All right.

A. The third position taken with the petition was giving full support of the Santa Fe and Pennsylvania Railroads to the Interstate Commerce Commission for approval of their joint acquisition for control of the TP&W through purchase of its capital stock.

Now, in answer to your question, Mr. Safford, the subject was brought to the attention of our board on September 22, 1955, when I presented to them a report prepared by our traffic department outlining all of the intervenors and all [fol. 469] of the action that had been taken on this case from July 8, 1955, to September 11, 1955. The matter was again brought to the attention of our board of directors on January 12, 1956, and the board approved legal counsel to be represented here at this hearing.

Again it was brought to the attention of the Board on January 26, 1956, when in my executive vice-president's report I informed the board of the work that we had done, the fact that you had volunteered to serve in that capacity, and that the hearings would commence here on February 1, 1956.

Q. And there has been no change in position brought to your attention by any member of your board of directors or any official of your Association to the present time as relates to the application of the two railways desiring to purchase the stock of the TP&W?

A. That is correct.

Q. And had there been a change of position, it would have been brought to your attention, Mr. Johnson?

A. I am sure it would, because I have attended every one of our board meetings, and as secretary of the board I must keep minutes of what goes on, and I am not aware of any call for any special board meeting to consider this matter.

Q. Mr. Johnson, you have interviewed and discussed with representatives of the Santa Fe Railway and the Pennsylvania Railway the matter of their application being heard at this time, have you not?

[fol. 470] A. Yes.

Q. And you have discussed with them the benefits that you feel will come to the City of Peoria and community by their joint ownership of the TP&W Railway?

A. Not in great detail. Mostly discussed with them the procedure here since this is my first experience in a matter of this kind.

Q. You are not a paid witness, are you, Mr. Johnson?

A. I am not paid to testify. I am on the payroll of the Association, at least I hope so.

Q. That is, the Association of Commerce?

A. Yes.

Exam. Albus: Incidentally, you are doing all right, too, Mr. Johnson.

By Mr. Safford:

Q. And you are not on the payroll of any of the parties interested in this proceeding, are you, Mr. Johnson? I mean, the industry, transportation industry, railways.

A. No, sir.

Q. And it was the opinion of your Association on July 18, 1955, and it is now the opinion of your Association on February 3, 1956, that the best interests of the city of Peoria and environs will be served by the granting of the application and relief sought here by the Santa Fe and the Pennsylvania Railways to acquire the capital stock of the TP&W Railway?

A. That is correct.

Mr. Safford: No further examination, Mr. Examiner.

[fol. 471] Exam. Albus: Cross-examination, please, Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. Mr. Johnson, do you know Mr. Frank Clausen, the former head of the Minneapolis Chamber of Commerce Industrial Development Department, now head of the M. & St. L. Industrial Development Department?

A. Yes, sir. I met him, oh, sometime during the month of January in our office.

Q. You had not met him prior thereto in your association work?

A. Not that I recall. I believe that was the first time that I met him.

Q. Mr. Johnson, is it the policy of your association to take sides in a controversy before hearing both sides?

A. No, sir.

Q. I believe you said you filed your supporting petition to intervene on July 8 or 18, which was it?

A. We filed it on July 22, 1955.

Q. Which was only 11 days after the application filed by the Pennsylvania-Santa Fe was verified, is that not correct?

A. I don't know when it was filed.

Q. Where did you get a copy of their application?

A. I don't recall that.

Q. When were you first apprised of it?

A. I believe you are asking me personally when I was first?

[fol. 472] Q. You or anybody else with the association.

A. Well, I can't speak for our officers and directors as to answer to that question, so I will answer it personally. The first I heard about it was at a meeting here in Peoria at which it was announced the plans of the Santa Fe and Pennsylvania to purchase the T. P. & W.

Q. Was that meeting adressed by officers of the Santa Fe or Pennsylvania?

A. As I recall, I believe both the president of the Santa Fe and the Pennsylvania and also the president of the T. P. & W. were present.

Q. Are you aware, Mr. Johnson, that the M. & St. L. has as its sole eastern terminus the City of Peoria?

A. I am not familiar with traffic matters. I am unable to answer that.

Q. Are you aware, Mr. Johnson, that the M. & St. L. for generations has advertised itself as the Peoria Gateway railroad?

A. I believe I can say that I am aware of the fact that they have advertised themselves as such but not for

generation. I just have recently noted that, in the last year or two, perhaps since I became a staff member of the association of commerce. Before that I had no interest.

Q. Do you know of any other railroad that so advertises?

A. Oh, I don't know what the trade-mark is of the other railroads.

[fol. 473] Q. Do you know of any railroad that gives Peoria as much advertising, nation-wide advertising, as the M. & St. L.?

A. I am not familiar with any advertising of the railroads.

Q. You didn't undertake to make any study of that fact before making the recommendation to the association?

A. It may have been that our officers and directors are familiar with that. I set forth the position they took and the reasons I observed in their discussions in coming to this position. Whether or not their consideration of the advertising of railroads took part in it, I don't know, it was not brought up, to my knowledge.

Q. Do you know the aggregate interchange of the M. & St. L. at Peoria?

A. No.

Q. Was that ever discussed at any of the association meetings when this question was before them, to your knowledge?

A. Not to my knowledge.

Q. Were the plans of the M. & St. L. with respect to its proposed ownership of the T. P. & W. ever discussed at any of the meetings of the association that you attended?

A. To my knowledge it was brought out that the M. & St. L. had an interest and what their interest was, yes.

Q. What was that interest that you refer to?

A. To acquire control of the T. P. & W.

Q. Approximately when was that first brought out in the discussions?

[fol. 474] A. I think it was first brought out at the board meeting July 18, 1955.

Q. And did the board issue an invitation or otherwise offer the M. & St. L. an opportunity to present their views to the board in respect to their plans?

A. They did not, neither did they extend any invitations to any others.

Q. And to this date the board has not done that, is that correct?

A. Not as a board not officially as a board, no.

Q. Or individually?

A. Individually, I can't speak for them.

Q. You don't know of any individual member who has sought out the views of the M. & St. L., do you?

A. No.

Q. Mr. Johnson, is this a normal policy of the association if a controversial matter comes up, does the association seek out the views of the parties to the controversy before taking a position or not?

A. We take so many different positions, we always find ourselves on one side or another of a controversy in about everything that we do, I would say everything, and the approach to each individual subject that comes before the board is not a written policy, 1, 2, 3, 4, 5, as to how you are going to consider it. It is different as the cases might be.

[fol. 475] Q. Was there during the course of the deliberations on the action to be taken by the association, was there mention of the size of the Santa Fe and Pennsylvania as compared to the M. & St. L.?

A. I don't recall that. Neither did I state it in any of the reasons here for taking this position.

Q. Did any discussion occur or were any statements made indicating that the M. & St. L. would abandon the west end of the T. P. & W.?

A. I don't recall any discussion along that line.

Q. Now, Mr. Johnson, I believe you stated you made a considerable study of this problem before you made your recommendations to the association, is that correct?

A. That is not correct.

Q. Well, who made the considerable study that you referred to?

A. I said our officers and directors had conducted inquiry and studied the situation.

Q. Do you know whether any of them ever got any information with respect to the plans of the M. & St. L. from any official of the M. & St. L.?

A. I do not.

Q. Wouldn't you formally expect that in making a study of a situation such as this that course would be pursued?

Mr. Safford: I object to that, Mr. Examiner. He stated he didn't know of any such individual inquiry being made.

Exam. Albus: He may answer, if he knows. The objection is overruled.

[fol. 476] A. I do not know, but I assume that they knew whereof, what they were doing, because we have a very fine group of representative citizens, all independent thinkers, and certainly do not express themselves on policy matters of the association without knowing what they are doing. I have a great deal of respect for each and every one of them.

By Mr. Wheeler:

Q. But that's the sole information that you have with respect to the information that they had regarding the plans of the M. & St. L., is that correct?

A. Will you repeat that question.

(Question read.)

By Mr. Wheeler:

Q. You relied, in other words, on your faith in their judgment?

A. Well, understand my position, Mr. Wheeler, I am responsible to the board. They took some action. The action that they took is stated in the petition. And I have set forth the reasons that were discussed from time-to-time at the board meetings for coming to this action.

Q. And you do not know what study, if any, underlayed that action?

A. No.

Q. Now, you referred to coast-to-coast traffic, Mr. Johnson. Was it your impression from the discussions in the association that they believed a new coast-to-coast service [fol. 477] would be inaugurated when the Pennsylvania and the Santa Fe took control of the T. P. & W.?

A. I don't believe that they had in mind a new service. It was to preserve the service that does exist, and it was their feeling, as I gathered it, that it had a better chance of being maintained, as this link being occupied by the T. P. & W., was half ownership by the Santa Fe and half ownership by the Pennsylvania to preserve that link.

Q. Do you know whether or not they had any information which indicated that the coast-to-coast service that you have described, as you have described it, would be discontinued by the Pennsylvania or the Santa Fe in the event they did not obtain control of the property?

A. I will have to have that question repeated.

(Question read.)

A. I have no information, no.

By Mr. Wheeler:

Q. Mr. Johnson, were you aware that both the Pennsylvania and the Santa Fe solicited against the T. P. & W. and the Peoria Gateway?

A. I don't recall that being discussed as a factor in coming to our position.

Q. Now, in the discussions of the association with respect to interchange of traffic, was there any statement made that this interchange traffic resulted from the solicitation of the Santa Fe or the Pennsylvania?

[fol. 478] A. Well, Mr. Wheeler, they didn't get into any discussions that I can recall concerning matters such as that. I have set forth the position and the reasons that I recall of their taking that position, and that is not included.

Q. Does it boil down to this, on examination of this exhibit, exhibit 7-D of the application, the board concluded to support the Pennsylvania-Santa Fe application?

A. Yes, that was set forth in the petition, Mr. Wheeler, that the two applicants committed themselves to paragraphs A through E in Exhibit 7-D, Section 3 in their application.

Q. Mr. Johnson, do you think it is logical if the M. & St. L. spent $12,000,000 for the T. P. & W. that they would not seek to further its interests?

A. Well, that wasn't a factor that was discussed, and I am only representing a position of the board and the reasons they set forth and that was not one of them.

Q. Mr. Johnson, hasn't the M. & St. L. been cooperative with the association in connection with its industrial survey?

A. They have been very cooperative.

Q. Mr. Johnson, I believe you solicited contributions from various industries and railroads in the Peoria area to help the association in making an industrial survey; is that not correct?

A. Yes, sir.

Q. Did any of the railroads not respond to your request for a contribution?

[fol. 479] A. Well, Mr. Wheeler, the survey cost a little over $12,000, and we received contributions from $15 on up for it, and I can't remember who gave and who didn't. I know a number of the railroads did contribute towards it. Which ones did and which ones didn't, I can't remember all of them. I believe the M. & St. L. did make a contribution to the industrial survey.

Q. Do you recall whether the Pennsylvania made a contribution?

A. No, I do not.

Q. Or the Santa Fe?

A. I do not recall.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Johnson, I believe your action was taken in July in regard to this position you now have before the Commission?

A. July 18, 1955.

Q. At that time your association had no information as to the Rock Island's interest in this case, did it?

A. I believe that is correct. I believe at that time the only one that the board was aware of was the M. & St. L.'s interest. However, it was brought out at the board meeting

that there, no doubt, would be other railroads taking an interest in the matter.

Q. But you had no information as to the Rock Island?

A. No, sir.

[fol. 480] Q. I was interest in one of the remarks you made, that you felt that the service via the T. P. & W. would be adversely affected if the application were not approved. In what way? What is going to happen? Is there any trouble on the T. P. & W. today?

A. I don't recall saying that the service would be adversely affected.

Q. You made a remark on your direct examination that the T. P. & W. was, I gathered, either unable by itself to complete its commitments, did you mean to imply that?

A. No, I don't recall saying that either.

Q. Isn't it a fact that the T. P. & W. is in about the soundest financial condition it ever has been today?

A. I assume it is, yes.

Q. Well, do you know?

A. I looked at its statement that they presented. I haven't compared it with prior years.

Q. Well, it is a pretty good one, isn't it?

A. Yes.

Q. And from your knowledge here in the City of Peoria of the community and having looked at that statement, do you have any doubt as to the ability of the T. P. & W. to continue to provide to Peoria?

A. You mean as a separate unit?

Q. Yes, if it were left alone, none of us came down here as here today.

[fol. 481] A. I certainly think it would, yes.

Q. So you didn't mean to imply that there was any danger of the continued efficiency and good service by the T. P. & W. if this application were not approved?

A. And the trustees would decide not to sell?

Q. That's right.

A. I think that's correct, yes.

Q. The Rock Island had one of its men on your committee for industrial development, did it not, last year?

A. Well, we have about somewheres between sixty-five and seventy-five people on our over-all industrial develop-

ment committee. I am inclined to think that probably most of the railroads in the area here are represented on this committee. If not, they should be.

Q. I take it one of the things that the City of Peoria is particularly interested in is the preservation of the T. P. & W. as a separate corporation with its local officers and plant as it is today, isn't that right?

Mr. Broker: Excuse me. He is not speaking for the City of Peoria.

By Mr. Cassell:

Q. I mean the Chamber of Commerce?

A. Yes.

Q. And if that were to be maintained in the future, that would meet your requirements, wouldn't it?

A. Well, it would depend upon what assurance we'd [fol. 482] have and how that would be maintained. After all, it has been brought, I am sure, to the attention of our officers and directors various possibilities that exist at the present time in that the trustees of the T. P. & W. wish to dispose of their capital stock and the other interests and they have taken a position and have steadfastly held to it.

Mr. Cassell: That is all.

Cross examination:

By Mr. Broker:

Q. Mr. Johnson, is the Nickel Plate a member of your association?

A. I think I can safely say yes. I believe all of the railroads in the area belong to the association of commerce.

Q. You are not purporting to speak for them at this hearing?

A. Sir?

Q. You are not speaking for them at this hearing, are you?

A. Speaking for who?

Q. I say you are here for the members—we are members—you are not speaking for us, are you?

A. I am speaking for the Peoria Association of Commerce, according to the policy of our board in action that they have taken and directing me to represent them here at the hearing and to set forth their positions and the reasons that I have gathered for their positions.

Q. Now, that board relied on Section 3 of Exhibit 7-D, is that right?

[fol. 483] A. Yes, that is set forth in our petition.

Q. They discussed that section of the contract?

A. I am sorry--

Q. (Interrupting) Did they discuss that section of the contract, Section 3?

A. As I recall, the petition was directed to be written in conformity to that section, yes.

Q. You understand it specifically says all these conditions are not for the benefit of anybody other than the Pennsylvania and the Santa Fe?

A. Well, I don't know whether—I can't speak for the officers and directors, whether they knew that or didn't know that in coming to this action.

Q. Now, one of the factors you relied upon was the development of through traffic, I understand, is that correct?

A. Yes.

Q. And did you hear the testimony of the applicants about favoring their long-haul?

A. Oh, I have been in and out, I don't know whether I heard that or not. I was primarily interested in the reasons that were set forth in the position and tried to listen to those who were testifying along that line.

Q. Do you know, for instance, that the Nickel Plate, according to Exhibit H-5 in the 12 months period ended June 30, 1955, interchanged 13,590 cars with the T. P. & W.

[fol. 484] A. No, I don't know that.

Q. Do you know that the Pennsylvania, according to its Exhibit H-16, page 5, moved only 7,277 cars in and out of Peoria?

Mr. Lucas: Mr. Examiner, those figures are not correct. The exhibit will speak for itself.

Exam. Albus: The exhibit will speak for itself, yes.

Mr. Broker: I am not reading a correct figure?

Mr. Lucas: No, the way you put that question you are not.

Exam. Albus: All right, restate the question, then.

By Mr. Broker:

Q. I am changing that from 7,277 to 10,410, is that correct now?

Mr. Lucas: No, I am not at all sure it is.
Will you read the question to me, please.

(The question was read as follows:
"Q. Do you know that the Pennsylvania, according to its Exhibit H-16, page 5, moved only 7,277 cars in and out of Peoria?")

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.
Ask the question.

Mr. Broker: Will you please read the question again?

Exam. Albus: Reframe the question, will you, please, Mr. Broker. Will you ask the question again, please.

By Mr. Broker:

Q. Do you know that the Pennsylvania Railroad transported via its own line 10,410 cars in and out of Peoria?

[fol. 485] Mr. Lucas: That is correct.

Exam. Albus: All right.
What is the answer, sir?

A. No, I don't know.

Exam. Albus: Next question, please.

By Mr. Broker:

Q. Why would your organization favor the handling of that Nickel Plate traffic in through movement from Lomax, let's say, to Effner without interchange at Peoria?

A. I don't know why they would. I don't think I said that they would.

Q. You said one of the reasons they favored this was because of the through traffic, through traffic potentialities.

A. I set forth the position of the board of directors that they took on July 18, 1955, and the reasons that I observed for that taking this position. There is a lot of information that has come out since then that has been brought to the attention of the board, their position hasn't been changed. Primarily it is in the interest of industrial development, in which we have a link of one railroad on one end and the other on the other end by buy the T. P. & W. and own it 50-50, and I am sure it is the board's feeling that the link would be better preserved by these two roads.

Q. You base part of your reasoning on the through traffic. Maybe you could explain that again? In other words, I am anxious to find out why your organization would favor a [fol. 486] plan that would take switching business and railroad business away from the City of Peoria?

A. Well, that isn't the basis that I have stated. It is to preserve the link between—no, that is not correct. It is to preserve the services of the T. P. & W. and the position of the association was that this could best be done by acquisition by the Santa Fe and the Pennsylvania.

Q. Don't you think the Nickel Plate is interested in maintaining the T. P. & W.?

A. Oh, I imagine they are or you wouldn't be here.

Q. And do you think it is important that that railroad remain neutral among its many connections?

A. Yes, I would say so.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions of Mr. Johnson?

(No response.)

Exam. Albus: You are excused, sir. Thank you very much.

(Witness excused.)

[fol. 486-A] Exam. Albus: May we have the next witness, please.

Mr. O'Hern: Mr. Examiner, my name is C. V. O'Hern, Jr., attorney appearing for Illinois Central Light Company, an intervening petitioner.

At this time I would like to call as our witness Mr. Earl Edwards.

EARL D. EDWARDS was sworn and testified as follows:

Direct examination.

By Mr. O'Hern:

Q. Will you please state your name and address?

A. I am Earl D. Edwards and I live at Rural Route 4, Galena Road, Peoria, Illinois.

Q. By whom are you employed and in what capacity?

A. I am employed by the Central Illinois Light Company as operating vice-president and I am a director of the company.

Q. What is the general character of your company's business?

A. Public Utility engaged in the production and distribution of electricity and steam heat and the distribution of gas.

Q. In what areas does your company operate?

A. We operate in the Peoria area, Springfield, Illinois, area, the Lincoln and Toledo area.

Q. To what extent is your company affected by the operation of the TP&W Railroad?

A. The TP&W Railroad handles our coal into our major [fol. 487] generating station.

Q. Where is that major generating station located?

A. That is located in East Peoria, Illinois.

Q. That is just across the river from the metropolitan area?

A. That is correct.

Q. What is the name of that station?

A. That is the Wallace Station of the Central Illinois Light Company.

Q. Tell us something of the size and capacity of that station.

A. The Wallace Electric Station has an installed capacity of 250,000 kilowatt, and at the present time we are engaged in expanding this to 350,000 kilowatt.

Q. Approximately how many turbines and generators do you have there?

A. This plant has operating at the present time six turbo-generators and we are installing the seventh.

Q. In the operation of this plant you consume coal, do you not?

A. That is correct.

Q. Can you give us some idea of the amount of coal consumed at this plant?

A. In 1955 this station consumed 650,000 tons of coal. In round figures 600,000 tons of coal were delivered by the TP&W Railroad, and again in round figures some 400,000 ton of this coal originated on the TP&W. The remaining [fol. 488] 200,000 tons were delivered by connecting lines to the TP&W and then to the electric station.

Q. Your company is a consignee of shipment over the TP&W Railroad, are they not?

A. That is correct.

Q. In terms of tonnage do you have any opinion how you rank as a consignee over the TP&W?

A. Well, I assume that we are the largest consignee.

Q. Have you ever investigated that assumption to verify it?

A. No, sir.

Q. What part have you personally had, Mr. Edwards, in your company's relationships with the TP&W Railroad, and over how long a period and in what capacity?

A. I was part o f the construction force starting in 1924, engaged in the building of the electric generating station. I was a part of the operating force of the power plant until January of '26, when I took over as chief engineer. I have been connected with the operation and expansion of the station continuously from that time until the present. A power plant is dependent upon a railroad for its supply of coal and also for the materials used in the construction and maintenance of facilities. Scheduling of fuel for a power plant is important and dependable delivery is an absolute necessity if reasonable coal handling costs are to be maintained. During my 23 years of connection with [fol. 489] this station we have had periods of good service, periods of poor service, and periods of no service. The best

service we have ever enjoyed started with the administration of Russell Coulter and continues to this day.

Q. Explain how the future operation of the TP&W Railroad will affect the future operations of your company.

A. The demand for coal at the East Peoria station, Wallace station, will increase for the next few years and will level off at about 800,000 tons per year. This tonnage will vary, as new plants are developed at other locations, but at intervals of three years will reach its maximum as usage of about 800,000 tons. We contemplate a new station south of Peoria on the Illinois River and our present thinking is that this station will be served by the TP&W Railroad. This location has not finally been determined and is subject to change dependent upon soil conditions, water supply, and rail service. This new plant will consume about 300,000 ton of coal per year, which will increase to 500,000 tons of coal per year after a three-year period.

Q. Now, your company, the Central Illinois Light Company, has filed its petition as an intervenor in this matter, asking that this Interstate Commerce Commission approve the acquisition of the TP&W by the Santa Fe and the Pennsylvania Railroad on the basis of their petition. Since the filing of your company's petition to intervene, there have been other petitions filed and other railroads have stated [fol. 490] their positions more fully in this matter. Are you familiar with the positions and the statements made since the filing of your company's petition?

A. Well, I believe I am. I haven't checked the petitions in detail, but I have been present at some of these hearings and heard the statements made here.

Q. Has your company's position changed in any manner as a result of these later petitions and statements?

A. No. We still feel that the approval of the Santa Fe and Pennsylvania petition for acquisition of the TP&W is definitely to our best interest and that of the public which we serve.

Q. Why?

A. Well, we are a public utility committed to providing the best service possible to our customers. The railroad service we get from the TP&W is vital to our operations. In addition to our need for a constant and reliable route

for the delivery to us of our coal, there are these other reasons why we favor the Santa Fe and Pennsylvania plan for acquisition of the TP&W. As the principal interchange railroads at the east and west ends of the TP&W the Santa Fe and Pennsylvania appear to us the logical owners and our greatest assurance that the entire line will continue to be operated as in the recent past.

Secondly, the plan gives us confidence in the maintenance of local management with which we are familiar, which gives us assurance of the type of service vital to us. The [fol. 491] TP&W cuts through 37 miles of Central Illinois Light Company territory, therefore this railroad is bound to play an important part in the industrial development and the service of the territory in which our company is so vitally interested and from which will come most of our future customers. Also the TP&W actually owns or controls a number of very important industrial sites, the future use of which means a great deal to us.

Q. If the application of the Santa Fe and the Pennsylvania Railroads in this matter for acquisition of the TP&W Railroad on the basis of the plan proposed by them should not be approved by the Interstate Commerce Commission, what effect would that have on your company's plans for the foreseeable future?

A. In that case the tentative plans that we have made would have to be completely reviewed and re-evaluated by us.

Mr. O'Hern: You may cross-examine.

Exam. Albus: At this time we will take a 10-minute recess.

(Short recess.)

Exam. Albus: The hearing will please come to order. We will continue with the cross-examination of Mr. Edwards.

Cross examination.

By Mr. Wheeler:

Q. Mr. Edwards, I gather what you are primarily interested in is service, is that not correct?

A. Yes, sir.

Q. Were you aware when you filed your petition of the application of the M&StL for control of the TP&W?

[fol. 492] A. I wasn't.

Q. You were not?

A. No.

Q. Have you ever had an opportunity to observe the service that is rendered to its shippers by the M&StL?

A. No, sir.

Q. Mr. Edwards, you said you had made some plans. I gather those were the plans with respect to the new plant.

A. Yes, sir.

Q. When were those plans commenced?

A. Oh, we started about a year or a year and a half ago.

Q. And when did you conclude those plans?

A. We haven't concluded them.

Q. You have not concluded them?

A. No, sir.

Q. Were those plans when they were made dependent upon the continued present ownership of the TP&W?

A. No, sir.

Q. Did they take into consideration, that is to say your deliberations on those plans, the ownership of the TP&W?

A. Well, it was one of the factors in the study.

Q. Well, was it really the ownership of the TP&W or the service rendered by it?

A. The service rendered by it.

Mr. Wheeler: I have no further questions.

[fol. 493] Exam. Albus: Thank you.

Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. The TP&W is presently able to provide all the service you need, isn't it?

A. Yes, sir.

Q. And so far as you know, they have the ability to continue to provide that, haven't they?

A. Yes, sir.

A. That is located directly below the approach, that is, the Cedar Street Bridge, the south side of the Cedar Street Bridge, it is south of the Cedar Street Bridge, I would say south, located directly back of the Caterpillar, fronting along the river.

Q. Now, the city of East Peoria has supported this application of the Pennsylvania and Santa Fe Railroads, have they not?

A. That is correct.

Q. Were you present at the meeting where they decided to support the application?

A. I was.

Q. Have you read this application?

A. Yes, sir.

Q. And have you read the contents of the application of both the Santa Fe and the Pennsylvania Railroad?

A. Yes, sir.

[fol. 514] Q. Have you read the application of the M&StL Railroad?

A. Vaguely. I read a part of it, a very small part of it.

Q. Where did you obtain that copy?

A. From you, from the attorney.

Q. Now, Mr. Phillips, do you favor the purchase of the Toledo, Peoria & Western Railroad by the Santa Fe and Pennsylvania Railroads?

A. Yes, sir, we do.

Q. And are you in favor of the purchase of the TP&W by the M&StL?

A. No, sir.

Q. Would you care to state why?

A. Well, one good reason is, opposing that, they didn't make any deposition as to what disposition that might be made of their present facilities now located in East Peoria. They didn't state, that I read in their application, that those things would be maintained as they are now. That was one of my objections to their application.

Q. Have you any other objections that you could recall, Mr. Phillips?

A. Well, I can't see why, other than favoring the Santa Fe and Pennsylvania. Those connections are more direct than the M&StL.

Q. So there wasn't any need for the approval of this application to make that service continue to be available to you? You didn't intend to imply that, did you?

A. Read the question.

(Question read.)

A. This application to intervene, is that what you are referring to?

Q. No, to acquire the TP&W.

A. I don't get the—

Q. As you said, the same remarks that Mr. Wheeler's questions were addressed to about your plans in the event this application were not approved, doesn't the TP&W have all the financial resources that might be necessary to continue the service that you need in the future?

A. To the best of my knowledge they have.

Q. So that the approval of the plan which you have men-
[fol. 494] tioned isn't necessary to provide you that service?

A. Well, in planning a power plant there is a major investment and the location is determined by several factors, fuel supply, the freight rate, water supply, and the location with reference to the delivery of the electric power to the ultimate customers. They all are factors in the determination of a plant site.

Q. That is right. But you would have no hesitancy in relying on the TP&W as it is today, would you.

A. No.

Q. Then I take it just as you have said, your interest is in the continued availability of that railroad service to you?

A. Yes.

Q. What is your coal service?

A. Fulton County, so-called Fulton County Field.

Q. How far west is that?

A. It lies immediately adjacent to Canton, it is about 40 miles to the west of Peoria.

Q. Your coal originates on the TP&W and is delivered as a local movement?

A. Four hundred thousand tons of it originates on the TP&W, or six hundred thousand.

Q. The Rock Island is a railroad operating through a part of your distribution territory, too, isn't it?

Q. Are you acquainted with the location of the M&StL, in general, that is, and the TP&W Railroad, particularly west of Peoria?

[fol. 515] A. Well, in looking the thing over, I believe they parallel somewhere in the west, but I can't recall just exactly where that parallel is, but they do parallel in some parts of Iowa, I believe, and the West.

Q. Would the fact that they parallel have any influence upon your decision?

A. Well, personally, no, but for the benefit of the general public, yes. That part of it might be used as one line, where they parallel.

Q. Now, Mr. Phillips, you have been advised that the Rock Island and the Nickel Plate has also intervened in this case, have you not?

A. I have heard it, but I have never read any of their application or anything of that kind.

Q. Do you have an opinion as to how you would feel if they were permitted to join as parties, party purchasers?

Mr. Cassell: I object to that. He says he doesn't know anything about their application.

Exam. Albus: This is a direct question as to his opinion as to what he thinks about them being included. The objection is overruled.

You may answer, sir.

A. Well, I think that with those two roads, along with, if the other four roads or two roads are implicated, I'd think [fol. 516] you'd have a confusion there, from our standpoint, as a city, to converse with the officials of those four roads rather than the one. Is that clear to you?

Exam. Albus: Is that opinion expressed as an officer of the City of East Peoria?

The Witness: Of the city welfare, yes, sir.

Exam. Albus: Thank you.

By Mr. Stiers:

Q. You have talked with the other council members, have you?

A. Yes, sir.

A. Yes, sir.

[fol. 495] Q. And you said that you were a public utility committed to the public service?

A. That is right.

Q. Isn't the Rock Island a public utility devoted to the public service like you are?

A. I assume so.

Q. That is a fact, isn't it?

A. I imagine the fact that it is operating it is a fact, yes.

Mr. Cassell: All right, that is all.

Exam. Albus: Mr. Broker, please.

Cross examination.

By Mr. Broker:

Q. You are aware of the heavy interchange of traffic between the Nickel Plate and the TP&W that comes from the western end of the TP&W's line, aren't you?

A. No, sir.

Q. You believe, don't you, that the Nickel Plate is very much interested in maintaining the line of the TP&W?

A. I have no technical knowledge of railroading, but I would assume from a general matter of information that they would be interested in having it operated.

Q. And don't you think that any railroad with a consignee of your importance would be interested in rendering the best possible service for you?

A. I would assume that any railroad handling that tonnage would be vitally interested in rendering us good service.

[fol. 496] Mr. Broker: Thank you, that is all.

Exam. Albus: Are there any further questions on cross-examination?

(No response.)

Exam. Albus: Any redirect examination.

Mr. O'Hern: No redirect.

Mr. Bagge: I have a question on cross.

Mr. Cassell: On cross?

Mr. Bagge: Yes, this gentleman is an intervenor. I think I have a right to cross-examine the intervenor.

Mr. Cassell: In support of the application?

Mr. Bagge: Yes.

Exam. Albus: Go ahead and ask the questions.

Cross examination.

By Mr. Bagge:

Q. The second and related reason, I take it, for which you are supporting the application of the applicants was, as you stated, the fact that as a public utility supplying electricity to this area that you are vitally interested in industrial development, is that not correct?

Mr. Wheeler: I object.

Exam. Albus: I sustain the objection.

You may ask him what his reasons for supporting the applications are but please don't tell him.

By Mr. Bagge:

Q. In addition to the reason which you stated to Mr. Cassell, are there any other reasons for which you take [fol. 497] the position of the applicants in this proceeding?

A. Our main reason for supporting the applicant is that we think that it will permit us the service that we have been getting in the last few years, and that to us is very important.

Q. Are you also interested in industrial development?

Mr. Wheeler: Mr. Examiner, I object.

Mr. Cassell: I object.

Mr. Wheeler: He is putting words in the witness's mouth.

Exam. Albus: Sustained.

By Mr. Bagge:

Q. Do you have any other related reasons?

Mr. Wheeler: I object, Mr. Examiner, he has asked that question and gotten an answer.

Exam. Albus: If he has any more reasons I will listen to them.

Do you have any further reasons, Mr. Edwards, why you support this application by the Pennsylvania and Santa Fe?

The Witness: I think they have been expressed, we are interested in the community as a public utility and we are interested in the industrial development of the area, and we are interested in a coal supply on a railroad that gives us good service and who is so located as to give us good rates.

Exam. Albus: Very well.

Anything further?

Mr. Bagge: Yes.

[fol. 498] By Mr. Bagge:

Q. What effect, in your opinion, would the inclusion of the other railroads in ownership of the TP&W have on the potential for industrial development in this area?

Mr. Cassell: I object to that. He hasn't shown any qualification.

Exam. Albus: He asked for his opinion, though. If he has an opinion, I will hear it.

Q. Would you repeat the question?

(Question read.)

A. Well, it seems to me that the industrial development will be furthered by these two major railroads rather than half a dozen railroads who are hauling from several different directions.

Exam. Albus: What is the reason for that answer, Mr. Edwards? Do you have any particular reason why it would be better to be under the control of two than six railroads?

The Witness: Yes, these particular two, for this reason, that the city of Peoria and our area is located on a major north and south haul on a waterway, and we are asking for ownership of two major railroads with east and west hauls, it seems to me that that is a point where it crosses to be developed.

the cooperation that you are now getting from the TP&W management, is that what you wish to—

A. That is what I—I have got to have those things down in black and white. Promises don't mean anything.

Q. You have to have them down in black and white?

A. I say, if the promises doesn't mean anything to us we have had cooperation and we know how we get along with those people over there.

Q. Well, now, Mr. Phillips, do you understand that the Pennsylvania and the Santa Fe have an application here to buy control of the TP&W?

A. Yes, sir.

Q. What leads you to believe that they are going to con- [fol. 520] tinue the present management of the TP&W in office?

A. They have said so in their application. They have assured us that they would.

Q. Isn't that just a promise?

A. Well, it is in writing. I'd call that rather a binding agreement.

A. That is right.

Q. Supposing there is testimony given under oath here to the Commission, would you regard that as a binding agreement?

A. Well, I'd have to, if it was under oath.

Q. Now, Mr. Phillips, do you have any reason to believe that the M&StL would not completely cooperate with you in the operation of the TP&W?

A. Well, I have no reason to believe that they wouldn't, but since you have already tried out the present management and you know what they will do, that is like trading a horse for one that will pull for one that won't. You know what this fellow will do.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Mr. Phillips, I think the TP&W management should be very gratified with what you have said this afternoon.

Exam. Albus: Thank you very much.
Anything further.
Mr. O'Hern: Redirect, if I may, just one.
[fol. 499] Exam. Albus: Yes.

Redirect examination.

By Mr. O'Hern:

Q. Mr. Cassell asked you whether your primary rea
on was the question of service. On your direct testimony you referred to the question of local management. Did you intend to include in the term in referring to the importance of the service the question of local management?

Mr. Wheeler: Mr. Examiner, I object again. This is very leading testimony.
Exam. Albus: Sustained.
Mr. O'Hern: I have no other questions.
Mr. Cassell: Mr. Examiner, if we may.
Exam. Albus: You may.

Recross examination.

By Mr. Cassell:

Q. Why wouldn't one of the other railroads which have asked for inclusion promote that interest in the east and west traffic just as much as the Santa Fe and Pennsylvania
A. Well, I assume that any railroad that has an east and west haul would be interested in the location at Peoria with a terminal on a waterway.

Mr. Cassell: That is all.

Recross examination.

By Mr. Broker:

Q. Don't you think that a railroad that has a terminus in the city of Peoria would be interested in industrial de
[fol. 500] velopment here?
A. I certainly think so.

and if the Rock Island gave you the same assurance as the Santa Fe and the Pennsylvania have as to the continuance [fol. 521] of that management, continuance of Mr. Coulter in office, and the maintenance of the present corporation and structure all just as it is today, just the same way as the Pennsylvania and Santa Fe have said, that is what you want, isn't it?"

A. Did you say, as a promise?

Q. Yes, if we gave you the same assurance as they have.

A. I'd want it in writing.

Q. I said if we would give you the same assurance.

Exam. Albus: That would be in writing.

If you had it in writing, would you be satisfied, Mr. Phillips?

The Witness: Well, I don't know, because of our co-operation that we have had over there, I don't believe we could better ourselves.

Do you understand me?

By Mr. Cassell:

Q. You want that same management retained, isn't that right?

A. That is right, that is correct.

Q. If we gave you the same assurance that the Santa Fe and Pennsylvania have as to the continuance of that management, that is one thing you want, isn't it?

A. That is one thing that we do strive for and that is what we want.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

fol. 522 Cross examination.

By Mr. Broker:

Q. Suppose the Nickel Plate gave you the same assurance.

Exam. Albus: In writing.

A. This reminds me of this "I will, too" stuff.

Q. Why, then, wouldn't the Nickel Plate be equally interested in industrial development in this area?

A. Well, I think that you are talking about a technical question now. I am not in a position to say what the Nickel Plate's interests would be in industrial development in this area.

Q. Well, you indicated that the TP&W would be impeded in some way if it had more than two owners. Presumably you meant that the additional owners would prevent industrial development. Was that the owner of your testimony?

A. I didn't intend to give that impression. I do think, however, that the efficiency in the operation of the railroad would be handicapped by more than two owners.

Q. The P&PU is owned by many railroads, isn't it?

A. That is correct.

Q. Including the Pennsylvania, the Nickel Plate, and others?

A. That is correct.

Q. And that is considered a very efficient railroad, isn't it?

A. To the best of my knowledge it is.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, Mr. Edwards.

(Witness excused.)

[fol. 501] Exam. Albus: Next witness, please.

Mr. Bordes: United Coal Electric Company, Mr. Examiner.

JOHN M. MORRIS was sworn and testified as follows:

Direct examination.

By Mr. Bordes:

Q. Will you state your name and address, please?

A. John M. Morris, 60 North Park Road, La Grange, Illinois.

Q. What is your occupation, Mr. Morris?

A. I am vice-president and director of the United Elec
tric Coal Companies.

Q. And where is your business located?

A. Well, the main office is 307 North Michigan Avenue
Chicago. We have two mines in Fulton County, Illinois
one in Perry County, Illinois, and one in western Kentucky

Q. Will you describe the nature of the business, please

A. Well, we mine and produce and prepare coal for de
livery to a variety of consumers, principally the publi
utilities and large industries and railroads up until two o
three years ago.

Q. What has been your experience in the coal industry?

A. Well, I have been with this present company, th
United Electric Coal Company, since 1928, about 27 years
Prior to that time I was with the Saline County Coal Com
pany in southern Illinois as a salesman on the road. All o
my work has been in sales entirely.

Q. How large an investment does your business repre
sent?

[fol. 502] A. In the neighborhood of eighteen to twent
million dollars.

Q. Will you tell us how much coal your company move
by rail, approximately?

A. You mean a hundred per cent by rail?

Q. Yes.

A. By rail about two and a half million tons a year.

Q. A year?

A. Yes, sir.

Q. Now, you are dependent, are you not, to a large exten
upon the rail service for distribution of your coal?

A. Yes, about 70 per cent of our total production move
that way.

Q. Would you describe the extent to which your busines
uses the T. P. & W. as an originating or terminating car
rier?

A. Well, we operate a mine in Fulton County about seve
miles west of Canton, which is located on the T. P. & W
originates about 350,000 tons a year that goes to the Cen
tral Illinois Light Company. That was the tonnage that h
mentioned that was moving into his plant via the T. P. & W

Q. You are speaking of Mr. Edwards now?

A. Of the Central Illinois Light.

Also from that mine we ship probably twenty-five or thirty thousand tons west into Keokuk.

Q. About how many cars would you say that you ship on the T. P. & W.?

A. Well, say 400,000 tons would be roughly, depending [fol. 503] upon the size of the car, somewhere in the neighborhood of seven thousand, seventy-five hundred, whether they were seventy ton cars or fifty ton.

Q. What is your position, Mr. Morris, with reference to the application of the Santa Fe and the Pennsylvania Railroad Company to acquire control of the T. P. & W.?

A. Well, our position coincides, has to coincide, with the position of the biggest customer we have in this area, the Central Illinois Light Company will buy this coal from us on a long-term contract, and you have heard their testimony on their wishes and desires in the matter, and it just seems to me that we as the seller to them are naturally tied to them in that regard. I do feel beyond that that based on what I have heard and I know that it just seems logical the Santa Fe and the Pennsylvania would be the best owners for that particular railroad because of their past performance with them and what they have announced they plan to do for the future. Furthermore, we are very interested in this possibly additional plant that the Central Illinois Light Company proposes to build. We are interested in the present management and seeking that—in the hope that the railroad will continue as a separate unit, be operated in that manner, and that the management that there is there now will continue to be located close to us in Peoria. I think those are practically the same reasoning that our good customer has stated here themselves.

[fol. 504] Q. Do you feel that the acquisition of this T. P. & W. road by the Santa Fe and the Pennsylvania Railroad would insure an adequate car supply for your needs?

Mr. Wheeler: Mr. Examiner, I think before this witness is asked anything about that he ought to be qualified as to whether or not he knows anything about the car supply. He has testified that his experience has been solely limited to the sale of coal.

and we will prove this by direct testimony, that the TP&W and the Nickel Plate are cooperating in the development of that property.

The Witness: Well, that question I'd have to answer that I don't know.

Exam. Albus: That is all right. It was just a statement, Mr. Phillips.

[fol. 525] The Witness: Yes, sir. Thank you.

Exam. Albus: Is there any further questioning of this witness, Mr. Phillips?

(No response.)

Exam. Albus: You are excused, sir. Thank you very much, indeed.

(Witness excused.)

[fol. 526] JOHN W. KEAYES was sworn and testified as follows:

Direct examination.

By Mr. Stiers:

Q. Will you state your name, please?

A. John W. Keayes.

Q. And where do you reside, Mr. Keayes?

A. East Peoria.

Q. You are an official of the City of East Peoria?

A. I am.

Q. And you are the mayor of the City of East Peoria, are you not?

A. That is correct.

Q. Mr. Keayes, you were present at a council meeting when a resolution was passed, were you not, pertaining to the entrance of the City of East Peoria into this case?

A. I was.

Q. Do you have that resolution with you?

A. I have a copy of it.

Q. Is that a true and correct copy of the original one?

A. It is.

Exam. Albus: Do you know anything about the car supply, Mr. Morris?

The Witness: I must know about it, because before I go and sell coal I have to go and find out whether I am going to have any cars to load it in.

Exam. Albus: You may answer.

A. What was the question again, please?

(Question read.)

A. Yes, I think it would, because they are two big railroads. They have a lot of cars, and I believe Mr. Gurley testified that he would place industries and coal mines on the T. P. & W. on a parity with industries and other shippers.

Mr. Wheeler: I move that this witness's testimony be stricken. Mr. Gurley testified no such thing.

Exam. Albus: The last part may be stricken about what Mr. Gurley testified.

The Witness: Maybe Mr. Gurley didn't testify to it, but I heard it from some source that we would be placed on a parity.

[fol. 505] Mr. Wheeler: I object to this witness testifying to what he heard.

Exam. Albus: I will sustain that objection.

A. Well, I will answer it in a different way, then.

Exam. Albus: If you will, please.

A. It just seems to me that those two big railroads acquiring control of the T. P. & W. Railroad would naturally provide them with cars for the shippers on that line, and that is an important thing to us, of course, to be assured that we will get cars. Now, we have been getting plenty of cars from the T. P. & W. for the business we have on their line up to now, and I think we should be able to continue to get plenty.

Mr. Wheeler: May I have that answer read, please?

(The answer was read as follows:)

Q. Would you read it into the record, please?

Exam. Albus: How long is it?
Mr. Stiers: Very short.
Exam. Albus: All right.

A. Copy of resolution taken from the city minute record [fol. 527] page no. 161. Resolution no. 22.

Offered by Commissioner John Phillips.

"Whereas, an application has been filed with the Interstate Commerce Commission for approval of joint ownership of the T. P. & W. Railroad by acquisition of the corporate stock of said railroad by the Santa Fe and Pennsylvania railroads, which assures continued operation of the T. P. & W. Railroad as a separate entity under its present management with headquarters in the City of East Peoria; and

"Whereas the acquisition and control of the said T. P. & W. desired is to the best interests of the people of this community and the industrial expansion will be best served by continuing the T. P. & W. as a strong and independent railroad.

"Now therefore be it resolved by the city council of the City of East Peoria, Illinois, that the anticipated acquisition of the joint ownership of the T. P. & W. Railroad by the Santa Fe and Pennsylvania railroads is deemed in the best interests of the City of East Peoria and the city attorney Fred V. Stiers is here and directed to intervene in the proceedings before the Interstate Commerce Commission requesting that a hearing be held in Peoria and urgently recommend the approval of the application."

This is just an affidavit.

By Mr. Stiers:

Q. Mayor, when was that resolution adopted?
A. July 26, 1956, at their regular meeting.

[fol. 528] Exam. Albus: 1955, wasn't it?
The Witness: 1955, that is right.

"A. Now, we have been getting plenty of cars from the T. P. & W. for the business we have on their line up to now, and I think we should be able to continue to get plenty."

Exam. Albus: Does that complete the direct?
Mr. Bordes: That is all.

Cross examination.

By Mr. Wheeler:

Q. Would you think, if the M. & S. L. acquired control of the T. P. & W. that the coal car supply at your mine will be any less than it is now?

Mr. Bordes: I object to that, Mr. Examiner, he didn't make that statement.
[fol. 506] Exam. Albus: Objection overruled.

A. Well, I have no reason to believe they wouldn't give us cars, I don't know anything about it.

By Mr. Wheeler:

Q. Do you know how many coal cars the T. P. & W. has at the present time?
A. No, I do not.
Q. Do you know how many coal cars, what the coal car ownership of the Santa Fe is?
A. No, I do not.
Q. Do you know what the coal car ownership of the Pennsylvania is?
A. I know it is rather large, but I don't know exactly, no.
Q. Do you know whether or not they have had severe shortages of coal cars in the Illinois coal fields?
A. I know everybody has had shortages in Illinois, Pennsylvania, Ohio.
Q. And including the Pennsylvania?
A. Including the Pennsylvania, yes.
Q. Aren't you aware that the M. & St. L. has kept its Fulton County mines supplied with coal cars?
A. They are competitors of ours, I know that, they have.

Q. Mr. Morris, you know no reason to believe that if the M. & St. L. acquired the T. P. & W. it would not render an adequate service to your mines, do you?

A. No, I have no knowledge one way or another.

[fol. 507] Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Morris, wouldn't the inclusion of the Rock Island even make more cars available to you?

A. Well, the Rock Island has mines on their line, too, and it is possible that a division of those cars between those mines and mines on the T. P. & W. might stretch the cars out more.

Q. How about the Pennsylvania, hasn't it got more mines than anybody else in the country?

A. It has, that is true.

Q. Might it not syphon off cars from you to help those mines?

A. All I can say, up to now we have had plenty of cars, and I feel that the ownership of the two roads would naturally see to it that we had plenty of cars.

Q. Wouldn't the inclusion of another road with its cars even make more cars available to you?

A. That might be true. That might be true.

Mr. Cassell: That is all.

Cross examination.

By Mr. Broker:

Q. Whose cars do you use now?

A. The cars are supplied by the T. P. & W. Railroad that are placed in there. What ownership they are, I don't know. Some of them are theirs, I presume, some are probably secured from other railroads.

[fol. 508] Q. Did you hear Mr. Carpi's testimony this morning about the shortage of coal cars on the Pennsylvania?

A. Yes, I did.

Q. Do you know that the Nickel Plate has an adequate car supply of coal cars?

A. I don't have any knowledge of the Nickel Plate situation.

Q. You indicated that part of your opinion was based on past performance of the owning lines, is that right?

A. Do you mean the—

Q. (Interrupting) Of the prospective—of the applicants, let's put it that way.

A. Yes, they have given a lot of traffic, so I understand, to the T. P. & W. Railroad that's been beneficial to them.

Q. Do you know anything about the record of the T. P. & W. during previous Pennsylvania ownership?

A. What period do you mean by that?

Q. 1893 to 1926.

A. No, that's too far back for me to know anything about.

Q. You don't remember that?

A. No.

Mr. Broker: No other questions.

Exam. Albus: Is there any further cross-examination?

(No response.)

Exam. Albus: Is there any redirect?

Mr. Bordes: No.

[fol. 509] Exam. Albus: You are excused, Mr. Morris. Thank you, sir.

(Witness excused.)

[fol. 510] Exam. Albus: Next witness, please.

JOHN PHILLIPS was sworn and testified as follows:

Direct examination.

By Mr. Stiers:

Q. Will you state your full name, please.

A. John Phillips.

Q. And where do you reside, Mr. Phillips?
A. 150 Urbandale, East Peoria.
Q. You are an official of the City of East Peoria?
A. Correct.
Q. And in what capacity, Mr. Phillips?
A. Commissioner of Public Health and Safety.
Q. You are one of how many commissioners?
A. Four, and five with the mayor.
Q. And the City of East Peoria is organized under the commission form of government law in the State of Illinois, is that right?
A. Correct.
Q. How long have you been a commissioner in East Peoria?
A. Well, for the past almost five years at this time and four years previous.
Q. And where is the City of East Peoria located?
A. In Tazewell County directly east from Peoria, Illinois, across the Illinois River.
Q. The Illinois River?
A. Yes.

[fol. 511] A. Well, we are a little over twelve thousand.
Q. You are acquainted with the principal industries of the city, are you not?
A. That is right.
Q. Would you state them briefly.
A. Caterpillar Tractor Company, Herschel Manufacturing Company, Altorfer, TP&W, and P&PU.
Q. Does the TP&W Railroad Company maintain its principal offices and yard and shops in the city of East Peoria?
A. They do.
Q. And they have for quite some time?
A. That is correct.
Q. Do you, that is, the City of East Peoria, and the railroad have interests that may coincide other than being a resident or doing business there?
A. Well, yes, they have quite a lot of ground there that's available for industry, or those things, and we are interested, of course, in bringing industry there, and with the cooperation of the TP&W we are planning on getting industry there.
Q. Mr. Phillips, City of East Peoria and the TP&W Rail

road and its president, Mr. Coulter, have worked quite close together for the past several years, is that correct?

A. That is correct.

Q. And that is as to the development and growth of the City of East Peoria?

[fol. 512] A. I would like to add one thing, if I may.

Q. Go ahead.

A. Always if there is prospects of an industry, the City Council has been assured that we would always be consulted in regard to the type of industry that would be placed in and around East Peoria. Thank you.

Q. That pertains to the desirability of the type of industry that might seek to locate?

A. That is correct.

Q. Are you acquainted with the number of acres of industrial ground that are available for industrial development in the city of East Peoria and owned by the TP&W Railroad?

A. Well, I would say somewhere around 360 acres or something like that.

Q. And do you know their locations approximately?

A. Yes, directly along the new bridge highway is quite a bit of ground and at their office out on the Washington Road there is 80 acres, and somewhere around about that many acres directly below the Cedar Street Bridge.

Q. Now, the one that you described as the site of the new bridge, you were referring to that territory almost opposite the metropolitan district in Peoria?

A. That is correct.

Q. And that borders on the river, with river frontage, is that correct?

[fol. 513] A. Correct.

Q. And the portion down near the Cedar—

Exam. Albus (interrupting): Let the witness testify, will you, please.

Mr. Stiers: Yes.

By Mr. Stiers:

Q. And the other portion of the railroad property that you described as by the Cedar Street Bridge, where is that?

Q. Do you know what their opinion is?

A. From what I can find out, their opinion will concur with mine along the same things as to the benefits that we would derive from the thing, from this particular deal through the Santa Fe and the Pennsylvania gaining control.

Exam. Albus: Did the city council take any official action in this matter?

The Witness: Yes, sir.

Exam. Albus: What did they do?

The Witness: We passed a resolution recommending that the Santa Fe and the Pennsylvania petition be granted.

Exam. Albus: How many men are on that council?

The Witness: Four commissioners and the mayor.

Exam. Albus: What was the vote?

The Witness: Unanimous.

[fol. 517] Exam. Albus: Thank you.

I am sorry to cut in on you.

Mr. Stiers: That is quite all right.

Exam. Albus: Proceed.

Have you finished?

Mr. Stiers: Yes, sir.

Exam. Albus: Cross-examine, Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. Mr. Phillips, if the M&StL plans to not only adopt, to continue the yards of the TP&W in East Peoria, but to expand those yards materially so as to make them their yards as well, would that change your view with respect to the acquisition of the TP&W by the M&StL?

A. Well, that sounds a little off, because in their part that I read, about the only thing that I can get out of it was they was going to economize the thing, which might mean economizing in East Peoria, and the TP&W, we want to keep that there as a taxpayer.

Q. Well, your taxes are based, in part, are they not, on the amount of land that is employed in those yards?

A. That is right.

Q. So you would have an interest at least taxwise in having those yards expanded and increased in size, would you not?

A. Mister, if you will pardon me, I want to say that our interest is that we want this held as an individual railroad, [fol. 518] as it is. Both the Santa Fe and the Pennsylvania assured us of that fact.

Q. Now, I want to get back, Mr. Phillips, to my question.

A. Yes.

Q. If the M&StL. were to increase, if it acquired control of the TP&W, and increase, if it acquired control of the TP&W, and increase the size of the yards of the TP&W in East Peoria, would that not benefit East Peoria?

A. Yes, it would, sure.

Q. And since it would benefit East Peoria, would you not favor that action?

A. Well, we haven't had any assurance that they would do that. It is a matter of what they said in their application. They didn't say that they would do these things, that I read.

Q. Now, Mr. Phillips, supposing the testimony in this hearing is to the effect that the M&StL. if they acquire control of the TP&W, will abandon their present yard and transfer all of their operations to the TP&W's East Peoria yard, would not that be in the best interest and beneficial to East Peoria?

A. If that was done, but we have no assurance that it will be done.

Q. If that were done, would you reconsider your position with respect to this application?

A. I don't think so, for the simple reason that the present management in East Peoria cooperate and work together, [fol. 519] and those are two things that are vitally interested in East Peoria, is the maintenance of the present management and that particular area for development and we have been assured that those things would be taken up with the council before any industrial plant of any kind was set in there.

Q. So you would rather have the present management maintained in control of the TP&W than have many other benefits flow to the city of East Peoria, is that correct?

A. I don't think under the present management that any other road could do any better than we have had done in the past year with the management of the TP&W.

Q. You can't conceive of any benefits that would offset

Exam. Albus: If they gave you the same assurance in writing.

The Witness: I'd have to say yes.

By Mr. Broker:

Q. That industrial property in East Peoria, some of that lies alongside the Nickel Plate, doesn't it?

A. I believe so.

Q. So the Nickel Plate has to cooperate with the TP&W in order to develop that fully, isn't that so?

A. Well, I wouldn't think so, since the TP&W owns the ground.

Q. How can they get across the tracks?

A. Well, that is a matter for, to be argued out.

Exam. Albus: If you don't know, just say so.

The Witness: Well, I don't.

By Mr. Broker:

Q. Actually the fact is, though, the TP&W owns some industrial property in East Peoria that lies on the other side of the Nickel Plate tracks, isn't that so?

A. That is right.

Q. Now, the interchange between the TP&W and the Nickel Plate takes place in East Peoria, doesn't it?

A. Correct.

[fol. 523] Q. Have you heard statements by me or questions that would indicate that we are very anxious to maintain that interchange?

A. Well, through your questions and testimony, to that I haven't paid a lot of attention. I imagine you would be, though, interested in maintaining that mutual agreement of exchange through the two railroads.

Q. As a matter of fact, isn't the fact that we are anxious to maintain that interchange at East Peoria the thing that protects your city the best as far as the TP&W is concerned?

A. That I wouldn't know, but I imagine you do.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions on cross examination?

(No response.)

Exam. Albus: Any redirect?
Mr. Stiers: Yes.

Redirect examination.

By Mr. Stiers:

Q. Mr. Phillips, regarding the multiplicity of ownership and the industrial development, have you an opinion as to what effect that would have on the city?

A. Well, in having ownership of the particular ground that is very, very vital for industrial purposes, we feel like that through our cooperation with the present management of the TP&W that we have always had cooperation, and to the extent that we—there will never be anything go in there other than what is satisfactory to the city council, [fol. 524] and that means a lot to us.

Q. Mr. Phillips, what would the effect of four or five owners have to possible development of industrial sites?

A. Well, it might have a great deal, for the simple reason that should the property of the TP&W or the majority of the stock be transferred and cut up into three or four different railroads in there, I feel like that the interest wouldn't be as great to the people interested as it would be under the management of the Santa Fe and Pennsylvania with the TP&W maintained as it is at the present time. Is that clear?

Mr. Stiers: Yes, sir; that will be all.

Recross examination.

By Mr. Broker:

Q. Don't you think as a part owner of the TP&W we would be all the more anxious to develop that property in East Peoria?

A. Well, you might. That I wouldn't say yes or no to. You might be.

Mr. Broker: I don't have any questions, but I don't know whether Mr. Phillips will be back, I just wanted to state,

A. That's right.

Q. Now, you say that by the time your Texas, Oklahoma, and southwestern Kansas movement is over ours is just starting and the cars can be unloaded and be sent on to us. Now, I take it that that was a reference to the Santa Fe cars, is that correct?

A. That is right, any southwestern railroad.

Q. Now, what month are you talking about then when these cars can be sent forward to you?

A. Well, normally our season starts any time after the 4th of July and runs up to about the 15th of August.

A. That's right, depending on our season.

[fol. 548] Q. Now, Mr. Morris, are you familiar with the fact that daily freight car shortage on the Santa Fe was higher after the 26th week of 1955 that before that and that it grew progressively higher, going through the 45th week of 1955?

A. No.

Q. Mr. Morris, don't you think it would have been advisable for you to find out definitely with respect to this information with respect to the freight car shortages on the Santa Fe before appearing here and saying that they would have cars to move north for your use when your movement or your needs for cars began?

A. No, I don't. We ship a lot of other grain besides just small grain. Small grain in our locality is a small part of our business.

Q. It is a small part, now?

A. That is right.

Q. All right, what is the big part?

A. Soy beans.

Q. When do you have the big movement in soy beans?

A. Any time from the first of September to the middle of November.

Q. Do you know what the shortage of cars is due to on the Santa Fe during that season?

A. No, sir.

Q. Do you have any reason to believe that you would get cars from the Santa Fe during that time?

[fol. 549] A. The Pennsylvania and the Santa Fe have

told us that they will pool their cars with the TP&W for available cars during our grain season.

Q. Did they tell you they would pool their car shortages or pool their cars?

A. Their car supply.

Q. Now, how can they pool cars that they don't have when they are already short on their own lines, Mr. Morris?

A. Well, they can't be any shorter than the TP&W is now, can they?

Q. Did you try to ascertain that fact?

A. I beg pardon?

Q. Did you try to ascertain that fact as to whether or not the shortages were greater on the TP&W than on the Atchison, Topeka and the Pennsylvania?

A. The Pennsylvania can furnish a few cars during that time, can't they?

Q. Mr. Morris, you are on the witness stand here and not I. I want to ask you that question.

Exam. Albus: Just answer the question, Mr. Morris, please.

By Mr. Wheeler:

Q. Did you attempt to ascertain whether or not the Pennsylvania could carry out the promise they made to you?

A. Sure.

[fol. 550] Q. What did you find out?

A. If they get it, they will throw their supply of cars in the deal, too, for us.

Q. But, Mr. Morris, if they are already short of cars now, during the period when you require them, how can they give them to you? Did you attempt to ascertain that fact?

A. Well, we couldn't be any worse off than what we are now, if they haven't any cars either.

Q. Mr. Morris, are you aware that the M&StL is a per diem credit railroad?

A. May I have that question so I can understand it.

Mr. Wheeler: Would you read the question to him.

By Mr. Stiers:

Q. And you were present at that meeting?
A. I was.
Q. What was the vote on that, Mr. Mayor?
A. Unanimous.
Q. You have heard the testimony given by Commissioner John Phillips, who just testified ahead of you, did you not?
A. I did.
Q. And is that also your opinion?
A. It is.
Q. For the sake of brevity I won't enlarge on that unless you have something you'd like to add, Mr. Mayor.

Exam. Albus: Thank you.

A. No, we go along the same lines, the whole council.

Mr. Stiers: Thank you.
Exam. Albus: Cross-examination?
Mr. Wheeler: If he agrees with Mr. Phillips, I have no cross-examination.
Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Mr. Keayes, the meeting you had on July 28—
A. (Interrupting) 26.
Q. July 26, that was before you had heard anything about [fol. 529] the Rock Island's interest in this case, wasn't it?
A. I didn't hear anything about it.
Q. And it wasn't discussed at your meeting, was it?
A. No.

Mr. Cassell: That is all.

Cross examination.

By Mr. Broker:

Q. Did you know about the Nickel Plate's intervention?
A. No.
Q. If I asked you on cross-examination the same ques-

tions as Mr. Phillips was asked, you would give approximately the same answers?

A. Yes, about the same answers.

Mr. Broker: Thank you.

Exam. Albus: Is there anything further from the mayor?

Mr. Stiers: I would like to ask him one on redirect, Mr. Examiner.

Redirect examination.

By Mr. Stiers:

Q. You learned that the Rock Island and Nickel Plate had filed petitions afterwards, is that right?

A. That is right.

Q. Is your position the same knowing those petitions have been filed?

A. I haven't changed any.

Mr. Stiers: That is all.

[fol. 530] Recross examination.

By Mr. Cassell:

Q. Do you know what the Rock Island plans are?

A. No, I don't, just hearsay.

Mr. Cassell: That is all.

Exam. Albus: You are excused. Thank you.

(Witness excused.)

JOHN L. MAYBERRY was sworn and testified as follows:

Direct examination.

By Mr. Stiers:

Q. Will you state your name, please?

A. John L. Mayberry.

Q. And where do you reside, Mr. Mayberry?

A. I live at 13 East Edmond Street, East Peoria.

Q. You are also one of the commissioners of the City of East Peoria?

A. I am.

Q. You were present at the meeting of July 26, 1955, when the resolution offered by the mayor was passed, were you not?

A. I was.

Exam. Albus: I understood the resolution to be offered by Commissioner Phillips?

The Witness: That is right, but we were all there.

Mr. Stiers: They were all present.

Exam. Albus: All right.

By Mr. Stiers:

Q. And did you vote in favor of that?

[fol. 531] A. I did.

Q. If you were to testify, Commissioner, would your testimony be along the same lines and same beliefs as Commissioner Phillips has testified to?

A. It will be.

Mr. Stiers: I believe that is all.

Cross examination.

By Mr. Wheeler:

Q. That would apply to both direct and cross-examination?

A. That is right.

Mr. Wheeler: That is all.

Cross examination.

By Mr. Cassell:

Q. And the same as to my questions, and I would like also the question I put to Mr. Keayes, your response would be the same?

A. That is right.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker?

Mr. Broker: No questions.

Exam. Albus: Thank you very much. You are excused, Mr. Commissioner.

(Witness excused.)

Mr. Stiers: That is all the City of Peoria has.

Exam. Albus: Thank you, Mr. Stiers.

[fols. 532-533] JOHN E. MORRIS was sworn and testified as follows:

Direct examination.

By Mr. Bagge:

Q. Will you state your name, please?

A. John E. Morris.

Q. Where do you reside, Mr. Morris?

A. Bushnell, Illinois.

Q. What is your business or occupation?

A. I am president and general manager of Good Hope Elevators, at Good Hope, Illinois.

Q. Would you describe where this elevator is located?

A. Well, we have three elevators: Two located at Good Hope and one at Scottsburg Sidings. The Good Hope Elevators are about 70 miles west of here on the TP&W Railroad.

Q. You are served by the TP&W Railroad, is that correct?

A. Yes, sir.

Q. How large an investment does your business represent, Mr. Morris?

A. About $100,000.

Q. Would you describe approximately what percentage of your outbound traffic moves by rail as compared with truck?

A. Well, that all depends a whole lot the condition from outlying territories. If there is a drought area in a short distance from us they will truck it out. Normally, under normal conditions it all goes out by rail. I think last year [fol. 534] about 90 per cent went out by rail and 10 per cent by truck, and that all went into drought areas in southern Illinois and southern Missouri, short hauls.

Q. Would you describe briefly what might be described as your area of rail market?

A. Places we ship?

Q. That is correct, sir.

A. Chicago, Peoria, St. Louis, Decatur, Bloomington, small points, but those are our main shipping points, of course, we get coal in from southern Illinois, all points in southern Illinois.

Q. You are dependent on rail service, is that correct?

A. That's my bread and butter.

Q. Are you also particularly dependent upon TP&W rail service?

A. That's the only one I've got there.

Q. How long a period of time have you been making this use which you describe of the rail service afforded by the TP&W Railroad?

A. Well, I have owned and controlled the Good Hope Elevator since 1951 and prior to that, I think the first elevator was built in 1900.

Q. Approximately how many carloads of grain and other products do you ship each year?

A. Approximately 300 cars outwardly.

Exam. Albus: How about coal inbound?

The Witness: Fifteen to twenty cars.

[fol. 535] By Mr. Bagge:

Q. You stated, did you not, that you are served at Good Hope exclusively by the TP&W Railroad?

A. That is right, Good Hope and Scottsburg, both.

Q. Will you tell us what your experience has been in the past, served as you are by the TP&W Railroad, with respect to car supply?

A. I have been short.

Q. For how long a period of time have you as a shipper experienced this shortage?

A. During all our flush seasons we are always short, which about all the local railroads in this locality all have a shortage of boxcars during our peak seasons. That is one thing, if the Santa Fe or the Pennsylvania would get it, the Santa Fe, their peak season of grain movement is over by the time ours starts.

Q. Would you tell us a little more about that.

A. Well, we all know that the grain season in the southwest starts in Texas any time after the 25th day of May and works gradually this way. Well, by the time your Texas, Oklahoma, and southwestern Kansas movement is over ours is just starting, and the cars can be unloaded and be sent on to us. Of course they'll need some cars, too.

Q. By "ours" do you mean this marketing area which you serve or the area which you serve as a shipping point, is that correct?

[fol. 536] A. That is right. Either me or any other elevators that is on the TP&W line.

Q. Is it your thought, therefore, that the Santa Fe would make such cars available to the TP&W, is that correct.

A. Yes, sir.

Q. Now, would you state what effect the inclusion of several other railroads in the ownership of the TP&W may have on your need for additional car supply?

A. Well, if five or six railroads had a hand in the TP&W railroad I can't see why any of them would give the TP&W any assistance.

Q. Why is that?

A. They probably want to fill their own needs first, and they wouldn't have enough invested to justify them to give us any additional cars.

Q. Do you feel that the Santa Fe and Pennsylvania railroads by having a 50 per cent investment each in the capital stock of the Toledo, Peoria and Western would be a sufficient investment to justify such action?

Mr. Broker: Excuse me, what action?

Mr. Bagge: The action to which the witness has just referred.

Mr. Broker: I'd like it defined, please.

By Mr. Bagge:

Q. In justifying making cars available to shippers located on the T.P.&W.

[fol. 537] Exam. Albus: Do you understand the question?

Mr. Broker: I object. This witness can't testify to what motivates railroads to furnish or not furnish cars.

Exam. Albus: He might have an opinion about it.

By Mr. Bagge:

Q. What is your opinion as a business man and as a shipper having used railroad service, what is your opinion?

A. Well, I know good and well if I owned 50 per cent of something I would at least give them a break and give them some cars, and if I owned 20 per cent of it I'd just let them go.

Q. All right, sir, what effect, in your opinion, would the granting of ownership of the Toledo, Peoria and Western Railroad, granting that ownership to the M&StL have, on the availability of an additional, or additional cars to you?

Mr. Wheeler: Now, just a moment, Mr. Examiner. This witness hasn't been qualified, so far as I know, with respect—

Exam. Albus: He is getting a little beyond his qualifications.

Mr. Bagge: I withdraw that question.

By Mr. Bagge:

Q. Now directing your attention to the question of service which you have described, do you have any particular problem in connection with the physical location of your property, and in connection with your operation, which necessitates frequent switch moves and frequent pickups and deliveries to your siding?

A. We are unfortunate only to have a three-car siding [fol. 538] with two elevators. Normally during our peak season we have had to be worked three times in twenty-four hours. If we didn't have a lot of trains going by our door we wouldn't get that service. I know that the TP&W railroad has stopped a number of their fast trains and gave us that service so we could keep our doors open. We haven't too big a storage and we can fill up pretty quick.

Q. And what would be the effect of that on your operations, Mr. Morris?

A. Well, you just close your doors until you get more room.

Q. Sir, in your opinion what would be the effect of the granting of this application as regards your needs for frequent service and for switch movements?

A. Well, if the TP&W and the Pennsylvania is granted the rights to take over the ownership we know we will still have those trains running by our door, and they say that we are going to have the same management, so there is no reason why they should change their ways of doing business.

Q. In your opinion do you anticipate an increase in the volume of traffic moving that way?

A. By rail?

Q. Yes, sir.

A. Well, up until the Santa Fe and the Pennsylvania got blocked by the M&StL railroad I was planning on building a government warehouse that would hold about 300,000 [fol. 539] bushel of corn at our Scottsburg siding, but I got that blocked right in the face.

Q. How do you mean?

A. Financially they said no, that until we find out who is going to furnish you cars we won't go along with you. The bank in Peoria did that. And until, I think, that you can see the records over at the TP&W office—I have been trying to buy this ground for the last two or three years from the TP&W and I was just granted that privilege about the same time that the Santa Fe and Pennsylvania took over and then the M&StL intervened in the deal.

Q. What effect would the granting of ownership to the M&StL have on your plans for expanding your facilities at Scottsburg?

A. I am not going to build if they get it.

Q. Why is that?

A. They haven't got any more cars than the TP&W has.

Mr. Broker: What was that last answer?

(Answer read.)

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Let the record show an adjournment until 9 o'clock Monday morning in this room.

(Whereupon, at 4:28 p.m., an adjournment was taken until 9:00 a.m., Monday, February 6, 1956.)

[fol. 540]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

LaSalle Room,
Pere Marquette Hotel,
Peoria, Illinois.

TRANSCRIPT OF HEARING—February 6, 1956

Met, pursuant to adjournment, at 9:00 a.m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCE:

J. B. Reeves, AT&SF General Office Building, Ninth and Jackson, Topeka, Kansas, appearing on behalf of the Atchison, Topeka and Santa Fe Railway Company, Applicant.

[fol. 542] PROCEEDINGS

Exam. Albus: The hearing will please come to order. I understand at this time there is an additional appearance to be entered.

Mr. Reeves: Mr. Examiner, please, J. B. Reeves, appearing on behalf of applicant, the Atchison, Topeka and Santa Fe, in Docket No. 18991. I am an attorney admitted to practice before the Commission. My address is AT&SF General Office Building, Ninth and Jackson, Topeka, Kansas.

I would also like to enter the same appearance as intervenor in opposition in Docket No. 18996.

Exam. Albus: Are there any further preliminaries?

Mr. Bagge: I have a statement, Mr. Examiner. It has been called to our attention that the roads are very slick this morning. Several of our appearances who were to

be here cannot get here until 10 or 11 o'clock. However, we will arrange to fill in the entire day.

Exam. Albus: Thank you very much.

We will continue with the cross-examination of Mr. Morris.

You may proceed, Mr. Wheeler.

JOHN M. MORRIS resumed the stand and testified further as follows:

Cross-examination (continued):

By Mr. Wheeler:

Q. Mr. Morris, since you appeared here on the stand on Friday have you discussed your testimony with anyone?

[fol. 543] A. Sure.

Q. With whom did you discuss it?

A. Santa Fe, Pennsylvania, a number of competitors at home.

Q. With whom from the Santa Fe and the Pennsylvania did you discuss it?

A. Paul Bagge, Harold Hemphill.

Q. Can you identify the last man whom you named? Do you know what his position with the Santa Fe is?

A. I beg pardon?

Exam. Albus: Can you identify the last man you named?

The Witness: May I mispronounced his name.

Exam. Albus: Is he in the room? Do you see him in the room?

The Witness: No.

A. Carl Bagge can describe him for you.

Mr. Wheeler: May we have a statement on the record, Mr. Bagge, as to who he is?

Mr. Bagge: He is general freight agent in charge of sales in the Illinois territory.

Exam. Albus: What is his name?

Mr. Bagge: Harold Hemphill. H-e-m-p-h-i-l-l.

Exam. Albus: Thank you very much.

By Mr. Wheeler:

Q. Did you talk to anyone else about your testimony?
[fol. 544] A. Not of any importance.

Q. Mr. Morris, you made a statement with reference to the car ownership of the M&StL. What was the source of that information?

A. Well, you know yourself that during the flush seasons you never have any cars on your own railroad the same as we do—

Q. (Interrupting) Now, Mr. Morris, I asked you a question and I'd like an answer to that question. If you want to explain your answer after you give it, all right, but I would like an answer to the question first.

What was the source of your information with respect to the car ownership of the M&StL, specifically?

A. You either have to own cars or have them when your shippers want them, don't you?

Q. Specifically, now, did anyone, did you talk to anyone with respect to the car ownership of the M&StL?

A. No, but I just took it for granted you didn't have any.

Q. You took it for granted?

A. Yes.

Q. You didn't make any investigation?

A. You never have any wherever—

Q. (Interrupting) Did you discuss it with Mr. Bagge?

A. I did not.

Q. Did you discuss it with any other representative of the Santa Fe?

[fol. 545] A. I did not.

Q. Did you discuss it with any officer or employee of the P&W?

A. No, sir.

Q. Did you inquire of any officer or employee of the M&StL?

A. No.

Q. Now, Mr. Morris, you knew when you made this statement yesterday that the M&StL didn't have any more cars than the TP&W has that you were under oath, did you not?

A. You can't supply them if you have them.

Q. Well, now, Mr. Morris, how many cars does the TP&W own?

A. Grain cars?

Q. All cars.

A. I don't know. I am not interested in anything except grain cars.

Q. All right, how many grain cars do they own?

A. Approximately 50.

Q. But you have no knowledge as to the total number of cars, of grain cars, that are owned by the M&StL?

Q. Not specifically numbers, no.

Q. Now, what experience have you had with respect to the furnishing of cars by the M&StL to its O-line shippers?

A. I am in direct competition with one of my elevators with two elevators that is located on your railroad.

Q. Which ones?

A. Which ones?

[fol. 546] Q. Yes, sir.

A. The elevator at Burwick, and the Farmers Elevator at London Mills.

Q. The name of those are the Farmers Elevator—

A. Yes, sir, at London Mills, and the Farmers Grain at Burwick, Illinois.

Q. At London Mills?

A. Yes, sir.

Q. Now, I believe your testimony was that the seasons, and I suppose your are referring to the harvesting seasons, start early in the south and grow later as you progressively move north, is that correct?

A. That is right, in your small grain season.

Q. In your small grain season?

A. That's right.

Q. And that is what you are primarily concerned with is small grain?

A. Well, any grain operator has to contend with small grain and soy beans and corn.

Q. When you said we all know that the grain season in the southwest starts in Texas and works gradually this way, were you referring to small grain or large grain or what?

A. Small grain season.

Q. All right. Now, dealing solely with the small grain season, then, is it not true that the harvesting season grows [fol. 547] progressively later as you move northward?

By Mr. Wheeler:

Q. If you don't understand any term I use, please t
me.

A. That is just what I asked you then.

Q. Are you aware that the M&StL receives more mon
each year for the rental of its cars than it pays out f
the rental of other railroads' cars?

A. What good do those cars do your shippers—

Exam. Albus: No, just answer the question.

By Mr. Wheeler:

Q. Just answer the question first, Mr. Morris.

A. I did not.

Q. Are you aware, Mr. Morris, that the M&StL own
approximately three hundred more cars than it ever h
on its lines at any one time during the year 1955?

[fol. 551] A. No.

Q. Are you aware that during the 1955 season t
M&StL was called upon to supply cars for other railroa
that is, grain cars for other railroads, and move cars
its lines and onto other railroads to meet shortages
other railroads?

A. No, I didn't know that, but I can't see why you wou
when your own shippers need them.

Q. Do you know that the Santa Fe had more frequent a
greater car shortages in 1955 than did the M&StL?

A. Do I?

Q. Yes.

A. I know nothing about the Santa Fe shortages.

Q. Would your answer be the same with respect to t
Pennsylvania Railroad?

A. During their grain season?

Q. Yes, sir.

A. I know nothing about their grain season either.

Q. Do you know the percent of bad order cars on t
Pennsylvania Railroad?

A. I am no car repairman.

Q. You would give the same answer, I take it, wi
respect to the M&StL?

A. That is right.

A. That is right.

Q. And is Santa Fe—well, the same answer would apply to the Santa Fe, would it?

[fol. 552] A. Sure.

Q. So that during 1955 many elevator operators on the M&StL constructed large additional facilities on the M&StL?

A. That was customary on all railroads.

Q. What is that?

A. That was customary on all railroads, if you could get the money to do it.

Q. Irrespective of the car supply on that railroad?

A. I wouldn't know about that.

Q. Do you think the car supply has anything to do with the construction of new or additional elevators on the line of a particular railroad?

A. I know it did with me.

Q. You know it did with you?

A. Yes.

Q. Do you think that other companies would construct elevator facilities on a railroad that did not have an adequate car supply to take care of the current needs of their current elevators?

A. Oh, that would just depend on the financial backing and how much service they would have to require to move their grain and at the time they wanted it moved.

[fol. 553] Q. I don't believe that is an answer.

Would you read that last question, please?

(Question read.)

By Mr. Wheeler:

Q. Can you answer that question for me, please, Mr. Morris?

A. I wouldn't know why, if anyone wanted to build storage and had their own money to do it, whether it would make any difference to them or not.

Q. Wouldn't make any difference whether they could get the car supply on that railroad, was adequate or inadequate, is that right?

A. That is right. Normally, this grain car movement, I don't know whether you are acquainted with the farmer

or not, he is a very peculiar man to do business with, he likes to have the elevator man carry him for six months with credit, but the minute he comes in and seals that bushel of grain he wants his money right there, and we in turn have to ship that grain out before we get any money, and under your storage agreement, the bulk of it is handled through the government or under warehouse receipts, and the market goes up where that they can clear themselves they come in and want to sell it right now. If the market goes up, there is many of a time you will by maybe fifteen, twenty, maybe thirty thousand bushels of grain in the day. Well, not having very much money in your pocketbook like I am I have to go to the bank and borrow it, and in turn [fol. 554] I have to have grain cars immediately to operate on. The farmer don't wait on us for six months like we have to wait on him, so that is why that we have to have grain cars for movement of grain.

Q. So I take it your answer would be that a sound elevator operator would not construct an elevator had he a choice on a railroad—strike that question.

I take it that your answer is that a sound elevator operator would not construct additional elevators on a railroad that was unable to afford him good service and a good car supply?

A. That's right.

Q. What is the capacity of your elevators?

A. On the T. P. & W. we have approximately about 80 thousand bushels of storage.

Q. How many elevators?

A. Three.

Q. I believe you testified that you had a very limited siding?

A. That is right.

Q. Why is that?

A. I wasn't the engineer that put the siding there.

Q. Have you asked the T. P. & W. to enlarge that siding?

A. No.

Q. Why not?

A. Well, under the present service I don't need it.

Q. I understood you to say that it was very inconvenient to you that you had this small siding and that you had

[fol. 555] have the locomotive stop and switch your cars frequently?

A. That is right.

Q. If the railroad built you a larger siding, that would not be necessary, would it?

A. Well, if they want to set around with switch engines and switch cars all day, it might not be.

Q. What did you mean when you said we are unfortunate to only have a three-car siding?

A. It would be a lot better if we had a bigger one, wouldn't it?

Q. Mr. Morris, if you say so, I will take your word for it. But what I was asking you was why you didn't get the T. P. & W. to build you a larger siding.

A. I never asked them, I never thought I needed it as long as they have the service that they have.

Q. You didn't feel your situation was unfortunate until Friday when you testified, is that correct?

A. I beg your pardon, I have.

Q. Now, you said that you were planning to build a government warehouse that would hold about 300,000 bushels of corn until the M. & St. L. filed its application in this proceeding, is that correct?

A. That is right.

[fol. 556] Q. When did you originally make your plans to build that elevator?

A. When?

Q. Yes, sir.

A. I gave an O.K. to buy the property to put it on for the last two years.

Q. Two years ago?

A. That is right.

Q. Now, that would be February 1954?

A. I think you misunderstood my answer.

Q. When did you get the property to build this on?

A. I said I have been trying to buy that property for the last two years.

Q. You haven't bought it yet, then?

A. No, sir.

Q. Why not?

A. I want to know who is going to run by my door and what kind of service I am going to get before I do any more expanding.

Q. Mr. Morris, do you want to know or does the bank want to know?

A. Both of us.

Q. Both of you?

A. That is right.

Q. Now, tell me, please, what bank.

A. Farmers-Merchants State Bank at Bushnell, Illinois.

Q. Farmers what is that?

[fol. 557] A. Farmers & Merchants State Bank.

Q. Is that a branch of a Peoria bank?

A. No. It is a corresponding bank with the Peoria banks.

Q. What is the bank in Peoria that you referred to on Friday that refused you a loan on the basis that the M&StL had filed an application to take control of the TP&W?

A. Well, now, I will tell you about that.

Q. Can you just answer my question and then explain. I asked you what bank you referred to in Peoria.

A. I don't know. The banks in Peoria, I don't know what bank they figured on working through. Before I—

Q. (Interrupting) Wait a minute, Mr. Morris. Let's get this town before you get into your explanation. You say the bank in Peoria did that in your testimony at page 539. What bank were you referring to?

A. I don't know.

Q. Who told you that a bank in Peoria refused on the ground—

A. (Interrupting) All they told me was—

Q. (Interrupting) Who is this?

A. The Farmers-Merchants State Bank of Bushnell, Mr. Vice-President Perine.

Q. He is the Vice-President of the Farmers-Merchants State Bank in Bushnell?

A. Right.

Q. Now, what did he tell you?

[fol. 558] A. Well, I went to him—

Q. (Interrupting) When did you go to him?

A. I think about in May I received a letter that they were willing to sell this ground to me and I went to them and

told them that I could buy this ground and wanted to build a storage, and they said well—

Q. (Interrupting) Just wait one moment. You first said that they told you that they could sell you the land. Did they own the land?

A. No, sir.

Q. Who did own the land?

A. TP&W Railroad, and they still do.

Q. TP&W owned the land?

A. That is right.

Q. All right. You went to the bank and told them you could buy the land?

A. That is right.

Q. And asked them to loan you the money to do so?

A. Well, to buy the land wasn't what I needed the money for. It was to build the storage.

Q. And they told you what?

A. To go ahead, that—well, we messed around for a couple, three, four weeks until after the Santa Fe and the Pennsylvania we thought, had purchased the stock and everybody was pretty well tickled about it, knowing that [fol. 559] we could get more cars than what we have already in the past.

Q. When you say you knew that you could get more cars, that is based on evidence that you previously testified to regarding your knowledge of the Santa Fe's car supply? Is that correct?

A. Santa Fe and Pennsylvania cars, yes.

Q. Now, go ahead, please.

A. So they told me that I had to be able to get cars before they would go along with me and OK a loan for me. So we went along and the M&StL intervened in this deal and they called me in one day and told me that we had to get some agreement on cars before they'd go along with me, that they thought the deal was all set up for the car supply between the Santa Fe and the Pennsylvania Railroad. So I asked them about—

Q. (Interrupting) You say some deal on cars. What did you mean when you said that?

A. Well, you know for yourself that with the supply of cars at the Santa Fe and the supply of cars that the

Pennsylvania Railroad have, we would be bound to get a few more cars than we are in the present conditions.

Q. I assume that statement is made on the basis of the previous testimony you have given, so we won't have to go back over all that again, is that correct?

A. That is right.

Q. Did you understand the bank to mean that you should [fol. 560] determine from the M&StL if they got control they would be able to furnish you cars? Did you?

A. Well, we know that your elevators on the M&StL don't get any more cars than we on the TP&W get.

Q. Now, you know that only by somebody having told you that, do you not?

A. I know when I buy stuff from those elevator areas and ask the farmers why they are bringing to us in place of taking to their own elevators they tell us their local elevators haven't the cars and the elevator is full.

Q. That might be a case of too small an elevator, might it not?

A. Well, the average elevator in Illinois don't hold too much grain.

Q. Now, I ask you again, did the bank indicate that you should go to the M&StL and determine whether or not they could give you an adequate number of cars to meet your need if they got control of the TP&W, did the bank so indicate to you?

A. Well, no, they did not.

Q. Did they suggest that you go to the Pennsylvania and the Santa Fe and ask them if they could give you written assurance that they would furnish you cars adequate to meet your needs?

A. Everybody took it for granted that we'd get more cars than we have been getting in the past with the two bigger railroads.

Q. I see. And the bank told you that when the M&StL intervened in this proceeding they could not make you a loan?

[fol. 561] A. That is right, until they were sure we could get a supply of cars.

Q. Did the bank mention the M&StL specifically?

A. Sure, they did. We in Bushnell know what your service has been up on your line running northwest out of here.

Q. You did not go to the M&StL, I believe you previously testified—

A. That is right.

Q. (Continuing) —to ascertain what their car supply was?

A. That is right.

Q. Had you ever encountered difficulty before in getting credit from the bank?

A. Have I?

Q. Yes, sir.

A. Not very often.

Q. Have you at all?

A. No.

Q. You have never made a request for a loan that has been denied?

A. Up until this time, no.

Q. Do you know whether or not Mr. Perine made any inquiry with respect to the car shortage situation on the Pennsylvania and the Santa Fe?

A. I wouldn't know about that.

Q. Is this Mr. Perine available in town?

A. Yes, sir.

[fol. 562] Q. In Bushnell or in Peoria?

A. No, he is in Bushnell.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Morris, way back when you were on direct examination I believe one of the things you said you were interested in was the retention of the present management of the TP&W.

A. That is right.

[fol. 563] Q. They have given you good service and you like their policies?

A. That's right.

Q. And any scheme that would preserve that management and keep those policies intact, that's what you want, isn't it?

A. Well, to the extent of ownership, yes, sir. You can't have five or six different owners and keep things intact as far as I am concerned.

Q. Well, you know now that they are not owned by any particular railroad, is that the fact?

A. That's right.

Q. And you like the management that it now has, and Mr. Coulter, I think you like the policies that he has in force, is that right?

A. That is right.

Q. What you want to see is Mr. Coulter left in charge of that railroad with his present officers and his policies? Isn't that what you want?

A. I want it but I want to know who is going to own the railroad, too.

Q. What difference does it make to you who owns it so long as you get that service? You are not a stockholder in the T. P. & W., are you?

A. No, sir.

Q. So what you are interested in is the service, isn't that right?

[fol. 564] A. Well, you know yourself—

Q. (Interrupting) Just answer my question, isn't it?

A. It is the service, yes, sir.

Q. And you think that can best be provided by the present officers of the corporation, isn't that right?

A. That's right.

Q. And so long as you continue to have that service available to you, that's what you want, isn't it?

A. I don't want to trade—

Q. (Interrupting) Can you just answer that yes or no, you want the continuation of the service, isn't that right?

Exam. Albus: He has already said that.

Mr. Cassell: That is all.

Exam. Albus: What difference does it make who owns the stock of the railroad as long as you get good service?

The Witness: Well, I will tell you, there are a lot of times we want to talk to someone in respect to grain cars. You know how it is if five or six people own something and they pass the buck here and there and all around. That is just the way I feel it would be if five or six people owned the T. P. & W. Railroad.

Exam. Albus: Mr. Broker, please.

Cross examination.

By Mr. Broker:

Q. You think, then, a corporation is more efficient with fewer stockholders?

[fol. 565] A. Beg pardon?

Mr. Broker: Would you read the question, please.

Exam. Albus: Do you think the corporation is more efficient with fewer stockholders?

A. Sure.

By Mr. Broker:

Q. Do you think that is true of corporations generally?

A. Well, there are some corporations that have a big number of stockholders, but if you have to pinpoint anything down to—if you have any questions or anything that you want to ask, you would want to go direct to someone that knows something besides having to run to five or six to get one answer.

Q. Would you expect to run to the Santa Fe about cars for your elevator?

A. No. But if I called up the T. P. & W. and needed cars and needed them bad and they'd say, well, I will have to see that the Nickel Plate or the M. & St. L. or the Pennsylvania, you know they might say, well, the Santa Fe didn't have any. Well, the Pennsylvania will ship them to me, or the Nickel Plate will ship some, the buck will be passed all the way through.

Q. Do you understand that the T. P. & W. will be so operated that its management will have to go to the Santa Fe and the Pennsylvania for things like this?

A. No, I didn't know that.

Q. I am asking you whether you know that.

[fol. 566] A. I did not.

Q. Wasn't that the tenor of your statement before, that the T. P. & W. would have to go to its owners to find out whether it could have an adequate car supply?

A. If the Pennsylvania had cars available they sure as the world would send them to the T. P. & W., wouldn't they? I am asking you.

A. I would say they would, yes.

Q. If they had them available?

A. That's right.

Q. Wouldn't more owners have more cars available?

A. Well, I imagine that the more owners they will take care of their own needs first.

Q. Don't you think the Pennsylvania will take care of its own needs first?

A. I imagine.

Q. So that if there are any cars left over, it is only after they fulfill their own needs?

A. If they own 50 per cent of the T. P. & W. Railroad, I imagine they'd have enough interest to give us some cars, too.

Q. Suppose they owned 100 per cent in another railroad, do you think they'd be more interested in furnishing that railroad with cars?

A. I don't know about that.

Q. Don't you think they would be more interested in [fol. 567] giving, let's say, the Wabash cars where they have a hundred per cent interest, than in a railroad where they've only got a fifty per cent ownership?

A. I am not in the railroad business, I don't know.

Q. So you don't know, then, what controls or motivates a railroad to furnish cars to another railroad, do you?

A. It is mostly your connections, you figure on getting them back.

Q. In other words, you furnish a car if you think you can get a haul out of it, is that right?

A. To a certain extent I'd think they would, yes.

Q. You think that that impels a railroad more than the ownership that it has in a railroad, the fact that the supplying line may get a haul out of it?

A. I'd think it would help, yes.

Q. Well, which do you think is more important, owning a railroad or getting a haul from the traffic?

A. Owning a car, I'd say.

Q. Why?

A. Well, you know you are going to get part of that haul if you own it.

Q. Why is that, because they can control the flow of traffic on the line that they are getting control of?

A. Situated the way I am in Goodall with one railroad, I have to depend on that one railroad for cars.

[fol. 568] Q. I understand.

A. And regardless where the cars go, whoever gets the railroad will get that haul.

Q. In other words, the owner of the railroad, of the T. I. & W., will get the haul?

A. That's right, the first haul. We ship a lot of studd over your railroad.

Q. I understand. Is the service good on the Nickel Plate?

A. The delivering carrier, I think so.

Q. But by and large the owning railroad would get first call on the traffic, particularly if it furnished the cars, is that right?

A. We are going to have to have—somebody is going to have to furnish the cars before we load them.

Q. Do you know whether—do you know anything about A. A. R. recommendations as to car ownership?

A. No, sir.

Mr. Broker: No other questions.

Exam. Albus: Is there any other cross-examination?

Mr. Wheeler: Yes.

Exam. Albus: Mr. Wheeler.

Further cross examination.

By Mr. Wheeler:

Q. Mr. Morris, you say you like the policies of Mr. Coulter. Do you like his policies with regard to the purchase or failure to purchase grain cars?

[fol. 569] A. I don't know too much about that part about it. They have always been able to have quite a few cars. Where they got them I don't know.

Q. They have been able to have quite a few cars?

A. That's right.

Q. They have taken care of you pretty well, is that right?

A. About like everybody else.

Q. Well, I want to know whether you feel you have been taken—well taken care of by the T. P. & W. with respect to purchase of grain cars?

A. We have had a car shortage but we aim to get along some way.

Q. So you don't think you are badly off now, is that correct?

A. Under the present conditions?

Q. Yes.

A. A lot of times we are, but normally we can get along some way. We have had to shut the doors.

Q. You are content with respect to the policy pursued now by the T. P. & W. with respect to their ownership of grain cars, is that correct?

Mr. Wheeler: Read the question to him, please.

(Question read.)

A. No, sir.

By Mr. Wheeler:

Q. You are not?

A. No, we need more cars than what they've got, sure.

Q. Have you acquired that land that you spoke of for [fol. 570] the construction of an elevator from the T. P. & W.?

A. No, sir.

Q. Have they agreed to sell it to you?

A. Well, I never followed it up when I found out I couldn't build.

Q. Has it been offered to you?

A. Yes, sir.

Q. Has the price been fixed?

A. The approximate price, yes, sir.

Q. Now, Mr. Morris, if the Santa Fe owned 100 per cent of the T. P. & W. instead of 50 per cent, as proposed in their application, do you think they would be more likely to furnish you cars, be more likely to furnish you cars?

A. Than the way we are now?

Q. No, sir. The Santa Fe in their application, you understand, proposes to acquire 50 per cent stock ownership in the T. P. & W.

A. That's right.

Q. Do you think if they were to acquire 100 per cent of the stock in the T. P. & W., they would be more apt to give you cars as you need them from off their lines?

A. I do.

Mr. Wheeler: I have no further questions.

Mr. Broker: Mr. Examiner, that is somewhat along the [fol. 571] lines of some questions that I asked, I wonder if I could just follow up on that 100 per cent ownership?

Exam. Albus: If you want to.

[fol. 572] Further cross examination.

By Mr. Broker:

Q. Why do you think the Santa Fe would be more likely to give the TP&W cars if it had a hundred per cent ownership than if it had a fifty per cent ownership?

A. She'd have everything invested, they'd own the whole thing and they'd want to keep their investment up, I'd think.

Q. So if you have a hundred per cent you are more apt to work more closely with the railroad than if you have only a 50 per cent ownership, is that right?

A. I'd think so.

Q. Don't you think the Pennsylvania, then, would work more closely with the Wabash than with the TP&W?

A. I don't know their connections.

Q. Suppose I told you that the ownership of the Pennsylvania and the Wabash is practically 100 per cent today, and its proposed ownership in the TP&W is 50 per cent, as you know, what would your answer be then?

A. It would be to everybody's advantage, I'd think, to give all the grain cars they possibly could to everyone.

Q. Rather than the line to which they have a hundred per cent interest?

A. A grain car is a grain car to me whoever owns it.

Q. Just one more question. Do you think that the TP&W. should be operated in a neutral manner?

A. What do you mean neutral manner?

[fol. 573] Q. Neutral among all connections, all connecting railroads.

A. You are going right back to the same question with five or six owning it again.

Q. You don't think it should be neutral?

A. No, I don't.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions?

Mr. Wheeler: May I have just one, I just want to be clear on one thing.

Further cross examination.

By Mr. Wheeler:

Q. Mr. Morris, I am not sure you stated but I believe you did that Mr. Perine did not name the bank in Peoria to which you referred in your testimony on Friday?

A. That is right. Here is what he told me, he said he would not O.K. the loan to go any place else, that they would have to be the financial man if I got support some place to build these buildings they would still have to loan me the money to buy these warehouse receipts when I needed them and I would definitely have to have money to do that with besides the construction.

Exam. Albus: Are there any further questions?

Mr. Bagge: Yes.

Exam. Albus: Redirect, please.

Redirect examination.

By Mr. Bagge:

Q. Mr. Morris, when you related the fact that it was [fol. 574] your opinion that certain cars might be more available to you from the Santa Fe because of the seasons,

the seasonal movement of the harvest, to what commodities did you have reference?

A. Well, soy beans is one grain that's raised on the farm that the average farmer doesn't have any storage for, and he has to move that. When the weather is right he wants to market, and in place of the olden days, threshing machine days that it took a month to bring a crop in, they like to bring their crop in immediately, you either have to have a world of storage or be able to get a sufficient amount of boxcars.

Q. With regard to soy beans, is it a fact, sir, or is it not a fact that the soy bean harvest in the area in which you operate comes subsequent to the harvest in a territory served by the Santa Fe Railroad?

A. That's right.

Q. During your fall season your southwest harvest is all over with?

A. Yes.

Q. Now, sir, were there any other commodities that you had in mind?

A. We move a little oats and wheat but soy beans is normally when we run into trouble.

Q. You made a statement with respect to the car ownership of the M&StL. Would you state for the record pre- [fol. 575] cisely where you obtained the basis for your information concerning this, Mr. Morris?

Mr. Wheeler: Mr. Examiner, I object. The witness stated he didn't have any information.

Exam. Albus: Do you know anything about the M&StL. car supply, Mr. Morris?

The Witness: Only for their service they give the elevators.

Mr. Wheeler: Mr. Examiner, I object to that. This witness has testified that he doesn't have any elevators on the M&StL and that all he can testify to is pure hearsay.

Exam. Albus: What are you going to say, Mr. Bagge?

Mr. Bagge: I simply want to ask him what the basis for his information was. He has just made a statement; I would like to be permitted to do so.

Exam. Albus: All right, the objection is overruled.

You may answer the question.

A. Like I told you earlier this morning we are in direct competition to their elevators. During your bean harvest they normally are plugged full of beans.

Mr. Wheeler: I object to that, Mr. Examiner, and move the answer be stricken on the ground this man doesn't know.

Exam. Albus: The objection is overruled.

By Mr. Bagge:

Q. Mr. Morris, do you come into contact with this competitor of yours at London Mills, do you come in contact [fol. 576] with him from time to time?

A. Sure, I do.

Q. Are you familiar with his operations on the M&StL?

A. Yes, sir.

Q. And do you know of your own knowledge what his experience with respect to car supply on the M&StL has been?

A. Sure, he has had to truck a lot of grain out.

Q. How much grain?

Mr. Wheeler: Mr. Examiner, I object. This is information that this man cannot know of his own personal knowledge. It is perfectly evident it is pure hearsay.

Exam. Albus: I think we have gone far enough into that phase of it.

Mr. Bagge: All right, sir.

Exam. Albus: Any further questions?

Mr. Bagge: Yes, Mr. Examiner.

By Mr. Bagge:

Q: Mr. Morris, were you ever contemplating an expansion of your operations on any other railroad?

Mr. Wheeler: Mr. Examiner, I object to this as going beyond the scope of the direct examination and covering nothing that was raised on cross.

Mr. Bagge: The question to which this relates on cross-examination is his opinion concerning whether or not it is

necessary for a railroad to have available a car supply before an individual would locate a grain elevator.

[fol. 577] Exam. Albus: You may answer.

A. I'd want to know for sure who was going to furnish me grain cars before I ever built any elevator.

Exam. Albus: Restate the question, please. Ask the question again.

By Mr. Bagge:

Q. Mr. Morris, did you at any time in the past ever contemplate the expansion of your facilities to a point on another railroad?

A. Yes, sir.

Q. And what railroad was that, Mr. Morris?

A. M&StL.

Q. And when did you contemplate such a movement?

A. '51.

Q. And did you make any inquiries from your associates who are located on the M&StL to determine the availability of car supply on the M&StL at that time?

A. Yes, sir.

Mr. Wheeler: Mr. Examiner, I object. This is hearsay.

Exam. Albus: Objection is overruled.

The answer is yes.

By Mr. Bagge:

Q. And what was the conclusion which you drew as a result of your investigation of the facts at that time?

A. They didn't have any more cars than anybody else so I didn't want to invest any money and build on the M&StL.

Q. What was the particular point at which you were [fol. 578] contemplating this expansion?

A. A little town by the name of Hermon, Illinois.

Mr. Wheeler: What is the name?

The Witness: Hurron. It is an unincorporated spot.

Mr. Wheeler: Herman?

The Witness: H-u-r-r-o-n.

By Mr. Bagge:

Q. Now, that is a point on the M&StL, is it?
A. That is right.

Mr. Wheeler: Mr. Examiner, I object to these leading questions.
Exam. Albus: I will sustain that objection.
Mr. Bagge: I withdraw that question.

By Mr. Bagge:

Q. Now, Mr. Morris, does Mr. Perine—is that how you pronounce his name?
A. Yes, sir.
Q. Does Mr. Perine of your local bank of Bushnell come into contact with farmers and with shippers located on the M&StL Railroad?

Mr. Wheeler: Mr. Examiner, I object, I certainly object to that question.
Exam. Albus: I will sustain the objection.

By Mr. Bagge:

Q. Well, do you know as a matter of fact whether or not competitors of yours located on the M&StL do their banking at your bank?

Mr. Wheeler: Mr. Examiner, I object to that. This is [fol. 579] hearsay on hearsay that we are getting into.
Exam. Albus: No, he may know somebody who is located on the M&StL that comes into the Bushnell bank.
Mr. Wheeler: Mr. Examiner, how can this witness know, he is not an officer of the bank, how does he know they bank there?
Exam. Albus: He can see them go into the front door.
Mr. Wheeler: Certainly, he can see them go in the front door but how does he know they bank there?
Exam. Albus: You are not going to get me into this argument.
What is your answer to that?

A. There is no elevator directly that banks at Bushnell but there is a number around the surrounding territory and I know that to be a fact.

Mr. Wheeler: I object to the answer on the ground that is unresponsive to the question.

Exam. Albus: The objection is overruled.

What is the next question?

By Mr. Bagge:

Q. Mr. Morris, do farmers who would otherwise deal with competitors of yours located on the M&StL ever come to you—

A. Sure.

Q. (Continuing) —to dispose of their grain and wheat?

Mr. Wheeler: Mr. Examiner, I object to this.

[fol. 580] Exam. Albus: Why? That is a fair question, Mr. Wheeler.

Mr. Wheeler: How does he know?

Exam. Albus: He talks to them.

Mr. Wheeler: Well, all he can know is what they tell him.

Exam. Albus: That's right.

Mr. Wheeler: That is hearsay. That is why I object.

The Witness: Is it hearsay when you know their elevators is plugged, and they have grain on the outside waiting to be unloaded, is that hearsay?

Mr. Wheeler: Yes, sir.

Exam. Albus: I had better not get into that argument, this is between those two.

Do farmers come to you when elevators are plugged on the M&StL?

The Witness: That's right.

Exam. Albus: That was your question?

Mr. Bagge: Yes, sir.

Exam. Albus: All right, may we have the next question, please.

Mr. Wheeler: Did I get my objection in on that?

Exam. Albus: We will give you credit for an objection on that. Of course you understand it was overruled.

Mr. Bagge: Thank you, Mr. Morris. Those are all the questions I have.

Exam. Albus: Mr. Wheeler.

[fol. 581] Recross examination.

By Mr. Wheeler:

Q. Mr. Morris, you said the Santa Fe movement of soy beans was in a territory south of Illinois, is that correct?

A. I didn't understand. The movement of beans on the Santa Fe?

Q. Yes.

A. There are very few beans raised in the southwest.

Q. Very few beans raised in the southwest?

A. That's right.

Q. Where are those beans raised, in Illinois?

A. Illinois and Iowa raises the greatest part of them, yes, sir.

Q. Does the Santa Fe operate in Illinois?

A. Yes, sir.

Q. Did you seek a bank loan in order to build this elevator from any other bank other than the Farmers and Merchants State Bank?

A. I asked them about coming to Peoria and they said they wouldn't O.K. the loan, they told me they wouldn't recommend the loan, and they told me there is no use to come over there. They always O.K. all the loans before I can get any money.

Q. So on the basis that they wouldn't O.K. a loan—

A. A stranger can't go very many places and borrow money unless he is recommended by his local bank.

Q. Do you know whether or not the TP&W is a depository in the Farmers and Merchants State Bank?

[fol. 582] A. I am not in the banking business.

Exam. Albus: Just answer the question. You don't know that, do you?

A. No.

Exam. Albus: All right, that is the answer.

By Mr. Wheeler:

Q. Did you inquire of that fact from Mr. Perine?

A. Why should I?

Q. Just answer my question, please.

A. No.

Q. Did you inquire whether the Santa Fe was a depositor in the Farmers and Merchants State Bank?

A. No. Why?

Q. What? I just asked you whether you did.

Exam. Albus: The answer is no.

By Mr. Wheeler:

Q. Did you discuss with Mr. Coulter or any officer or director of the TP&W the refusal of the Farmers and Merchants State Bank to loan you the money?

A. No, sir.

Q. Did you discuss that fact with an officer or director or employee of any other railroad?

A. No, sir.

Q. Did you discuss it with any officer or employee of the Santa Fe?

A. No, sir.

[fol. 583] Q. Now, the sole people with whom you talked on the M&StL in your whole experience with respect to the M&StL I believe you testified is in connection with the Farmers Elevators at London Mills in Burwick, Illinois, is that correct?

A. I have talked to a number of fellows at grain conventions on the M&StL and they all have the same answer, no cars.

Q. Can you give me specifically the names of any others, other than these two?

A. Tim Ricketts at the elevator at Keithsburg is one man.

Q. Wait a minute, let's get his name.

A. Tim.

Q. Ricketts, R-i-c-k-e-t-t-s?

A. That's right.

Q. And where is he?

A. Keithsburg, Illinois.

Q. Keithsburg?

A. Keithsburg.

Q. Now, whom did you talk to at the London Mills, the Farmers Elevators at London Mills?

A. Barr is the manager.

Q. Barr?

A. That is right.

Q. And at Burwick?

A. I have talked to two or three managers that they have had up there. A fellow by the name of Roy Rogers was there in '54.

[fol. 584] Q. Who is the latest one?

A. I don't know what his name is. He is just a young fellow.

Q. The present one?

A. Yes. I don't know what his name is.

[fol. 585] Q. Have farmers ever found your elevator plugged?

A. Sure, they did.

Q. And where did they take their grain?

A. Took it home.

Q. Did they ever take it to the farmers' elevators at London Mills or Burwick?

A. Sure, because they are always full before we are.

Q. You say they never have?

A. That is right.

Q. Did you inquire of either Mr. Barr or the manager at Burwick whether or not they had ever had farmers who had been turned away from your doors come to theirs?

A. Well, they never fill up, Mr. Wheeler, until after we are full, because we have a lot more storage than they have.

Q. I just asked you the question. Did you ever inquire of Mr. Barr or this man at Burwick, Illinois, whether or not farmers had left your doors and come to them?

A. No, sir, I have not.

Q. Now, these are small elevators, are they, at London Mills and Burwick?

A. That is right.

Q. Smaller than yours?

A. That is right.

Q. And the smaller the elevator, the sooner it gets plugged?

A. If you only hold ten thousand bushel, when you ge [fol. 586] ten thousand bushel in you are full.

Q. If you had a larger elevator, Mr. Morris, your car supply requirements would be spread out over a longer period of time, would they not?

A. No.

Q. Why not?

A. Because I couldn't get the money to fill it up full of grain to pay for it.

Q. Assuming you had adequate capital, that would be true, would it not?

A. Well, the average individual elevator don't have that, the average operator don't have that much money.

Q. You mean he doesn't have enough money to carry the grain in his elevator?

A. If you just keep piling it up and don't ship any.

Q. Isn't your elevator ever full?

A. Is it? Yes, sir, it has been full, but if I built more storage I'd have to have more money to carry that inventory, wouldn't I?

Q. Then, Mr. Morris, is your storage presently adequate?

A. No, it isn't, but as far as my pocketbook, it is.

Q. So you don't have at the present time working capital to handle more grain, a greater grain storage capacity than you have at the present time, is that correct?

A. That's right.

[fol. 587] Q. And despite that fact, you sought to build an additional elevator, is that correct?

A. If I could get the money to build it, I would.

Mr. Wheeler: I have no further questions.

Exam. Albus: Are there any further questions?

Mr. Bagge: No, sir.

Exam. Albus: You are excused, Mr. Morris. Thank you, sir.

(Witness excused.)

Mr. Lucas: May I state that we have had a message from Watseka and there were five witnesses coming together in a car and they cannot make it, the roads are too icy. I am simply supplementing that and perhaps the M&StL can get ready to go forward in case our list breaks down.

Exam. Albus: All right, sir. Others are available?

Mr. Lucas: We have some others available. Mr. Hunter is out now trying to bring in a couple of others who were scheduled for tomorrow.

Mr. Bagge: We are trying to do the same thing with respect to the west end. I would like to call Mr. Uhler to the stand, please.

JAMES C. UHLER was sworn and testified as follows:

Direct examination.

By Mr. Bagge:

Q. What is your name, sir?

A. James C. Uhler.

[fol. 588] Q. Where do you reside?

A. Los Angeles, California.

Q. What is your business or occupation, sir?

A. I am traffic manager of Sunkist Growers, Incorporated.

Q. Would you describe what Sunkist Growers, Incorporated, is.

A. It is a cooperative marketing organization with over twelve thousand grower members, growers of California and Arizona citrus fruits.

Q. Would you state briefly what your traffic experience has been and what associations or traffic organizations you are a member of.

A. Well, I came with Sunkist in 1935. Prior to that I was with the Pacific Fruit Express Company in Los Angeles. I was assistant traffic manager in 1953 and traffic manager January 1 of this year.

Q. Do you belong to any traffic organizations of national or local character?

A. You mean committees?

Q. Committees.

A. The Refrigerator Car Committee and the National Fruit & Vegetable Claims Committee and the Los Angeles Chamber of Commerce Committee, which is local, of course.

Q. What are those two committees you mentioned, the perishable committees, are they committees of some national organization?

A. Yes, the United Fresh Fruit & Vegetable Association [fol. 589] is the Refrigerator Car Committee and the Na-

tional Claims Committee is a national organization not affiliated with anybody else.

Q. I see. In connection with the operations of Sunkist, would you describe briefly what the truck markets and the rail markets of Sunkist Growers are.

A. The shipments we make east of the Mississippi go practically 100 per cent rail. The area west of the Mississippi, of course, is very competitive with trucks, so we have brought rail and truck shipments to that area.

Q. Are you dependent to a large extent upon rail service or for the distribution of produce?

A. Yes, we are, to the East and eastern Canada, long haul traffic.

Q. Would you describe the extent to which Sunkist uses the TP&W as an intermediate carrier.

A. Well, last year over thirteen hundred of our shipments were routed over the TP&W.

Q. Could you give an approximation of the number of cars which Sunkist routed over the TP&W in the last few years.

A. Well, starting in 1949 and '50 it was approximately a thousand. Each season begins November 1 and ends October 31 the following year. 1950-'51 it was over thirteen hundred. The next season had dropped below a thousand. '52-'53 was above twelve hundred. And the last two seasons have been above thirteen hundred.

[fol. 590] Q. For how long a period of time has Sunkist been making such use of the TP&W?

A. Well, for quite a period. We will say at least 10 years. It has been longer than that, but I don't know offhand.

Q. Then, as shippers go on the TP&W, Sunkist probably constitutes, does it, one of the largest shippers?

Mr. Wheeler: Mr. Examiner, I object.

Exam. Albus: I sustain the objection.

Mr. Bagge: I withdraw the question.

By Mr. Bagge:

Q. What factors motivate Sunkist to route this perishable traffic via the TP&W?

A. We like to diffuse—a great many of our shipments start out without a sale—they are "rolling", as we call them—and we like to use as many routes as possible, so we will have our cars diffused because daily orders are coming in from various markets on the basis of being available, and the more we fan our cars out the more likely we are to have a car in the vicinity of the possible sale, so we have quite an interest in having a lot of routes available.

Q. In using those routes with this purpose in mind, do you use principally service routes in that connection?

A. Entirely, if they are available.

Q. Is the TP&W in its use by you as a bridge carrier considered a service route?

A. It is.

[fol. 591] Q. In connection with that, what specific routings do you use in connection with the TP&W?

A. Well, first I'd have to explain we put out thirteen, our traffic department puts out 13, different routing circulars to packing houses located on various lines, they are tailormade to that particular line, like, for instance, the Union Pacific has a routing sheet, the SP has one for Arizona, southern California, and so does the Santa Fe, so each packing house gets a routing sheet. It is a circular consisting of about 14 pages, and if any order received doesn't specify to some routing to the contrary, they go to this particular routing sheet and use it.

Q. I see.

A. With that in mind, I have a notation here to answer your question of how we use it; Arizona, central and southern California we use Santa Fe, TP&W and Nickel Plate, to Buffalo, Cleveland, Kokomo, Lafayette, Indiana, Lorraine, Ohio, and we use Santa Fe, TP&W, Nickel Plate, Lehigh Valley and New Haven, Hartford, East Hartford, Connecticut, and New Britain, Connecticut, from Arizona we use Santa Fe, Nickel Plate, DPOW, Scranton—these are just indications.

Q. Yes?

A. In our Arizona, southern California, in other words, in three routing sheets we use Santa Fe, TP&W, Pennsylvania to Logansport and Pittsburgh—Pittsburgh, of course, [fol. 592] is an option. And from the same points we use

the Santa Fe, TP&W, NYC to Champaign and Bellefontaine, locally.

Then, we also give each district manager, of which we have, I believe, fifty, fifty-one—it is a company employee located at various points, for instance, Peoria and Chicago—give them standing route instructions to markets beyond their particular point, so that we can quote and give a disposition at the same time.

Q. Yes.

A. And, in that connection, several of these routes are also used, for instance, right from Peoria here to Denver, Pennsylvania, or Lebanon, Pennsylvania, we use TP&W-Penn-Reading system. I think that gives you a general idea.

Q. Is it a fact, then, sir, that you use the TP&W as a connecting carrier with several other lines, is that correct, sir?

A. Oh, yes.

Q. Approximately how many cars have moved over these routings which you have just mentioned during the past few years?

A. I don't have a breakdown, TP&W, Nickel Plate, NYC, Pennsylvania, and the figures I gave are the total.

Q. The total figures?

A. So I have nothing more to add to that.

Q. Now, does the foregoing facts which you have stated indicate that the TP&W is an important carrier to Sunkist?

A. It is.

[fol. 593] Q. Have you read the application of the Santa Fe and Pennsylvania railroad as contained in Finance Docket 18991?

A. Yes, I have.

Q. Are you familiar with it?

A. Reasonably.

Q. What is your position and the position of your company with reference to the application of the applicants in this proceeding?

A. We favor it.

Q. Now, what specific reasons do you have for supporting the application of the Santa Fe and Pennsylvania railroads to acquire the T. P. & W.?

A. We have over 50 packinghouses located directly on the Santa Fe and have come in very close contact with them, of course, as the originating carrier over the years, and their performance has been such as to give us complete confidence in them to perform the things they hold out in this application to perform. But the strongest point in our opinion is the fact that just pure self-interest would indicate that they would perform or carry out the performance because the T. P. & W. supplements the Santa Fe and, of course, the Pennsylvania, and in our opinion self-interest is a pretty strong motive and a pretty good assurance of performance.

Q. Now, what specific representations did you have in mind when you stated that the self-interest would assure [fol. 594] that they would be promoted, or would be fulfilled?

A. Well, it is stated on page 19 of the application that the applicants propose to continue their present independent management in the operation of the T. P. & W., and the consummation of the proposed transaction will bring about no change in the T. P. & W. as a route open to all carriers on an equal basis, and we predicated the whole thing on that being true, and existing interchange points are to be kept open and maintained, existing routes and other traffic arrangements would continue to be in effect. I wouldn't be here unless I thought that would be true.

Q. In other words, are you primarily concerned with that—

Mr. Wheeler: I object.

By Mr. Bagge:

Q. Are you concerned with that phase of this proposal?

A. We are concerned with the T. P. & W. in general as a gateway route, and we want all the present connections kept open.

Q. I see. You have said that it is in the self-interest of the applicants to maintain them open. Why is it in the self-interest of the Santa Fe and the Pennsylvania railroads through their ownership of the T. P. & W. to maintain these present connections with the other carriers?

Mr. Wheeler: Mr. Examiner, I object. I don't think this witness ought to be testifying as to the motivation of the Santa Fe or the Pennsylvania. He can talk about his [fol. 595] own motives, perhaps, but not about those of the applicants.

Mr. Bagge: Mr. Examiner, I have attempted to qualify the witness as a traffic expert, and I think that he has the background to state why in his opinion the economics of the relationship are such that as a business man, as a user of the T. P. & W. as a bridge carrier, having this interest in maintaining these gateways, he feels as a shipper that he would be adequately protected by Santa Fe-P.R.R. ownership.

Mr. Wheeler: Mr. Examiner—

Exam. Albus: Mr. Wheeler?

Mr. Wheeler: I have no question as to this man's qualifications as a representative of a shipper. I would have no objection to testimony elicited from him as to what motivates Sunkist oranges, but he has not been qualified as an operating railroad executive, either in their freight department or the traffic department or in any other department of the railroad, and I therefore submit that he is not qualified and cannot know what the specific self-interest of a railroad as distinct from a shipper.

Mr. Bagge: Mr. Examiner, having Mr. Wheeler's point in mind I would be perfectly willing to have this witness qualified based solely on his experience as the traffic manager of one of the largest shippers in the country.

Mr. Wheeler: Mr. Examiner, a man can't testify outside of his competence.

[fol. 596] Mr. Bagge: The basis on which I submit—

Exam. Albus: I have heard enough.

Mr. Uhler, do you have the question in mind?

The Witness: The question?

Exam. Albus: Yes, the question all the firing is about, all the shooting.

The Witness: I think the original question, if I recall it now, was what made me believe that it would be to the self-interest of the Santa Fe to keep these routes open, and I think that is material and I think we are interested in that.

Exam. Albus: Do you have an opinion on that?

The Witness: Yes, I do.

Exam. Albus: All right, you may express it.

The Witness: One thing that would probably keep these routes open through self-interest is the fact, for example, if the S. P.-Rock Island, Keokuk, T. P. & W. or Nickel Plate route were not maintained, the Rock Island, the S. P.-Rock Island would go right to St. Louis, they could also go straight to Peoria or to Chicago, and the same thing is true on the Burlington, you can go Union Pacific, C. B. & Q., east St. Louis, Nickel Plate, you can do the same thing via Peoria or Chicago. So if any of these routes that are now open by the T. P. & W. are closed, there would be too many alternatives open to the shippers and the carriers, primarily the shippers I am talking about.

[fol. 597] Exam. Albus: Are there any further questions?

Mr. Bagge: Yes.

By Mr. Bagge:

Q. In connection with the use of the alternative routes which you have described would the T. P. & W. or the Santa Fe or Pennsylvania railroads derive any revenue through such an alternative route?

A. Not if they aren't included in a route. Excuse me, I will answer your question a little bit better than that. I have given the routes, and on the routes I have given, of course, they would not participate at all, have no revenue.

Q. Is that true with the Rock Island traffic which is presently interchanged with the T. P. & W. at Keokuk?

A. That is true, yes.

Q. Is it true with respect to the Burlington traffic that is present?

Mr. Wheeler: I object. That is a leading question.

Exam. Albus: I will sustain the objection.

By Mr. Bagge:

Q. Is that fact true with respect to all of the carriers with whom you connect via the T. P. & W.?

Mr. Broker: He doesn't connect via the T. P. & W. He ships over it.

Exam. Albus: Yes, there is no connection there.

By Mr. Bagge:

Q. Well, is this point true with regard to the several carriers which you have mentioned whom you specify in connection with the T. P. & W.?

[fol. 598] Mr. Wheeler: I object. This is leading again.

Exam. Albus: It is obviously true, yes, it is.

By Mr. Bagge:

Q. All right, sir, in view of the foregoing, in your opinion do you believe that it is necessary for each of the connecting lines of the T. P. & W. to participate in ownership in order to protect their present connection?

Mr. Wheeler: May we have the question read, please.

(The question was read as follows:

"Q. In view of the foregoing, in your opinion do you believe that it is necessary for each of the connecting lines of the T. P. & W. to participate in ownership in order to protect their present connection?")

Mr. Wheeler: Mr. Examiner, it seems to me this is argumentative, arguing with the witness on direct as well as being highly leading.

Exam. Albus: The witness may answer.

A. Obviously if the Santa Fe keeps the promise made in this application, ownership would not be necessary, because they offer to keep all routes open and they don't propose ownership of the other carriers.

By Mr. Bagge:

Q. Do any other factors lead you to that conclusion?

A. To the conclusion that the routes would be kept open?

Q. Yes, that it isn't necessary for them to participate in ownership.

[fol. 599] A. Oh, definitely because they have these alternatives to them and open to the shippers.

Q. Now, if the Keokuk routing which you have mentioned were not maintained, would you substitute Santa Fe-T. P. & W. on traffic presently moving via Keokuk?

A. No, sir. We make a practice of giving the originating carrier a long haul. In this case, of course, the Rock Island is not an originating carrier but they are a preferred over the originating carrier and we wouldn't short haul them.

Q. Is that a general policy of Sunkist?

A. That is the general policy.

Q. Are you familiar with whether or not that is the policy of any other overhead shipper?

A. No, sir, I am not.

Q. All right, sir. What is your attitude regarding the possible ownership of the T. P. & W. Railroad by the M. & St. L.?

A. Well, I am not here really in opposition to any particular railroad. We use all the railroads and we need all the railroads, and we want to keep as many routes open as we can, but obviously the T. P. & W. couldn't get into the ownership and still follow this petition. I think this petition sets forth probably the strongest, in our opinion, the strongest combination of railroads in whom movement-ship could be vested.

Q. And is it your opinion that that would be best serving your interest, that the granting of this petition would serve [fol. 600] your interest?

A. I think it would involve two carriers who would have a very, very definite interest in developing this route, and that, of course, would serve our best interests.

Q. How would you compare your experience with service via the M. & St. L. as compared with that of the T. P. & W.?

A. Well, in October 1953 the M. & St. L. withdrew their guarantee of their schedule on cars routed Nemo-M. & St. L.-Nickel Plate to all points, Buffalo and west, and as a result, of course, we had to discontinue using them to route Cleveland, which is an option and other points, they'd continue to maintain it east of Buffalo on account of the way connections were made, so at the present time the T. P. &

W. is more of a service route with a wider guarantee than the M. & St. L.

Q. Does this experience and the experience of Sunkist with regard to the M. & St. L. lead you to any conclusion regarding the ownership of the T. P. & W. by the M. & St. L.?

A. Well, possibly, if the M. & St. L. took over the ownership, they might reestablish their guarantee and do a very good job indefinitely, but it would be a lot of conjecture. Right at the moment we have an operating route that is operating and working and I think that the proposal would even further trengthen it without any conjunction, so that is why I would favor this proposal.

Mr. Bagge: Thank you.

That is all I have of this witness.

[fol. 601] Exam. Albus: We will take a 10-minute recess.

(Short recess.)

[fol. 602] Exam. Albus: The hearing will please come to order.

We will continue the cross-examination of Mr. Uhler.

Mr. Wheeler, please.

Cross examination.

By Mr. Wheeler:

Q. Mr. Uhler, do you understand that the M&StL proposes to close any of the existing routes with the TP&W if it obtains control of that property?

A. No, I don't.

Mr. Cassell: I am sorry, I couldn't hear either the question or the answer, Mr. Examiner.

(Question and answer read.)

Mr. Cassell: Thank you.

Exam. Albus: You are welcome, sir.

By Mr. Wheeler:

Q. Do you believe that the Santa Fe-Pennsylvania would not keep their word with respect to keeping existing routes and schedules open if it were not in their self-interest?

A. Well, our past dealings with the Santa Fe would indicate to us that they could be pretty well trusted. But I think the strongest assurance of that is their self-interest.

Q. Now, you spoke of service over the M&StL. Eliminating for the moment from consideration the run between Nemo and Peoria on the M&StL, what service, what kind of service, have you obtained on the M&StL of your shipments over its other lines?

A. Well, we use it quite often up to Minneapolis and we [fol. 603] get very good service.

Q. Now, Mr. Uhler, wasn't your service prior to 1951 on the Nemo-Peoria run of the M&StL very good?

A. It was very satisfactory.

Q. And it was subsequent to 1951 that the service became not as good, as I understand it, as that afforded by the TP&W?

A. Actually it was October '53.

Q. October '53?

A. Yes.

Q. Now, that was the date that they withdrew their guarantee?

A. In connection with the Nickel Plate at Peoria, yes.

Q. Now, what is that guarantee to which you refer?

A. They were getting into Peoria at 1:30 p. m. and the Nickel Plate connection was out at 2:30, I believe, just offhand, at 2:30 a. m., and that was too tight for them to guarantee that particular schedule, however, they could pick up a train around 11 o'clock which would work all right over Buffalo over points east of Buffalo, but to Buffalo and Cleveland and points west they couldn't guarantee the 2 a. m. which was required in order to make the markets to those points.

Q. What is this guarantee you are talking about?

A. Well, the guarantee is the agreement to pay claims on failure to perform the schedule.

Q. That is, it is a guarantee by the railroad to Sunkist that if they fail to make schedule and you, and any damage [fol. 604] results to Sunkist, they will pay for that damage, is that correct?

A. It is a published schedule to all shippers.

Q. Well, I am speaking just of Sunkist.

A. Yes. If the Cleveland market is seven days and they fail to make the seventh morning sale and there is a loss of market on the eighth day they would stand the difference.

Q. That is, the M&StL would stand the difference in that case if they failed to make it?

A. Yes.

Q. Are you familiar, Mr. Uhler, with the fact that there was a change in an interchange service between the Santa Fe and the M&StL before and after 1951 or thereabouts, '51 to '53?

A. Well, I am familiar with this, that the delivery to both the TP&W and the M&StL is for 8 p. m.

Q. Off the Santa Fe?

A. Off the Santa Fe, yes.

Q. Are you familiar with the fact that before that—that is the present delivery, is that correct?

A. Yes.

Q. Are you familiar with the fact that prior to 1951 the Santa Fe set off the fruit blocks at Nemo, right off of their direct run to Chicago?

A. Well, the principal point—well, no, to answer your question.

[fol. 605] Q. Are you familiar with the fact that they now set them off at Shopton and deliver them by a local to Nemo, or subsequent to 1951 they engaged in the present practice?

A. How is your question again?

Q. Are you familiar with the fact that the Santa Fe changed its practice from setting off the fruit blocks at Nemo out of their transcontinental train prior to 1951, that subsequently they altered that practice, set off the fruit blocks at Shopton and delivered them to Nemo by a local train?

A. Yes, I am familiar with the fact that their delivery is later to the M&StL than it had been.

Q. Than it had been?

A. Yes.

Q. Are you familiar with the fact that that made it exceedingly difficult, or that that was the reason why the M&StL felt it could not continue to guarantee delivery into Peoria?

A. Yes. Of course they get the cars at the same time as the TP&W does.

Q. Are you familiar with the fact that the TP&W also gets cars off the Rock Island and the Burlington for that eastbound movement with the cars off of the Santa Fe?

A. Yes.

Q. You are familiar with that fact?

A. At Keokuk?

Q. Yes.

[fol. 606] A. Yes.

Q. And that the M&StL has no such opportunity at Nemo?

A. Yes, that's right.

Q. Do you have any reason to believe that the M&StL would discontinue or impair in any way the service now rendered by the TP&W to you between Lomax and Peoria, if it gained control?

A. We have no reason to believe that it would. Well, we have no particular reason to believe that they would—

Q. (Interrupting) It would be in the self-interest of the M&StL as the controller of the TP&W to continue to get that revenue, would it not?

A. Well, it gets another factor in there—

Q. (Interrupting) Can you answer my question first and then give any explanation.

(Question read.)

A. Oh, definitely, yes.

By Mr. Wheeler:

Q. Do you move any traffic over the Santa Fe through the Chicago gateway?

A. We do.

Q. Is that a large movement as compared to the TP&W or not?

A. Yes, much larger.

Q. Much larger?

A. Yes.

Q. Does the Santa Fe prefer that long haul movement to the shorter haul movement?

[fol. 607] A. We have never had any solicitation against the TP&W.

Q. But you have had solicitation for Chicago from the Santa Fe?

A. No, we have never had any comparison made by any Santa Fe representative, or anything done to sway us one way or the other.

Q. They do not solicit for Chicago?

A. They solicit for Chicago but they don't draw a comparison.

Q. Are you solicited by the Pennsylvania?

A. Yes.

Q. Do they solicit for the St. Louis gateway?

A. They like the St. Louis gateway.

Q. It gives them the longer haul, does it not?

A. Well, from our own experience, we have never had the Pennsylvania suggest that we primarily route via St. Louis as against Chicago or Effner. They have solicited, in general, but they have never asked specifically that we route cars via St. Louis.

Q. Railroads in general prefer their long haul, do they not, if they can get it?

A. As a general proposition, yes.

Q. Does the Wabash solicit traffic from you?

A. Yes.

Q. Do they solicit it from Kansas City?

A. Yes.

Q. Do you deliver more traffic to the Pennsylvania [fol. 608] through Chicago than you do through Effner?

A. Yes.

Q. Do you deliver more traffic—

A. (Interrupting) Wait a minute. Actually it is a close question. I just don't have the figures here. My impression would be that it was not too far apart, one way or the other.

Q. How about St. Louis, a comparison with St. Louis versus Effner and Chicago?

A. To answer your questions I would kind of have to make an estimate of how many came out of Arizona on the Santa Fe and S.P. and also Tulare County. Some of these routes call for the Pennsylvania at St. Louis and some Santa Fe-TPW-Penn, and others Santa Fe-IHB- Penn through Chicago.

Q. Then you could not tell us whether or not the Pennsylvania, that more of your traffic moves over the Pennsylvania through St. Louis than moves over the Pennsylvania at Effner or Chicago, is that correct?

A. It is substantial in all the places and undoubtedly one of those gateways will get more than the other but I couldn't, right offhand, no.

Q. Considering movement over all lines, is Chicago your most important gateway of the three?

A. Yes, I'd say more move via Chicago. It takes all of southern Canada.

Q. Wouldn't movement through Chicago be quite a bit [fol. 609] greater than through Peoria, for instance?

A. It would. Total movement you mean all carriers in and out?

Q. Yes.

A. Yes.

Q. Where would St. Louis, East St. Louis, rank, ahead of Chicago?

A. No, behind Chicago.

Q. But ahead of Peoria?

A. Yes.

Q. Again by a substantial margin?

A. By a good margin, yes.

Q. Do you truck a substantial quantity of your fruit through the Midwest area?

A. Yes, we do.

Mr. Wheeler: I have no further questions.

Exam. Albus: Thank you.

Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Uhler, who solicits the traffic that moves, the Sunkist traffic that moves, over the TP&W today, is that primarily obtained by the TP&W solicitors?

A. Yes.

Q. I believe that you are familiar with the fact that the Southern Pacific is the Rock Island's connection to get into California, isn't that right?

[fol. 610] A. Well, from our standpoint, you do get out of California, yes.

Q. Don't you send a good deal of your produces via the Southern Pacific?

A. Yes, we do.

Q. And doesn't the Rock Island figure in the movement of that traffic that comes east?

A. A very substantial amount, yes.

Q. And I believe the Keokuk gateway is used for that too, isn't it?

A. Yes.

[fol. 611] Q. In fact, the Keokuk-Rock Island-Keokuk, TP&W-Peoria is the guaranteed route through the Peoria gateway using the Rock Island, isn't that so?

A. Are you talking now just about the Peoria gateway?

Q. Peoria gateway to the east.

A. Yes, that is right.

Q. I believe one of the things you thought would be desirable would be the continuation of the present management of the TP&W, isn't that right?

A. Yes.

Q. Do you know the position of the Rock Island in regard to that?

A. No.

Q. If the Rock Island gave you the same assurance as the Santa Fe of the continuation of the present management in exactly the same shape and form as the Santa Fe has said it wanted it, wouldn't that suit you, then, in regard to what you wish?

A. You are talking about management?

Q. I am talking about management now.

A. Well, yes, we'd believe the Rock Island.

Q. Since the Rock Island is a link and this is important traffic to it, wouldn't it have the same motives as the Santa Fe in keeping the routes open?

A. Well, the more people you include in the ownership, the smaller the percentage each one would own, naturally. [fol. 612] Q. That is right, but wouldn't Rock Island have—

A. (Interrupting) So carrying the thing a little further, carrying the Rock Island and adding possibly a few more would give much more incentive going via another gateway, because no one carrier would have enough ownership going via Peoria as against another gateway.

Q. Don't you think an investment of three million dollars is enough to cause someone some concern?

A. If you are going to get one-fourth of the revenue over that gateway and one hundred per cent over another, I doubt if it would offset it.

Q. In any event, wouldn't the Rock Island have the same motives as the Santa Fe in regard to this property, isn't it similarly situated in regard—

A. (Interrupting) They'd have the same motive; if the Rock Island went into it the Santa Fe would even have less motive.

Q. I take it, however, that one of the things you would be interested in would be preserving the Rock Island route via Keokuk?

A. We wouldn't be here if we didn't believe the assurance of the Santa Fe that they'd keep all the routes open. We definitely want that.

Q. You don't believe that by having another carrier subscribing to the same conditions that there would be any less likelihood of having those routes open, do you? [fol. 613] A. Possibly not, but there would be less incentive to build up that particular route because nobody would have a big enough stake in it.

Q. Aren't those routes preserved today without any ownership in the TP&W by any of these railroads?

A. Yes, through the solicitation of the TP&W.

Q. Does the Rock Island appear in your routing sheets today that you have mentioned?

A. Oh, definitely. You mean in connection with the TP&W.?

Q. Yes.

A. Yes, very extensively.

Q. Do you know relatively the volume that probably originates on your railroad on the Santa Fe versus the Southern Pacific?

Mr. Broker: On his railroad, what do you mean?

Mr. Cassell: I mean of your company, that originates on the Santa Fe versus the Southern Pacific.

A. I would say the Southern Pacific, particularly with its affiliated carriers, as Visalia Electric and so forth, originates more than the Santa Fe.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker, please.

Cross examination.

By Mr. Broker:

Q. Your primary interest, as I understand, is to keep the present service and all connections and gateways open, is that correct?

[fol. 614] A. That is certainly a primary requirement as far as we are concerned.

Q. And you believe that there should be some strict neutrality observed in the maintenance of those routes and channels of trade, I assume, is that correct?

A. You mean whoever had the ownership would keep those routes open?

Q. And would exercise neutrality among the various connections.

A. Do I understand you to mean—

Q. (Interrupting) Do you believe that the owner of the railroad should exercise neutrality among all the connections of the TP&W?

A. Well, I think the owners should keep all the routes open.

Q. And should maintain the service as it is today?

A. And maintain the service via all the available routes that are available today, yes, sir.

Q. Now, should he favor any one over another? There is a distinction, you understand—well, do you understand there is a distinction between keeping a route open and being neutral among the various connections?

A. I don't quite understand your neutrality, what you mean exactly by "neutrality". You mean in solicitation?

Q. Do you think the TP&W solicitation force should continue its present practices of solicitation?

A. Yes.

[fol. 615] Q. Do you know what those practices are?

A. Well, they solicit TP&W routing.

Q. Yes, and they are not particularly concerned with the junction points so long as they are in on the haul, is that right?

A. Well, they do prefer the haul to Effner because of the reason it takes in more of its line.

Q. But they don't oppose the interchange, say, at Peoria to the Nickel Plate?

A. That is right.

Q. If they can get the car as far as Peoria and give it to the Nickel Plate there, that is perfectly satisfactory?

A. That is right.

Q. Do you think the owners should maintain that attitude?

A. Well, I think they should do nothing to impair the routing via the Nickel Plate, for example, at Peoria; if they wanted to put out a plus effort on some other route over and above what they now exert, I would certainly not be against that, provided they didn't do anything to actually block another open route.

Q. Do you think that railroads can affect the movement of traffic by the plus or minus effort?

A. Well, there are an awful lot of people working for railroads who aren't doing much of a job if they can't to some extent

Q. So railroads do influence routing?

A. Yes; they have a sales force.

[fol. 616] Q. Don't you think that the Nickel Plate is

interested in maintaining the TP&W particularly since it lost this so-called guarantee, Nemo, M&StL, Peoria and Nickel Plate?

A. Don't I think the Nickel Plate is interested in maintaining that gateway, you mean?

Q. The TP&W and the Peoria gateway.

A. Well, they certainly—we have never had any solicitation against that gateway from the Nickel Plate.

Q. They have always been neutral among their gateways, haven't they?

A. Well, we have never had them try to sell us one gateway over another.

Q. Do you think the Nickel Plate could make a contribution to the TP&W?

A. You mean through ownership?

Q. Yes.

A. Well, I'd have to answer the same way, I am not sure that—just as a general proposition, a matter of principle, as a general principle, rather, it is just to me quite obvious the more people who are in a particular deal the more pieces of pie you have to cut and the less interesting any particular piece is to any particular participant.

Q. It is all based, then, on self-interest?

A. I think that is a good foundation, self-interest. When you reduce self-interest you have a tendency to reduce the effort.

[fol. 617] Q. Before we pursue that, I want to come back to something else. You talked earlier about the plus effort, for instance, that might be made by the Pennsylvania to influence routing via Effner. You recall your testimony there?

A. Yes.

Q. And you also recall your testimony that the TP&W today does not favor one interchange over another, at least doesn't oppose, let's say, movement Peoria Nickel Plate, do you recall that?

A. They certainly don't oppose it; they certainly do try to get a longer haul, if they can.

Q. Do you see that the advent of the Pennsylvania in the ownership would constitute a change in the traffic policy of the TP&W?

A. I don't think so, because the interchange of the Pennsylvania has always been their long haul.

Q. And they will continue to favor their long haul, you would assume?

A. I would think so, but not to block the other hauls.

Q. Don't you think that their self-interest would affect them in soliciting or intensifying their solicitation via Effner?

A. Well, intensifying, they already want that haul via Effner. I don't know how they could really intensify it if they are doing a good job now.

Q. Suppose the Pennsylvania and the Santa Fe had a [fol. 618] joint self-interest in promoting the long haul over the entire route of the TP&W, let's say, from Lomax to Effner, do you think that by reason of their ownership they would influence such routing in their own self-interest?

A. They'd try to, but I don't see how they could hurt, for instance, the Nickel Plate. If, for instance, our Cleveland option is on the Nickel Plate, now, we certainly wouldn't split the haul up and then short-cut east of there because you are under the CA routing guide, as you are aware, so our normal tendency is the destination delivery desired.

Q. Do you route over the Erie to New York City, to New York?

A. To New York City?

Q. Yes.

A. Yes, to New York City, and also to Penn.

Q. They have a common facility in New York now, don't they?

A. Yes, they do.

Q. And those are both service routes, aren't they, to New York, I mean?

A. Yes.

Q. Do you think it would be in the self-interest of the owners to change schedules, let's say, it was indicated that the Santa Fe did, in respect to the M&StL?

A. Well, I wouldn't, any change they made— this M&StL TP&W deal, the delivery is the same, on the fifth night. if they made a change of schedule in order to close a now [fol. 619] existing service route, I'd say they have broken

the things they held out in here (indicating) to do, we'd naturally then oppose it. It is our belief that they won't do that that causes us to favor their application.

Mr. Broker: Thank you.

Exam. Albus: Mr. Uhler, on what portion of your traffic do you prescribe the routing?

The Witness: We prescribe all the routing—we will get a request for a delivering line and that's about as far as it goes. Safeway Stores prescribe some of their routes, but other than that, by and large, we give all the routing.

Exam. Albus: It is practically 100 per cent, then?

The Witness: Yes.

Exam. Albus: Do you designate junctions?

The Witness: We designate junctions. When without a junction a car could move over any one of two junctions. We want to know where the car is in transit.

Exam. Albus: Thank you.

Are there any further questions of Mr. Uhler?

Mr. Wheeler, please.

Further cross examination.

By Mr. Wheeler:

Q. Mr. Uhler, do the Rock Island and the CB&Q, with respect to the Rock Island and the CB&Q, does the bulk of your traffic over those roads move through Chicago on the eastern movement?

[fol. 620] A. Yes.

Q. Do they solicit Chicago as against Keokuk?

A. Well, I really don't know what their practice is, in general, but with us I have never had anybody make a pitch for any particular gateway.

Q. Do you have a belief the Santa Fe solicitation of you is going to change as a result of this application, if their application here is granted?

A. Well, I really couldn't say. I will say this, that no matter what the solicitation, I don't think it will have too much effect on the results.

Q. They indicated to you that their solicitation policy would change vis-a-vis this gateway versus Chicago?

A. Naturally, with a substantial interest in this, they could solicit Peoria and that would be all right with us.

Q. That is not quite my question, Mr. Uhler. Have they told you that they would solicit Peoria as against Chicago in the event that their application here was granted?

A. Well, as I understand it, it wouldn't be Peoria over Chicago, it would make them practically even. It would be immaterial to them whether they went Chicago or Peoria.

Q. Didn't you indicate in answer to an earlier question by me—

A. (Interrupting) I just indicated that we ourselves—I don't know what their general policy is—had them object to using TP&W.

[fol. 621] Q. I think you went further than that, I think you said they do not actively solicit you for the Chicago movement as against the Peoria movement.

A. That is right.

Q. Have they told you or indicated to you in any way that they would change that policy as a result of their acquisition of control of the TP&W?

A. No.

Mr. Wheeler: I have no further questions.

Exam. Albus: Is there any further cross-examination?

(No response.)

Exam. Albus: Is there any redirect?

Mr. Bagge: Yes, sir.

[fol. 622] Redirect examination.

By Mr. Bagge:

Q. As a substantial shipper on the TP&W, what is your opinion regarding the relative interest of the M&StL as owner of the TP&W on the west end of the line as compared with the interest of the applicants in the event this application is granted?

Mr. Wheeler: Excuse me a moment, please, may I have that question read.

Exam. Albus: Read the question, please.

(Question read.)

Mr. Wheeler: Mr. Examiner, I object to the question as having nothing to do with any cross-examination, and even going beyond the scope of the direct.

Mr. Bagge: Mr. Examiner, the question to which this was directed was raised on cross related to a question he never allowed the witness to finish, the question was, in your opinion, it was something along this line, in your opinion is it to the self-interest of the M&StL to maintain service on the west end, he never allowed the witness to finish at that time, here he'd like the opportunity.

Exam. Albus: Here we go again. The objection is overruled.

The witness may answer.

A. It was rather an involved question.

By Mr. Bagge:

Q. May I simplify it?

A. Please.

fol. 623] Q. Is it a fact that you support—

Mr. Wheeler: I object. This is a leading question.

By Mr. Bagge:

Q. What is your opinion regarding the relative interest of the M&StL Railroad in maintaining service via the west end of the TP&W as compared with the interest of the applicants in this proceeding?

Mr. Wheeler: Mr. Examiner.

Exam. Albus: That is the same question to which an objection was overruled.

Mr. Wheeler: I have further—I want to know what he means by applicants in this proceeding.

Exam. Albus: I am sorry. Very well.

Mr. Wheeler: I believe there are three, at least.

Mr. Bagge: The applicants, Santa and Pennsylvania Railroads.

Exam. Albus: Very well.

A. Well, as a general proposition the M&StL would be running a service somewhat parallel to the west end of the TP&W, whereas the TP&W would form really the only

direct route that the Santa Fe has into Peoria. So I would say as a general proposition, that with all your eggs in one basket you would push it a little harder than you would with two.

Mr. Bagge: That is all.
Exam. Albus: Recross.

Recross examination.

By Mr. Wheeler:

Q. Did you take into account in that answer the fact that [fol. 624] the Santa Fe enters the Chicago gateway and the M&StL does not?

A. Well, I was confining it to the Peoria gateway.

Q. Did you take into account that the Santa Fe would have only a 50 per cent interest in this line, whereas the M&StL would have a hundred per cent interest?

A. Well, the Santa Fe's percentage of interest in the line would be somewhat comparable to the amount of mileage west of Peoria and maybe east of Peoria. I don't think that's quite true, but they'd have a substantial interest in it, and they would only be serving the western part of it. If you see what I am getting at, that the percentage of interest and the percentage of mileage would become somewhat nearer to making it a Santa Fe deal as far as Peoria.

Q. Now, isn't the Nemo-Peoria route a direct run for the Santa Fe to Peoria?

A. Isn't what?

Q. The Nemo-Peoria route of the M&StL a direct route for the Santa Fe into Peoria, just as the Lomax-Peoria run is?

A. Oh, yes.

Q. I believe you have already stated that you are aware that the Pennsylvania has access to the St. Louis as well as as the Chicago gateway and to the Kansas City gateway through its control of a subsidiary, the Wabash, did you not?

A. Well, I held it down to St. Louis, the ones served by [fol. 625] the Pennsylvania proper.

Q. Would you expect a railroad company having a 50

per cent ownership in a property to push the routes of that railroad property to a great extent than the routes of a railroad, of another subsidiary that it owned a hundred per cent of?

Mr. Bagge: Would you read the question, please, Miss Reporter?

(Question read.)

A. No, but I would expect the Pennsylvania to push this particular gateway harder than they do without any ownership at all.

Mr. Broker: Would you read the last answer, please?

(Answer read.)

Mr. Wheeler: I have just one more question.

By Mr. Wheeler:

Q. Did you protest to the Santa Fe the change in their operating policy with respect to Nemo in 1951 or thereafter?

A. Well, whenever an operating practice is changed that affects the guarantee, we take it up with the carriers involved, and I can't recall right offhand 1951—you mean 1953?

Q. '51 or '53 or—

A. (Interrupting) Whatever the date happens to be, I would say from our normal practice I would expect that we had. I just don't have the file here.

Q. Anything that might interfere with your guaranteed service—

A. (Interrupting) We are against.

[fol. 626] Q. (Continuing) —you would be opposed to?

A. That is right.

Mr. Wheeler: I have no further questions.

Exam. Albus: Are there any further questions?

Mr. Bagge: No, sir.

Exam. Albus: You are excused, Mr. Uhler. Thank you very much.

(Witness excused.)

Mr. Bagge: At this time, Mr. Examiner, an intervenor, a municipality, who is taking the position of supporting the applicants would like to appear.

Exam. Albus: Very well.

[fol. 627] Mr. Fort: Lyman Fort, I am the city attorney for the village of Lomax, an intervenor in this matter in support of the petition filed by the Santa Fe and Pennsylvania Railroad.

I would like to call Mr. Everett Pence to the stand for testimony.

Everett Carl Pence was sworn and testified as follows:

Direct examination.

Exam. Albus: May we have your full name?

The Witness: Everett Carl Pence.

By Mr. Fort:

Q. Where do you live, Mr. Pence?

A. Lomax, Illinois.

Q. How long have you lived there?

A. Born and raised there.

Q. Do you hold any elective office in the village of Lomax?

A. President of the village board.

Q. Village trustees?

A. Yes, sir.

Q. Where is the village of Lomax located?

A. About three miles from the Mississippi River, about halfway between Burlington, Iowa, and Fort Madison, Iowa.

Q. On the Illinois side of the river?

A. On the Illinois side, yes.

Q. Are there any railroads running through the village of Lomax?

A. With the T. P. & W. we have three.

[fol. 628] Q. What are the two other railroads?

A. A branch of the C. B. & Q.

Q. What are the others?

A. A. T. and Santa Fe.

Q. Have you looked over the application which has been

made by the Santa Fe to the Interstate Commerce Commission in this matter?

A. I have.

Q. Have you made any examination of the application of the M. & St. L. in this matter?

A. Only what Mr. Bagge gave me.

Q. Those were excerpts on it?

A. Yes, sir.

Q. When did the trustees of the village of Lomax decide to intervene in this matter?

A. I think I brought it up before the board in the September meeting.

Q. Of 1955?

A. 1955.

Q. And when was the petition filed?

A. I think October 5, 1955.

Q. 1955?

A. Yes, sir.

Q. What reasons did the trustees have to intervene in this matter?

[fol. 629] A. Well, as the Santa Fe is a big taxpayer in our town, the T. P. & W., too, they thought it was best to go along with the Santa Fe.

Q. Is the village of Lomax customarily referred to as the western terminal of the T. P. & W.?

A. Well, it is the western end of the T. P. & W., the interchange is Lomax.

Q. The Santa Fe and the T. P. & W. interchange—

A. (Interrupting) At Lomax, yes, sir.

Q. When the village board of the village of Lomax acted to intervene in this matter, had any representative of any railroad discussed this matter with you or the other members of the board?

A. Neither party.

Q. No one had discussed it with you?

A. No, sir, neither party.

Q. Have you since taking your action discussed the proceeding with any railroad concerned here?

A. Have I what?

Q. Have you ever discussed this case with any—

A. (Interrupting) I did with Mr. Bagge on January 26, 1955. He is the only party.

Q. Did anyone request that you come here as a witness today?

A. None other than the village of Lomax.

Q. How do you feel or what are your reasons for being opposed to the petition of the Minneapolis & St. Louis Railroad in this matter?

[fol. 630] A. Well, I am opposed to it. I think the present setup has been all right down there. As far as changing to the other fellow, I don't know what the future would be.

Q. You're primarily concerned with keeping the west end of the route open, are you?

A. That is right, yes, sir.

Q. Do you have any reason to believe that the west end of the route, that is, the route from Peoria on west, would not be left open?

A. Well, it would be if M. & St. L. got it, their interchange might be at Nemo instead of Lomax.

Q. What reason do you have for—

A. Well, that would take all of that business out of Lomax.

Q. You are primarily concerned with the interest of Lomax today, are you not?

A. That is right. If the Santa Fe and Pennsylvania get it, we have a chance for expansion down there.

Q. Is anyone compensating you for coming as a witness today, Mr. Pence?

A. None other than the village board, out-of-pocket money.

Q. Do you have anything else you want to say before the Commission?

A. I do during the war that was a vital link in wartime. I was born and raised there, and there was an awful lot [fol. 631] of war material traveled over that shortcut.

Q You feel that it might have some advantage in the case of war again?

A. I do, yes, sir.

Q. Mr. Pence, you have lived in the village of Lomax since 1920 probably sometime, have you not?

A. Yes, sir, I was born in 1905.

Q. Then you perhaps were living there when the interchange was made between the Santa Fe and T. P. & W. in 1927?

A. Yes, sir, I have seen it grow to its present state, from the beginning when they connected with the Santa Fe in '26, I believe it was.

Q. Has it increased substantially?

A. Yes, yes.

Q. Have the facilities which are located in the village of Lomax for the traffic interchange increased?

Mr. Broker: Excuse me, what was that question?

Exam. Albus: Have the facilities at Lomax by the interchange increased?

Mr. Broker: There was another word in there, I thought.

Exam. Albus: Read the question, please.

(Question read.)

A. Facilities?

By Mr. Fort:

Q. The yards.

Exam. Albus: Railroad facilities.

[fol. 632] A. Oh, yes, they have expanded those yards considerable from the beginning.

By Mr. Fort:

Q. When that took place, did that affect your assessed valuation in your village, taxes?

A. Yes, it did.

Q. It increased it?

A. Yes, sir.

Q. Your reason for being in favor of the Santa Fe and Pennsylvania application—

Exam. Albus: Let him tell us the reason, don't you tell him.

What other reasons do you have for this acquisition, Mr. Pence?

The Witness: Well, not knowing whether—I have never had no application or anything from the M. & St. L. for

what they might do, I don't know. We know what the T. P. & W. and the Santa Fe and Pennsylvania has done. In my opinion I think it would be better to go along with them that way.

Exam. Albus: Have you been here since the hearing started?

The Witness: This is my first day.

Exam. Albus: Thank you.

Any more questions?

Mr. Fort: That's all the questions, sir.

Exam. Albus: Cross-examination.

Cross-examination.

[fol. 633] By Mr. Wheeler:

Q. I believe you indicated that you did not—when did you get a copy of the application of the Pennsylvania-Santa Fe?

A. January 23, 1956.

Q. January 23?

A. Yes, sir.

Q. And from whom did you get that?

A. Mr. Bagge and Mr. Hemphill.

Q. Who is Mr. Hemphill?

A. Well, I suppose he is a Santa Fe man. I don't know what capacity he holds.

Exam. Albus: I think I've got his card here.

By Mr. Wheeler:

Q. Isn't he from the Pennsylvania Railroad, Mr. Pence?

A. He might be, I don't know.

Exam. Albus: That is all right, if you don't know, Mr. Pence, just say so.

By Mr. Wheeler:

Q. They gave you a copy of the application of the Santa Fe? Was it a complete copy?

A. I think it was.

Q. Was it one of these blue backed—

A. (Interrupting) Yes, sir.

Q. Did they give you what purported to be some excerpts from the M. & St. L. application?

A. Yes, sir.

[fol. 634] Q. Do you know what parts of that application they gave you?

A. No.

Q. It wasn't a complete application, though, was it?

A. I don't know. You fellows have never come out with your plant, I don't know.

Q. You don't know whether it was part of our application or part of a petition we filed?

A. I don't know what it was.

Q. Were those documents read by the board prior to the time you filed your petition in this matter?

A. We didn't have no applicant or nothing. We had never been solicited by nobody when we acted on this.

Q. When did the board act?

A. In September.

Q. And at that time you had no application or anything before you?

A. No, sir, no, sir.

Mr. Wheeler: No further questions.

Exam. Albus: Thank you very much, Mr. Wheeler. Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Pence, is your town of Lomax located on the main line of the Santa Fe?

A. Yes, sir.

Q. The rails of the Santa Fe, then, go through your town?

[fol. 635] A. Yes, sir.

Q. Is the connection with the T. P. & W. actually inside your town or out in the country?

A. Right in town.

Q. There are no carload shippers of freight in Lomax, are there?

A. Carload shippers of freight?

Q. Yes.

A. That's farm products, just anything to make a carload?

Q. Is there anything in Lomax that ships out freight carloads of freight?

A. Why, yes, the Santa Fe ships a carload of freight.

Q. What industry is that?

A. Grain elevator.

Q. Do you have any industry in Lomax other—

A. (Interrupting) I am a farmer.

Q. I beg your pardon?

A. I am a farmer.

Q. But you are speaking for the village, aren't you?

A. That is right.

Q. Does the village, and your farm with it, aren't you?

A. Yes.

Exam. Albus: He has lived there since 1905.

By Mr. Cassell:

Q. What is the population of Lomax?

A. 1950 census was 490.

Q. Other than the grain elevator are there any other [fol. 636] industries in Lomax?

A. Well, we have a canning factory, tomato factory.

Q. Does it ship out over the T. P. & W. or the Santa Fe?

A. I think they use the Q. and truck.

Q. The Q. and truck?

A. I think so.

Q. And that is all you have in town?

A. Yes.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. Do you remember when the C. B. & Q. had a connection at that point with the T. P. & W.?

A. When the T. P. & W. started, then run on the C. B. & Q. tracks at Iowa junction into Burlington, Iowa.

Q. So they did have a direct connection in the vicinity of your viliage?

A. That is right.

Q. Do you remember the condition of the T. P. & W. prior to the installation of the connection between the Santa Fe and the T. P. & W.?

A. You mean before the connected to the Santa Fe?

A. Yes, I remember, the trains practically stopped.

Q. It was not in good condition, was it?

A. That is right. The Santa Fe and the Pennsylvania [fol. 637] has put it in the condition it is now, in my estimation.

Q. I will come to that. Was it in that bad condition as far back as you can remember?

A. Yes.

Q. That would be since you were a small boy, let's say?

A. That's right.

Q. And you know you have testified now that the Pennsylvania and the Santa Fe have improved the T. P. & W., isn't that right.

A. That's right.

Q. Now, what has the Pennsylvania done, to your knowledge, to improve the T. P. & W.?

A. Well, I imagine the main factor in improving the T. P. & W. is this through train service around Chicago.

Q. You mean to avoid Chicago?

A. That's right.

Q. Do you know whether a lot of that traffic moves Santa Fe-T. P. & W. and Nickel Plate?

A. I don't know what those are routed.

Q. So you don't know, really, whether or not the Nickel Plate has contributed its share to the building up of the T. P. & W.?

A. I don't know what per cent, no, I wouldn't know.

Q. When your village reached its position in support of the application, did you know about the Rock Island, the Nickel Plate—

A. I did.

[fol. 638] Q. (Continuing) —coming in and seeking its share?

A. I did.

Q. But you hadn't seen the petition?

A. No, sir.

Q. Your primary interest is in keeping that west end open and active, isn't it?

A. That's right, yes, sir.

Q. Don't you think that the Nickel Plate would be very much interested in maintaining that west end?

A. Well, that might depend on how much interest they've got.

Q. Suppose they had an ownership interest, don't you think they'd have a greater interest than they have today?

A. Well, I don't know. Are you pertaining to a quarter interest?

Q. Well, whatever the Commission might approve. There are seven or eight railroads, I believe, now, that have sought a share.

A. In my opinion the way that has done business down there and the volume of business it does that I don't see why you want to bother, fool with it, why not Santa Fe and Pennsylvania have it?

Exam. Albus: Railroading doesn't work that way, Mr. Pence?

The Witness: Doesn't it? Well, if you get too many parties interested or wrapped up in one thing, why, you are headed for trouble.

By Mr. Broker:

Q. Oh, you think, then, that an organization shouldn't have very many parties, is that right?

[fol. 639] A. Not over two.

Q. You have heard of corporations, though, who have had more than two stockholders, who have been successful?

A. Oh, yes. After they take a while to thrash out things, I suppose, they come to some decision.

Q. Did you hear the testimony by the vice-president of the Pennsylvania that they would still favor the St. Louis route over the T. P. & W. even though they had a half interest in it?

A. No, I didn't.

Mr. Broker: Thank you.

Exam. Albus: I believe you say you just came in this morning, is that correct?

The Witness: I came in last night on the train and stayed over.

Exam. Albus: Is there any further cross-examination of Mr. Pence?

Are there any further questions?

(No response.)

Exam. Albus: You are excused, sir. Thank you very much.

(Witness excused.)

[fol. 640] Exam. Albus: Next witness, please.

Mr. Bagge: Mr. George Bertolino.

I would like to state that the City of Bushnell is an intervenor in this proceeding and their city attorney, who would otherwise be here this morning representing him, is unable to be here and that in his stead I shall interrogate the representative from the city.

Exam. Albus: Very well, Mr. Bagge.

George Bertolino was sworn and testified as follows:

Direct examination.

Exam. Albus: May we have your full name, please?

The Witness: George Bertolino.

By Mr. Bagge:

Q. Would you state your name, please?

A. George Bertolino.

Q. Where do you reside, sir?

A. Bushnell, Illinois.

Q. What is your business or occupation?

A. I am a manager of a lumber yard in Bushnell.

Q. Now, in addition to your business, do you occupy any other position in the community?

A. I am an alderman in our city.

Q. Did the city council of the City of Bushnell take any action in connection with the application of the Santa Fe Pennsylvania Railroads, which is presently pending before [fol. 641] this commission?

A. Yes, they did.

Q. What was that action?

A. I believe on October 3rd a resolution was adopted in the council favoring the petition of the Santa Fe in the acquisition of the stock of the T. P. & W. at that time. I believe that was October 3, 1955.

Q. After the passage of the resolution did the city take steps to do anything else about expressing their attitude before this body?

A. Well, to the extent that a petition was instituted, yes.

Q. I see. Would you describe briefly what the population of the City of Bushnell is and tell us something about the business interests which support the community?

A. We are a community situated on the cross-roads of the main C. B. & Q. line going south out of Galesburg and intersecting with the T. P. & W. going westwardly; a community of approximately 4,000 people in the last census; predominantly an agricultural and small industrial area; serving a radius of, I presume, somewhere in the neighborhood of 15 to 20 square miles. Predominantly hog raising farmers and grain farmers, as I believe Mr. Morris, who was on before, testified. We have numerous small industries in the town, manufacturing. When I say numerous I am acting as a chamber of commerce a little bit. We have about four, really. We seem to think that we have a repre- [fol. 642] sentative midwestern community.

Q. I see. What position does the City of Bushnell take with respect to the application of the Santa Fe and Pennsylvania Railroads in this proceeding?

A. We are very much in accord with the petition. We are in hopes that that's the way the thing will be settled by the Commission.

Q. Would you tell us briefly why?

A. Well, yes, and I am repeating the consensus of opinion of the people on our council. We feel that if the ownership of the T. P. & W. passes to these two great lines, the Santa and the Pennsylvania, not that there are not other great

lines, but those two being in question now, we feel that our chances of possibly inducing people to come in and locate along our lines industries of other nature, would be enhanced possibly more, at least we feel so, than if it didn't.

The other reason, we feel very much this particular reason, now we are on a main line, we are on the T. P. & W., it is a main line in itself, it is an entity unto itself. If the ownership should pass to the Minneapolis, St. Paul, as an example, we feel then we would be on a competing line for the reason that Nemo is just a short distance from Bushnell and we would have two lines running in the same direction, and we don't think it would be to their advantage; I say I personally don't think it would be to their advantage, that this western line from Peoria on over be maintained in its present state, consequently we are in hopes that the Commission sees the thing favorable for the Santa Fe and Pennsylvania.

(fol. 643)

Exam. Albus: In your answer there you mentioned Minneapolis and St. Paul. Did you mean Minneapolis and St. Louis?

The Witness: Excuse me, Minneapolis and St. Louis Railroad.

By Mr. Bagge:

Q. When you spoke of the fact that you supported us, among other things, for the reason that you thought the opportunity of bringing in industry would be enhanced, what factors led you to that conclusion?

A. Naturally we are interested and we kind of watch the papers and we see where small factories locate in various parts of the community. We have an organization that tries to bring these people into our town, and we like to talk to them, and we find ever once in a while where the Santa Fe is doing quite a little bit towards fostering the movement of these small businesses or businesses in their infancies into some of our smaller towns.

We noticed the other day, as an example, in Galesburg the Santa Fe made known they had some land available for industrial purposes, and we are in hopes the same thing would be applicable to our small town.

Q. You indicated your position with respect to the application of the M&St.L Railroad, is that correct?

A. That is correct.

Q. If you were assured or if your community were assured by the representatives of the M&St.L that [fol. 644] they would agree to the imposition of conditions by this Commission requiring them to maintain service over that end of the railroad, over that segment of the T.P.&W. in which you are most interested, would your attitude regarding the M&St.L be changed?

A. If the Commission requested them, sir?

Q. No, sir. If the M.&St.L. agreed to the Commission imposing a requirement requiring that they maintain service on the west end of the T.P&W, would the position which you have taken with respect to their application be changed?

A. No, I don't think so, not if the Commission, not if they had to go to the Commission—in other words, if the Commission had to be the whipping boy to keep service through Bushnell on the T. P. & W., even though the Minneapolis owned it, I wouldn't be in favor of that; I don't believe I would.

Q. Why do you say that?

A. Well, I don't think that that is a feasible way to operate business, for a directive to be given by the Interstate Commerce Commission telling them that they had to maintain service along that line.

Q. Well, of course, you know that—strike that.

It would take the form of an agreement by them—this is an assumption—

Mr. Wheeler (interrupting): I object.

Mr. Broker: Wait a minute.

[fol. 645] Exam. Albus: I sustain the objection.

Mr. Bagge: All right.

By Mr. Bagge:

Q. Mr. Bertolino, are you aware that the Rock Island and Nickel Plate Railroads and the Burlington and the Wabash Railroads have intervened in this proceeding?

A. I am.

Q. Are you aware of the fact that they have requested to be permitted to participate in ownership with the Santa Fe and Pennsylvania?

A. I am.

Q. What is the position of your community with reference to the desires of these other railroads?

Mr. Cassell: I object to that. There is nothing in the record as to any position of their community.

Exam. Albus: I will sustain the objection. I don't think this gentleman is in a position to—

Did you know those facts at the time your board took action in this case?

The Witness: In October, I don't believe those facts were in evidence at that time. I did later on, naturally, because we read it in the papers.

Exam. Albus: Do you have an opinion as to what disposition should be made of their request to be included? Have you formed an opinion with respect to that?

The Witness: It would be a personal opinion. It wouldn't [fol. 646] be an opinion expressed by our council. Is that what you mean, sir?

Exam. Albus: Yes, that is right

The objection is sustained.

Mr. Bagge: All right, sir.

By Mr. Bagge:

Q. Have you anything further to say on behalf of the City of Bushnell?

A. No, except possibly to reiterate the point that we hope that this thing devolves down to where the ownership is possibly included under a few heads rather than large numbers, because we don't think then that we will be again on a main trunkline, we will be merely on a subsidiary line of a group of competing agencies and I don't feel that we will get the service that we hope we will get under the new agreement.

Mr. Bagge: Thank you.

That is all I have of this witness.

Exam. Albus: Cross-examination.

Cross examination.

By Mr. Wheeler:

Q. Mr. Bertolino, do you believe that you will be on the main trunkline of the Santa Fe if their application is granted?

A. Things being equal I do feel that way, and I believe we all feel that way.

Q. You say your council took action on October 3, did you have a copy of the Santa Fe application before you at that time?

[fol. 647] A. No, sir.

Q. Did you have a copy of the M & St. L. application before you at that time?

A. No, sir.

Q. On what did you base your action? I mean did you have some document. How did this thing come to your attention?

A. I think the first we knew of that, sir, was when we saw the printed evidence in the paper that the Santa Fe was going to make an effort to obtain the stock of the T. P. & W. Railroad.

Q. Did, well, had anybody from the Santa Fe been to see you prior to that time?

A. No, sir.

[fol. 648] Q. Do you believe that the Santa Fe would seek to locate an industry in your town, assuming they had a 50 per cent ownership in the TP&W rather than to locate an industry on their own lines of which they own a 100 per cent?

A. I would think they would at least give it some consideration.

Q. Don't you think they'd have more interest in locating it on their own line if they had a 100 per cent ownership there?

A. I would agree to that.

Mr. Wheeler: No further questions.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Bertolino, isn't your plant located on the Burlington Railroad?

A. When you say my plant, I presume you refer to the lumber yard that I manage, sir, is that correct?

Q. Yes.

A. It is located on a siding of the CB&Q Railroad.

Q. So your service is derived from the Burlington rather than the TP&W in the first instance, isn't that right?

A. Primarily, sir, that the CB&Q does own the siding that sides to our lumber yard.

Q. I think you are familiar with the general layout of the TP&W, aren't you, how it runs across Illinois and its western connections.

A. Yes, sir.

[fol. 649] Q. Bushnell is in that segment of the TP&W between Peoria and LaHarpe, isn't it?

A. Yes, sir.

Q. And at LaHarpe the TP&W forks, one fork going up to Lomax and connects with the Santa Fe, is that correct?

A. That is correct.

Q. And then there is a longer line that goes on down to Keokuk, Iowa?

A. That is right.

Q. And the Rock Island connects with it at that point?

A. I believe that is correct. I am not cognizant of the connections on the one spur that you mentioned, although it does show it in the map, but I believe you are correct.

Q. Then you were not familiar with the fact, then, until you saw the map today, is that right?

A. Oh, no, sir. I have lived there 15 years, and naturally this question, not necessarily this question of ownership of the two, has been discussed, a good many times.

Q. Has been discussed a good many times. Are you generally familiar with the fact that the Rock Island connects with the TP&W at Keokuk, Iowa?

A. That is right, sir.

Q. Then you have the situation of the Santa Fe having its connection at Lomax and the Rock Island having its con-

nection at Keokuk, and those two lines converging west of [fol. 650] you at LaHarpe and then both of the connections then goes by Bushnell, is that right?

A. I believe that is right, sir.

Q. Isn't the position of the Rock Island geographically the same as that of the Santa Fe in relation to the TP&W?

A. Paralleling its self, I would think, yes.

Q. And then wouldn't the Rock Island have the same interest in the TP&W that the Santa Fe has?

A. On what line, sir?

Q. On the line that goes through Bushnell.

A. That was an ambiguous question on my part. I believe to a certain extent, yes.

Q. Wouldn't it be just the same, they both have a western connection at one of these two lines and then they join and go through Bushnell?

A. That is correct, they do, both of them do that.

Q. So their interest would be the same as far as the TP&W is concerned, wouldn't it?

A. I don't believe I could answer that in the light that you want. I don't know which interest you are referring to, sir.

Q. I mean the interest in retention of the TP&W as a route through Bushnell, to and from the East.

A. Well, we have never been informed of that by the Rock Island, sir. As far as our council is concerned we don't know that.

[fol. 651] Q. I see, but just looking at the map.

A. Geographically looking at the map?

Q. Yes. Let me show you this, Mr. Bertolino.

The Witness: I don't know what he is trying to establish, sir.

By Mr. Cassell:

Q. Mr. Bertolino, this is a map prepared by the Santa Fe and Pennsylvania, and it is Exhibit 4, and on page 1 of that there is a black line showing the route of the TP&W across Illinois, and you will see that your town of Bushnell is located on the TP&W between Peoria and LaHarpe, and then there is the line that goes up to Lomax where it

connects with the Santa Fe and the other line where it comes west to Keokuk and joins with the Rock Island, then both of those railroads have their own lines beyond. Now, wouldn't the Rock Island's interest in maintaining the main line of the TP&W through Bushnell be the same as that of the Santa Fe?

A. I would presume that it would, but we have no evidence of it. We have never been assured that that would be the fact.

Q. Assuming, then, that the Rock Island stated that it would maintain the present management and policies of the TP&W and subscribe to the same principles as to service to the public with the TP&W as the Santa Fe has, that would give you what you want in Bushnell, wouldn't it?

A. Possibly.

Q. What would cause you to doubt it, if they gave the [fol. 652] same promises as the Santa Fe?

A. Well, assuming that the other companies, the other two companies are also instrumental in owning a part of it then I would be afraid we would have too much divulgence of ownership.

Q. Too much divulgence of ownership?

A. You would be competing, Rock Island-Santa Fe, would be competing, theoretically, assume they would be competing—

Q. (Interrupting) There is no theory about it, it is a fact.

A. Then they would be joining up to use a common carrier across our town and I am afraid there might be some repercussions.

Q. Since they join at LaHarpe and have a common stream by Bushnell, that would benefit you, wouldn't it, with the traffic of both railroads going through Bushnell?

A. Who is going to be owning the line, sir?

Q. We hope the Rock Island is going to participate in it with the Santa Fe and Pennsylvania and such other railroads as may wish to participate. And, of course, the line through Bushnell would be used by the traffic that goes to either the Santa Fe or the Rock Island, isn't that right?

A. Under a joint ownership, possibly. At the same time there might be considerable friction, in, we will say, La

Harpe on through Bushnell, that phase of the line that is owned by the two who had competed previously for this shipping, we will call it, then putting it on their own common carrier at that particular point, I am afraid—I don't [fol. 653] know the machinations of the railroads but I would presume that that would cause friction. You are asking me, sir, I believe to adjudge something that I am not qualified to adjudge.

Exam. Albus: That is an honest statement, if I ever heard one.

Mr. Cassell: With that statement I think I will have no further questions.

Exam. Albus: Thank you very much.

Mr. Broker.

Mr. Broker: I would like to ask a question.

Cross examination.

By Mr. Broker:

Q. You said earlier you didn't think business ought to be operated under the compulsion of a government directive that they had to maintain service, is that right?

A. I think the statement that I tried to answer was that would I be satisfied if the Minneapolis and St. Louis were directed by the Interstate Commerce Commission to maintain traffic over the western end of the TP&W, what is now the present TP&W Railroad, and my answer at that time was I didn't think I would be personally in favor, and I don't think the community of ours would be in favor, of a government directive, being a government body directive, being the Interstate Commerce Commission, directing them to maintain service over that end of the line, I don't believe we would be in for that, sir.

Q. Do you understand the Pennsylvania and Santa Fe [fol. 654] have proposed some sort of condition that would require them to maintain service over the line?

A. I would presume that all railroads are under a directive to maintain a certain phase of service.

Q. Then what is the difference between that and the M&StL situation?

A. Well, one you would—my version, I presume that is what you are asking, sir?

Q. Yes, please.

Exam. Albus: That is correct.

A. We have a competing line of the Minneapolis and St. Louis just a few miles to the north of the line that we are going to try to maintain just a few miles to the south running east and westwardly. Consequently I don't think the Minneapolis and St. Louis would be totally operating the total lines efficiently. As I say, I am trying to answer questions.

By Mr. Broker:

Q. I understand. Do you think any competitor of the TP&W would be interested in maintaining its line?

A. Insofar as the competition would be favorable to the competitor, yes.

Q. Do you know whether or not the Pennsylvania competes with the TP&W today?

A. No, sir, I don't know.

Q. Do you know whether the Santa Fe competes with the TP&W today?

[fol. 655] A. I don't know that, sir.

Q. If they did compete do you think it would be harmful for them to become owners of the TP&W?

A. If they removed the competition by becoming the owners then I would say it wouldn't be harmful.

Q. Suppose they continued that present competition, do you think that then it would be harmful?

A. I don't believe I can answer that, sir.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions?

Mr. Bagge: No, sir.

Exam. Albus: You are excused, sir. Thank you very much.

(Witness excused.)

Exam. Albus: Do you have another witness?

Mr. Bagge: At this time, if the Examiner please, I would like to suggest that we adjourn for lunch, if that is permissible. We are not entirely clear as to who can come in for this afternoon's session to testify.

Exam. Albus: We will take a recess until 2 o'clock.

(Whereupon, at 12:15 p.m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 656]

AFTERNOON SESSION

2 p.m.

Exam. Albus: The hearing will please come to order. May we have the next witness, please.

Mr. Bagge: Mr. Matthews.

HARRY O. MATTHEWS was sworn and testified as follows:

Direct examination.

By Mr. Bagge:

Q. Would you state your name, sir.

A. Harry O. Matthews.

Q. Where do you reside, Mr. Matthews?

A. 65 Longcommon Road, Riverside, Illinois.

Q. What is your business or occupation?

A. I am general manager of transportation and distribution for Armour & Company. In that position I am responsible for the routing of all traffic.

Q. Are you the chief traffic officer for Armour?

A. I am.

Q. Would you tell us briefly what your traffic experience has been and tell us about what traffic organizations of which you are a member.

A. I have been in my present position since January 1, 1952. Prior to that I was transportation manager for [illegible] years for Standard Brands, Incorporated, in New York.

Q. Are you a member of some national traffic organizations, committees?

[fol. 657] A. The Traffic Club of Chicago, the National Industrial Traffic League. I think that is all pertaining to traffic.

Q. Now, Mr. Matthews, would you describe briefly the location and the nature of the business which Armour performs.

A. Armour is engaged in several businesses, but primarily it is that of fresh meat and packinghouse products, which results in the slaughter of live animals on or near the Missouri-Mississippi River and the movement of the finished products to primary markets in the East.

Q. Would you describe a little more about the location of some of the branches of Armour's.

A. Our main plants are located, in addition to Chicago, at Kansas City, Missouri, St. Joseph, Missouri, Sioux City, Iowa, St. Paul, Minnesota, Fargo, North Dakota, Huron, South Dakota, and Grand Forks, North Dakota.

Q. Would you describe in a general way what might be characterized as your truck markets as compared to your rail markets would be markets we would reach with relatively short hauls where the products we manufacture are delivered direct to customers from our manufacturing or processing plants.

The rail markets are the ones where there is a much longer haul involved and where our products are transported from our manufacturing facilities to our branch houses in New England, New York and the Southeast, in general.

Q. Is Armour dependent to a large extent upon rail ser-
[fol. 658] vice for the distribution of your products?

A. It is.

Q. Would you describe the extent to which Armour uses the TP&W Railroad, either as an originating, terminating, or as an intermediate carrier?

A. Our use of the TP&W Railroad is essentially that of an intermediate carrier, what we call so-called "bridge service", that is, shipments originating beyond the western terminus of the TP&W Railroad, routed over its lines to

destinations east of the eastern terminus of the railroad. We have very little service originating on the railroad.

Q. I see. Now, for how long a period of time has Armour & Company been making such use of the TP&W?

A. To my personal knowledge, it was before I came, and I don't know how much longer before that, which was dated prior to January 1, 1952.

Q. What factors motivate Armour to route traffic via the TP&W?

A. Our primary use of any routing is for the most expeditious service of perishable goods. We have found it to our distinct advantage to use the routing via the TP&W from certain origins to certain destinations in order to take advantage of the more direct route and avoid the congestion of other gateways, such as Chicago.

Q. Does Armour have a plant located in the Peoria area or in the area served by the TP&W Railroad?

[fol. 659] A. We have a plant in Peoria.

Q. Would you describe that, please.

A. Actually there are two plants adjacent to each other, and they are on the P&PU Railroad insofar as direct service of that railroad is concerned. Those plants also ship products to these eastern primary markets, and in that case the TP&W is used as the first line-haul of that shipment.

Q. The TP&W is then used as an originating carrier in that connection?

A. In such case it is an originating carrier.

Q. Does Armour & Company generally specify routings?

A. Armour & Company specifies all routings.

Exam. Albus: How about junctions?

The Witness: The routing itself would, for the most part, insofar as I know, take care of the junction. If it didn't, the junction would be identified.

Exam. Albus: Thank you.

By Mr. Bagge:

Q. Well, in that connection, does Armour & Company specify junctions in connection with any traffic which you now move Rock Island, then TP&W?

A. So far as I know, they do. There might be an example in the case of so-called dead freight which did not, but perishables we do.

Q. And in such a route, which junction would be specified?

A. The junction at Lomax or Keokuk, whichever one applied.

[fol. 660] Q. I see. Mr. Matthews, have you seen a copy of the application which the Santa Fe and Pennsylvania Railroads have filed with this Commission?

A. I have.

Q. Are you in a general way familiar with the contents of that application?

A. Insofar as pertains to our business, I am.

[fol. 661] Q. What is your position and the position of Armours with reference to the application of the Santa Fe and Pennsylvania Railroads to acquire control of the TP&W?

A. We are in favor of it

Q. What specific reasons do you and does Armour have for supporting the applicants in this connection?

A. Both of the railroads involved are used a great deal by Armour & Company for originating and destination shipments, and we feel that such service is definitely to our advantage to have two roads such as that participate in the ownership of a bridge service such as the TP&W is for us.

Q. Now, you have stated that Armour ships products from Santa Fe origins to Pennsylvania destinations. Does Armour use the TP&W in connection with any other routings, Mr. Matthews?

A. They do.

Q. Would you describe that, please.

A. Well, routing from St. Paul by way of Rock Island, as an example—

Q. Yes, sir.

A. (Continuing) — to the appropriate western terminus, either Lomax or Keokuk—I am not familiar without looking at the map exactly which it is—would be used, and thence to the Pennsylvania at Effner, if it was a Pennsylvania destination, or to the other connections such as Peoria on the Nickel Plate or Shelton on the New York Central.

[fol. 662] Q. Do you utilize the services of any other western connecting carrier in shipping movements to the TP&W?

A. Yes, we have used the Burlington.

Q. And what junction do you specify in connection with the routing of Burlington-TP&W?

A. I believe we specify Peoria in that particular connection. It could be that we use others.

Q. Do you know whether or not you ever have occasion to use Keokuk in that routing?

A. We have, yes, for certain of our products.

Q. Now, in connection with your routing of movements from the TP&W to eastern carriers, what eastern carriers do you use in volume?

A. We use fairly well divided between the Pennsylvania, New York Central, Erie and Nickel Plate, with B&O participating for a sizable amount of our traffic.

Q. Is it fair to state, then, sir, that Armour & Company has a significant economic interest in the maintenance and preservation of the rail connections of the TP&W Railroad?

A. We have a definite interest in maintaining all the connections we use at present.

Q. In your opinion what effect would the granting of the application of the Santa Fe and Pennsylvania Railroads have on these rail connections which you have mentioned?

A. As I read the application it doesn't have any effect, [fol. 663] the gateway is to remain open to all connections, both ends.

Q. Why do you feel that?

A. It is stated in the application, as I read it, that the Santa Fe and Pennsylvania propose to leave these gateways open for free movement of all carriers to use them and all shippers.

Q. Are there any other reasons for your believing that these routes and gateways would be maintained?

A. I don't see how it could be otherwise, they'd have to be maintained, if the TP&W, operated as an independent road, further stated in the application, is to be a fact, in order to make it operative independently with free solicitation of traffic the gateways would have to be maintained.

Q. Are there any alternatives available to you as a
ipper having these routings in mind in the event that
e or any of these gateways were not maintained?
A. We have alternate routes we can use for almost all
the originating traffic.
Q. Would that include the routing from the Burlington
d Rock Island Keokuk to the TP&W?
A. Yes, we could route on the Rock Island-Burlington
rough Chicago if the gateway were not maintained for
m.
Q. Does that pertain also to the junctions you have
ntioned including the TP&W-Nickel Plate or New York
ntral?
A. That is right.
Q. Or any other connections in the East?
l. 664 A. All of those roads have eastern connections
Chicago.
Q. In view of that, Mr. Matthews, in your opinion do
u believe that there exists a need for the connecting
il carriers to have stock ownership in the TP&W to
aintain these connections?
A. No, I do not. It is our feeling that we would be best
rved by ownership such as proposed rather than a multi-
ownership. Our experience in gateway operation, such
this is, is that multiple ownership we have difficulty in
ving any one road assume responsibility to make the
eration work efficiently at all times. Where there is a
per cent ownership as proposed by these two roads,
e, we would not experience any difficulty.
Q. Mr. Matthews, what is the position of Armour &
mpany and your opinion with respect to the applica
n of the M&StL. Railroad to obtain control of the
P&W?
A. We would feel that there is a great possibility that
ce there is essentially duplicate service between Peoria
d the western termini that one of them is likely to be
andoned or certainly not promoted, and we therefore
ve objection to that application for that reason.
Q. Have you anything further to say, Mr. Matthews?
A. Only this, that our experience with the two roads,
ch as the two propose to purchase, has been such that

we receive the service and attention that we must have in [fol. 665] the shipment of products such as fresh meat, which is on a very close schedule, requires a very great deal of attention, and avoidance of delays. We feel that we get a service from these two roads in connection with this gateway that will be better than any of the other proposals that I know of that exists in that case.

Mr. Bagge: That is all I have of this witness, sir.
Exam. Albus: Cross-examination, please.
Mr. Wheeler.

[fol. 666] Cross examination.

By Mr. Wheeler:

Q. Mr. Matthews, don't you ship a substantial volume of your products over the M. & St. L.?

A. M. & St. L. originate traffic for us at Mason City.

Q. Would you describe that operation, your opinion at Mason City?

A. Mason City is one of our larger plants. They ship products largely east, southeast, and south. The routing of the traffic is to the junction point, the general routing of that traffic is to the junction point, about 18 miles from Mason City to the Illinois Central, thence to other roads, as may be necessary. There could be some northbound which the M. & St. L. would take on out.

Q. Northbound the M. & St. L. would take on out. What about your St. Paul plant, doesn't a fair amount of the product of that plant move out over the M. & St. L. lines to Albert Lea?

A. As far as I know we have no shipments from Albert Lea to St. Paul. If it is, it would be a very small percentage. The movements of our traffic from south St. Paul in volume of traffic is divided between six roads. On a weekly basis the M. & St. L. is not one of them.

Q. Is the Illinois Central one of those roads that participates in that movement?

A. In St. Paul?

Q. From St. Paul to Chicago.

A. The Illinois Central doesn't serve—

[fol. 667] Q. I understand; but you know the Illinois Central connects with the M. & St. L. at Albert Lea, do you not?

A. No, they do not participate in that movement at St. Paul to any consequence at all. There could be routing on it for emergency reasons, and there could be somewhat we class as dead freight or nonperishable freight, might be a better expression for it, on that routing. However, to my knowledge, there isn't. It would depend on destination.

Q. Does the M. & St. L. serve your Mason City plant exclusively?

A. Yes, sir.

Q. What kind of service do you get from the M. & St. L.?

A. Very good.

Q. Very fine?

A. Very fine.

Q. Mr. Matthews, are you familiar with the fact that the M. & St. L. application just as the Pennsylvania-Santa Fe application provides that all existing routes, gateways, shall remain open?

A. I am not familiar with the exact wording of it. I understand it could be so ordered.

Q. Have you ever found in your dealings with the M. & St. L. that they failed to keep their word? Would you have any reason to doubt a statement made by the M. & St. L. to the Commission in good faith?

A. I haven't had any occasion.

[fol. 668] Mr. Wheeler: I have nothing further.

Exam. Albus: Thank you.

Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Matthews, I understood you to say one of the things you are interested in is the preservaion of all your connections on the T. P. & W. as at the present time?

A. That is right.

Q. And you'd like the service, the neutral service today, no particular connection favored over another, isn't it?

A. I don't know that neutral is exactly what we mean. We are interested in all connections, gateways, remaining as they are today, open to us.

Q. And the T. P. & W. today does not prefer any particular connection or gateway over another, does it?

A. Not that I know of. T. P. & W. today are independent and solicit for traffic over their railroad, and as I understand it they will continue to do so under this application.

Q. And that present situation is one of the things you want preserved, isn't it?

A. That is right.

Q. Incidentally, your service over the T. P. & W. is satisfactory today, isn't it?

A. Yes.

Q. And you don't see any reason why that should de- [fol. 669] teriorate if they should remain as a separate corporation and nobody bought them, do you?

A. No.

Q. So there isn't any need to approve the transaction in order to give you the service you need?

A. I start with the understanding that the T. P. & W. were to be sold.

Q. Assuming it wasn't sold at all, it doesn't have to be sold, in order to give you the service you want, does it?

A. Not that I know of.

Q. I believe you said in your direct examination that you used both the Santa Fe and the Rock Island in connection with the shipments which move over the T. P. & W. through the western gateways of Keokuk and Lomax, isn't that right?

A. That is right.

Q. As a matter of fact, you use those two railroads equally, don't you?

A. Not through that gateway. It depends on the originating point. The Santa Fe, for example the Santa Fe and Rock Island do not originate traffic for us to St. Paul, the Rock Island does and the Santa Fe does not.

Q. As to, for instance, your Kansas City-St. Joseph operations, you have them at those two points, don't you?

A. That's right.

[fol. 670] Q. I believe both carriers participate about equally on the traffic that comes out of those points and doesn't that go through Keokuk and Lomax?

A. Not all of it. I can't tell you exactly how that is routed daily. It is my recollection at this time that the Rock Island traffic is routed through Chicago mostly, at this time, out of those plants. Also it is my recollection that they do not participate equally in those particular plants. Would you mind my clarifying that just a little?

Q. Not at all.

A. There is a pattern of traffic routing of which all plants are taken in consideration and all of our regular carriers we use. When one plant is pinpointed or two, it isn't quite fair to all the roads participating because it highlights one over the other and any plant taken and any road taken would receive the same treatment.

Q. I see. Perhaps I can make what I am getting at more definite by reframing my questions in this way: Isn't there about an equal volume of freight coming off the Santa Fe for you through Lomax as that from the Rock Island through Keokuk?

A. I think there is more from the Santa Fe.

Q. Isn't the Rock Island an important connection to you, railroad to you, in connection with the T. P. & W. service?

A. Yes.

Q. Would you like to see that service retained in its [fol. 671] present volatile form?

A. Yes, that is the point I make, gateways open to all routings.

Q. Don't you believe that the Rock Island would be as interested as the Santa Fe in maintaining the route east of the western terminus as from Keokuk or from Lomax in operation?

A. In my opinion the interest depends on the percentage of ownership involved.

Q. Well, apart from the percentage of ownership involved, assuming they both had the same per cent, whether that was a hundred per cent or fifty per cent, wouldn't the reaction of the two railroads so far as you can see be about the same?

A. If it were not less than 50 per cent, I think it probably would.

Q. And you would have no objection to the Rock Island if it was to have 50 per cent?

A. I don't think so, except that it is not as great a traffic carrier to us at that point as the Santa Fe is.

Q. It isn't as big a railroad as the Santa Fe?

A. That is correct.

Q. Then would it be fair to state from that that, generally speaking, you have no particular objection to the Rock Island as such, and you think it could do an equally good job as the Santa Fe?

A. From what I know I think they could. I would like to qualify. You see, we deal with all railroads in our [fol. 672] efforts to move our traffic, all of the larger roads particular, the western roads participate in it, and we do our best to treat them all fairly commensurate with the service they offer us and time schedules, and so forth. I have no knowledge of the ability or inability of the Rock Island to perform in connection with our question.

Q. So it is not on that account in any event that you have taken the position you have?

A. That is right. I am concerned on a 50 per cent ownership at least.

Q. And your only reason on that is that you think that a carrier with something less than 50 per cent wouldn't have its whole heart in it, is that it?

A. That's been our experience in the Chicago Gateway.

Q. How about the T. & P. U. here in Peoria?

A. We originate such a small amount of rail traffic out of here that we haven't had any—

Q. Isn't it used as a connecting carrier on some of your traffic?

A. I don't believe it is. It originates at our plant and delivers to a line haul carrier. It is a T. P. & W., and it could be, for example, the big four.

Q. Do you have any operations that get as far east so that you would use the Richmond, Fredericksburg and Potomac Railroad?

A. We may have. That is not a normal routing, north [fol. 673] and south at the eastern seaboard, it is not a

normal traffic routing for us. No doubt there is traffic moving over it.

Q. Do you know anything about that railroad?

A. I only know that it is jointly owned by several railroads, and I don't know how many.

Q. That is an efficiently operated railroad, isn't it?

A. So far as I know.

Q. Now, this carrier that you talk of that you have had some not entirely satisfactory, at any rate, experience, that is a terminal carrier, isn't it?

A. It is the harbor.

Q. Isn't that a terminal carrier?

A. As far as we are concerned it is a bridge carrier between the western and eastern railroads.

Q. It doesn't have any line haul operations, though, does it?

A. I don't believe they are classed as line haul, but they are used as a connection.

Q. Just within the Chicago terminal area, isn't it?

A. I believe that is right.

Q. So to that extent it is different from the T. P. & W., isn't it, which is a line haul carrier going across the State of Illinois?

A. It performs the same service for us.

Mr. Cassell: That is all.

Cross examination.

[fol. 674] By Mr. Broker:

Q. You think the interest a carrier has on a particular line depends, then, upon the percentage of ownership?

A. That is the position I take, yes, sir.

Q. And that would hold true for any railroad, including the applicants?

A. That is the position I take.

Q. Now, the applicants, let's take the Pennsylvania has alternate routes, too, just as much as any other carrier, isn't that so?

A. That is right.

Q. At St. Louis and at Chicago?

A. That is right.

Q. And the Santa Fe has the same alternate route, doesn't it, to Chicago?

A. That is right.

Q. And they have 100 per cent interest in those lines, don't they?

A. Yes. You mean as far as the line haul carrier is concerned to Chicago, for example?

Q. To a particular gateway, that is right.

A. That is right.

Q. You ship to New England, of course?

A. Yes, sir.

Q. You ship all over the United States?

A. Yes, sir.

Q. And in movements to New England do the cars move [fol. 675] over the L. & H. R., Lehigh and Hudson River?

A. Yes, there are some movements in there to certain of our destinations. I couldn't tell you what the final destination is that we use them on.

Q. You don't have any particular trouble with that route do you?

A. No, because the volume used over it is not in any way comparable in so far as we are concerned.

Q. To the T. P. & W.?

A. That is right.

Q. But to the extent that you use it it is an efficient railroad?

A. Yes, there are very few cars involved in it.

Q. Now, this local traffic that comes out of Peoria from the P. & P. U., is that all routed east over the T. P. & W.?

A. Pretty generally that's true. There could be on the southeast, it could go out over the big four to Indianapolis and Cincinnati.

Q. And the bridge traffic that comes from the west, that could move over numerous combinations, say, Santa Fe, Effner, P. R. R., or Santa Fe, T. P. & W., Peoria and Nickel Plate?

A. That's right.

Q. And those routes are reasonably efficient, aren't they?

A. That's right.

Q. And they worked out—let's take the Nickel Plate route via Peoria—a very close schedule, too, aren't they?

[fol. 676] A. That's right.

Q. So the Nickel Plate would be very much interested, wouldn't it, in maintaining that close tight schedule and the service on the T. P. & W.?

A. That is correct.

Mr. Broker: That is all.

Mr. Carr: May I ask a question, Mr. Examiner?

Exam. Albus: What is your name, sir?

Mr. Carr: C. A. Carr.

Exam. Albus: Yes, sir.

Cross examination.

By Mr. Carr:

Q. Do you have a plant in South Dakota?

A. Yes, sir.

Q. Do you ship in carload lots east of Chicago?

A. Yes, sir.

Q. Do they go through Chicago or Peoria?

A. They go through Chicago.

Q. They do not go through Peoria?

A. No. The plant is served exclusively by North Western Railroad.

Q. You don't ship Great Northern?

A. Not out of there.

Q. Do you ship dairy products in carload lots to the east coast?

A. A limited amount by comparison, yes, sir.

Q. And those go through Chicago?

[fol. 677] A. I wouldn't say for sure that all did. They generally would, yes, but there could be routing through Peoria of those dairy products that come out of some of those creamery locations in South Dakota and Minnesota.

Mr. Carr: Thank you.

Exam. Albus: Are there any other questions of Mr. Matthews?

(No response.)

Exam. Albus: Apparently not. You are excused, thank you very much, Mr. Matthews.

(Witness excused.)

[fol. 678] Mr. Hunter: I will call Mr. Dale Tammen.

DALE W. TAMMEN was sworn and testified as follows:

Direct examination.

Exam. Albus: May we have your full name, please.
The Witness: **Dale W. Tammen.**

By Mr. Hunter:

Q. And where do you reside?
A. At LaHogue, Illinois.
Q. Where is LaHogue?
A. That's about 80 miles east of Peoria.
Q. What is your business?
A. I am owner and operator of a grain business.
Q. Would you briefly describe the nature of your grain business.
A. Well, I buy and sell grain from farmers on a brokerage basis.
Q. And whom do you sell the grain to?
A. Well, I sell to different brokers, most of it—well, I said most of it, part of it moves east and some of it moves into Peoria.
Q. What railroad are you served by, Mr. Tammen?
A. The TP&W.
Q. Do you have any other rail service directly?
A. Not directly, no, sir.
Q. Is there any other railroad in LaHogue?
A. No, sir.
[fol. 679] Q. Approximately how many cars a year do you ship?
A. Oh, approximately a hundred.
Q. When you ship the cars do you specify the routing?
A. Not generally.
Q. Is a routing specified?
A. Sometimes. Sometimes I do send it, most generally, I should say, I send it by the way of the buyer.

Q. What routes are generally used by you in your principal movements?

A. Well, it would only be the TP&W coming into Peoria, and moving east, why, it is the New York Central and the Pennsylvania.

Q. Do you have any other substantial rail shipments, other than those you have just described?

A. No, not too many. I do ship a few to Chicago.

Q. How long have you been in this business?

A. In LaHogue I have been in business since 1946.

Q. Were you ever in the grain business in any other location?

A. Yes, sir.

Q. Where was that, and for what years?

A. Well, I was—when I started in the grain business I was in Gilman for nine years, and from there I was at my present location for three years, and in 1942 I was at Oakland, Illinois.

Exam. Albus: Is Gilman in Illinois?

The Witness: Yes, sir.

[fol. 680] By Mr. Hunter:

Q. What rail lines were you served by in Oakland?

A. The Pennsylvania and the Nickel Plate did run through Oakland.

Q. Has your service by the T. & W. been satisfactory?

A. Very, outside of a few times when cars are short.

Q. Was your service by the Pennsylvania satisfactory in Oakland?

A. Very good.

Q. Mr. Tammen, have you read the application of the Santa Fe and Pennsylvania Railroads in this case?

A. Part of it, sir.

Q. Are you familiar with it?

A. Well, I know they are applying to purchase it.

Q. As a shipper, are you interested in that application?

A. Well, I would think so.

Q. What is your position relative to that application?

A. Well, as my stuff moves east, why, I would be more or less interested in the Pennsylvania, as quite a little bit of mine is routed that way, to Indianapolis.

Q. What reasons do you have for favoring the application of the Pennsylvania and Santa Fe Railroads?

A. Well, I suppose we all have selfish reasons. I would think that boxcar situation, why, we may have a chance to get a few more boxcars.

[fol. 681] Q. Does your previous experience with the Pennsylvania Railroad lead you to that conclusion?

Mr. Broker: I object. That is kind of remote, isn't it?

Exam. Albus: He can tell why he has that opinion.

Mr. Broker: All right.

A. Well, we receive quite a few cars from, load Pennsylvania cars, and being on the east end, why, I would think they would serve some back to the TP&W, in the past, because they get the haul to Indianapolis.

By Mr. Hunter:

Q. Have you had occasion, Mr. Tammen, to contact the general offices of the TP&W in Peoria?

A. A few times.

Q. What occasions were those?

A. Boxcar shortages.

Q. Did it do you any good?

A. Yes.

Q. Was it convenient for you to be able to contact the general office?

A. Yes, it has been.

Mr. Lucas: Mr. Examiner, may I ask a question off the record.

Exam. Albus: Yes. Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

By Mr. Hunter:

Q. Mr. Tammen, going back, are cars which leave your [fol. 682] elevator actually routed when they leave the elevator?

A. Sometimes. Most of the time.

Q. Are those routings in accordance with shippers' in-

structions or receivers' instructions?

A. Receivers' instructions.

Mr. Hunter: No further questions.

Exam. Albus: How was the contact made with the general offices of the TP&W?

The Witness: By telephone.

Exam. Albus: Cross-examine, please. Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. Mr. Tammen, did you see the application of the M&StL filed in this proceeding?

A. No, I didn't.

Q. Did you make a study of the car-ownership of the Pennsylvania Railroad?

A. No, I didn't.

Q. Or the Santa Fe?

A. No, sir.

Q. Or the M&StL?

A. No, sir.

Q. Did you attempt to determine their relative car shortages during the last several years?

A. Well, I guess they didn't have enough cars.

Q. But you didn't make any particular effort to determine that?

[fol. 683] A. No.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Tammen, just to have it located, LaHogue is about 35 miles west of Effner?

A. How many miles?

Q. Thirty-five or thereabouts.

A. Thirty-five?

Q. Thirty-five.

A. I would say about that.

Q. And Gilman is just east of LaHogue?

A. Right.

Q. What was the other town you spoke of and where is it located?

A. Oakland, Illinois, in the southern part of the state.

Q. How big a town is LaHogue?

A. Well, I suppose about 70 people live there.

Q. Your elevator is the only railroad shipper in town, isn't it?

A. That is right, sir.

Q. One of the things you are interested in is the retention of these offices that you can call up over here in Peoria?

A. I would think so, yes, close at hand.

Q. A setup that has those offices available to you is what you want, isn't it?

[fol. 684] A. That's right.

Q. And I take it that you are not interested in the service west of Peoria, is that right?

A. That would be right.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. Do you know if the Nickel Plate becomes a part owner it will propose to keep those offices in East Peoria?

A. No, sir, I don't.

Mr. Broker: No other questions.

Exam. Albus: Are there any further questions?

Mr. Wheeler: May I ask one question?

Exam. Albus: Mr. Wheeler.

Further cross examination.

By Mr. Wheeler:

Q. I understand you contact these offices by telephone. Mr. Tammen.

A. I have, yes.

Q. That is your usual method of communicating with them?

A. No, not too often in the Peoria office because we have a local agent.

Q. Mostly you contact the local agent?

A. Mostly, yes.

Mr. Wheeler: No further questions.

[fol. 685] Exam. Albus: Are there any further questions?

Mr. Hunter: No, sir.

Exam. Albus: Apparently not.

You are excused, Mr. Tammen. Thank you.

(Witness excused.)

Exam. Albus: Next witness, please.

[fol. 686] ALBERT STAMPER was sworn and testified as follows:

Direct examination.

By Mr. Bagge:

Q. Would you state your name, sir?

A. Albert Stamper.

Q. Where do you reside, Mr. Stamper?

A. Burlington, Iowa.

Q. What is your business or occupation?

A. I am vice-president and general manager of Interstate Wholesale, Incorporated.

Q. Would you describe briefly what Interstate Wholesale, Incorporated is?

A. It is a wholesale lumber concern, brokering lumber direct from mills in the Pacific Northwest, and also carrying inventory for retail lumbermen and industry in the market of these locations being in East Peoria, Illinois, Fort Madison, Iowa, and Bettadorf, Iowa.

Q. How large an area do you serve in the wholesale marketing of lumber?

A. Approximately 75 miles surrounding each of the locations which I have named.

Q. Would you describe briefly the manner in which you are dependent on rail service in the operation of your business?

A. One hundred per cent.

Q. Would you describe that briefly?

[fol. 687] A. Our lumber originates in the Pacific Northwest, which makes it 100 per cent—it is necessary for us to ship all this lumber in boxcars to the market we serve and our yards.

Q. Would you describe to what extent Interstate Wholesale utilizes the services of the T. P. & W. Railroad, either as an originating, terminating or bridge carrier?

A. With our plant located in East Peoria a good bulk of our or all of our inventory shipped into this market to be distributed to retail lumbermen is unloaded in East Peoria.

Q. I see.

A. Of course there are some retail lumbermen east of Peoria and west of Peoria which is served by the T. P. & W. points.

Q. Now, I take it that there are other available routes for getting this merchandise to your plant at East Peoria, is that correct?

A. Yes, there is.

Q. What factors motivate you to route this over the T. P. & W.?

A. Primarily because we are located on the—not primarily, because we are located solely on the T. P. & W. Railroad, served solely by the T. P. & W. Railroad.

Q. Now, is it a fact, however, that to get your merchandise to that warehouse that you can use other railroads to each of them?

A. That is correct.

Q. For the line haul, is that correct?

A. That is correct, sir.

[fol. 688] Q. Are you familiar with the application of the applicants in this proceeding, the Santa Fe and Pennsylvania Railroads?

A. Yes, somewhat.

Q. You have availed yourself of having read portions of it?

A. Yes, sir.

Q. Would you state what your position and the position of Interstate Wholesale is in connection with the application of the Santa Fe and Pennsylvania Railroads to acquire the TP&W?

A. We are familiar with operations of the Santa Fe Railroad and their efficiency in which they operate. Service with us is a great factor. We know what the Santa Fe can do. Again we feel that if this application were granted it would be of great service to our organization, it would be helpful, very helpful.

Q. In other words, I take it, that your position in this proceeding is in favor of it because you feel that this would serve your needs, is that correct?

A. That is right, and possibly open up some new markets east of Peoria for us on an outbound transit arrangement, out from Peoria.

Q. Would you describe that, please.

A. Loading cars of 36,000-pound minimum possibly and serving retail lumbermen, oh, in western Indiana possibly. If something like that could be instigated here, and this application were granted, it could very possibly open a new market for us.

[fol. 689] Q. It is something, I take it, which hasn't happened before, is that correct?

A. That is correct.

Q. You stated that there are other alternative routes available to you. Would you describe what routings you use in connection with movements moving to the TP&W Railroad? Let's take a car of lumber from the west.

A. All right. From an area south of Portland it generally moves, the lumber generally starts on the Union Pacific or Southern Pacific Railroad, and they will pull it to the Mississippi River, or their junction points, excuse me, their junction points, at which time it generally comes into the Peoria market via the Santa Fe or the CB&Q Railroad, and from there via the TP&W to East Peoria.

Q. I take it, therefore, that you are interested in maintaining and preserving this gateway at Keokuk, is that correct?

A. It has been very satisfactory.

Q. Are you interested in maintaining it in its present form?

A. Yes, sir.

Q. And you have a direct interest in that, do you?

A. Yes, sir.

Q. What effect do you believe the granting of the application of the Pennsylvania and Santa Fe Railroads will have if they are granted ownership of the TP&W on the maintenance of the Keokuk gateway?

[fol. 690] A. I feel that it will, as I have stated, under Santa Fe management will be—the management will be improved, consequently service will be improved, new industry will probably be drawn to the territory, which will be of help to the area.

Q. Are you interested in that factor?

A. Being in the building material business we are very interested, yes, sir.

Q. Would you go on? I didn't mean to interrupt you.

A. The Lomax gateway tying in with the Santa Fe and TP&W is of great value to us. We balance our inventory in that manner, and again the Keokuk gateway is of value.

Q. Do you believe or is it your opinion that if this application were granted that service via the Keokuk gateway would be affected in any way detrimentally?

A. No.

Q. Why do you say that?

A. Well, again, the service which the Santa Fe Railroad can afford and the way their cars are handled we would always know where our cars were located, and it would be of great help to us.

Q. Is there a possibility that you would use alternative routes if this gateway were not maintained?

A. Yes, there is.

Q. Would the TP&W participate in such a routing?

A. No.

Q. Would the Santa Fe derive any revenue if you used [fol. 691] an alternative routing?

A. No.

Q. Would the Pennsylvania derive any revenue if you used an alternative routing?

A. No.

Q. Is it fair to say, then, that it is to the self-interest of the applicants to maintain that gateway?

A. I would say so, yes.

Mr. Bagge: That is all I have of this witness, sir.
Exam. Albus: Cross-examine, please.

Cross examination.

By Mr. Wheeler:

Q. Do you believe the Lomax or Keokuk gateway will be closed in the event the Santa Fe-Pennsylvania application is denied?

A. No, I wouldn't think so, no.

Q. Do you request the routing on this lumber that is coming east to you or is that routing given by the shipper?

A. We never request it—the only thing we request is final destination, generally.

Q. So that it is immaterial, really, to you whether it goes over the Q or whether it goes over the Santa Fe, is that correct?

A. No, I generally see to it that there is a fair amount of distribution.

Q. But your service over the one is about as good as it is [fol. 692] over the other, is it?

A. Yes.

Q. Have you seen the application of the M&StL in these proceedings?

A. No, sir.

Q. Do you have any business from the Pacific Northwest, that is, any shipments of lumber come in via Minneapolis, the Minneapolis gateway?

A. Yes, we do.

Q. How does that come into the TP&W?

A. Generally by the CB&Q, sir.

Mr. Wheeler: No further questions.
Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Mr. Stamper, you said most of your shipments originate in the Pacific Northwest?

A. Yes, on the Pacific Coast, the lumber producing areas out there, yes, sir.

Q. That is north of California, isn't it?

A. That is correct.

Q. Now, I specifically ask as to shipments coming into Peoria. Most of those are routed over the Burlington, aren't they?

A. From California?

Q. Well, immediately prior to the TP&W.

A. Will you state your question again?

[fol. 693] Q. As to those shipments from the Pacific Northwest that you have been mentioning, which are destined to your East Peoria location, and are delivered by the TP&W, as I understand they all are, isn't that so?

A. Yes, they have to be.

Q. Don't practically all of those come into the TP&W via the Burlington?

A. Coming out of northern Washington, Idaho, and Montana, there is no other way to get in here.

Q. How many cars would you say you ship a year or what percentage of your shipments into Peoria have any, and I am speaking only of Peoria, either in percentage or number of cars, either way you wish to express it, have any Santa Fe routing?

A. Do you want a percentage figure?

Q. Yes, of the cars that are destined to Peoria?

A. Twenty per cent.

Q. Where does the Santa Fe get a haul on those Pacific Northwest cars?

A. They get very little, they just can't.

Q. Where would their junctions be?

A. Well, I am not much of a railroad man. We have a traffic department. You ask where the junction points coming out of what region now?

Q. Well, your lumber in the Northwest.

A. You are talking about Washington and Oregon?

[fol. 694] Q. Yes, that is where you said it came from.

A. Well, Kansas City, Denver, whenever possible.

Q. Do you ever use the Rock Island on those shipments?

A. No, we never have.

Q. Do you know why not?

A. Well, when this lumber is rolling we try to keep it going to junction points on railroads where we can serve the market where our salesmen are traveling and we are consequently tied down because of that.

Q. Then it is a question of marketing that influences your routing?

A. Marketing is a big factor, yes, sir.

Q. You mentioned you would like to have some sort of a transit arrangement here in Peoria. Couldn't that be effected with the present railroad facilities you have today with the TP&W?

A. It hasn't been satisfactorily.

Q. I mean there is nothing physically that has to be done, you don't know of any new facilities that is going to be put up?

A. Not as far as I know.

Q. It is just a question of somebody making the decision, isn't that it?

A. Possibly.

Q. Have you been told that if the Santa Fe gets control they will put in that transit arrangement?

[fol. 695] A. No, but they are pretty aggressive people as far as I know.

Q. Aren't the TP&W aggressive?

A. To a certain extent.

Q. We have heard a good deal about their management here, don't you consider it a well managed railroad?

A. Yes, I do.

Q. You said one of the things you were interested in seeing the management improve, now, just what is lacking with its present management that you think ought to be improved?

A. Well, not being a railroad man I wouldn't want to make any suggestion—

Q. (Interrupting) Well, just what is lacking with its present management that you think ought to be improved?

A. Well, it is important that you know when your cars are going to get to your yard. Unloading of lumber is quite a factor. If we would be advised of where these cars are at all times, we know about what time they are going to be in the yards, it helps us to get them unloaded.

Q. Doesn't the TP&W do that for you?

A. Oh, we have never asked them to.

Q. If you do, couldn't they?

A. I suppose, yes, I suppose they have facilities for that.

Q. Then you don't need to have this transaction approved to trace your cars, then, do you?

A. Oh, no, not wholly, not entirely.

[fol. 696] Q. What else do you need it for?

A. Well, our general office is in Fort Madison, Iowa. We have had a lot of dealings with the division point in Fort Madison. By our general office being there it would be awful easy for us to pick up the phone in our own home town and ask where our car was, and whether it was east or west of the Mississippi River, it would make a difference, they could probably tell us right then.

Q. It is because of your location in Fort Madison, then, that you would like to see this approved, is that it?

A. That is one of the factors.

Q. Who serves Keokuk today, the Santa Fe?

A. No, sir.

Q. What railroads do?

A. CB&Q and TP&W.

Q. Did you ever hear of the Rock Island?

A. Yes.

Q. Now, I was interested in your statement that you thought that the tracing services of the Santa Fe and so on would help out Keokuk. The Santa Fe doesn't serve Keokuk, though, does it?

A. I don't quite get your point.

Q. I didn't get yours. That is why I am asking the question. You said something about Keokuk and the Santa Fe. I didn't know the Santa Fe had anything to do with Keokuk

[fol. 697] A. They don't have.

Q. What did you mean to imply that would happen to Keokuk in regard to the Santa Fe?

A. Well, we use Keokuk via the—

Q. (Interrupting) Burlington?

A. (Continuing) —Burlington Railroad.

Q. Well, then, what would the Santa Fe have to do with Keokuk?

A. Absolutely nothing.

Q. You are over in East Peoria on the TP&W?

A. That is right.

Q. Isn't the reason why you get all your deliveries by the TP&W—is there any reciprocal switching available to you in East Peoria?

A. Yes—no, no; there isn't.

Q. There is not? If you came in over any other railroad then you would have a penalty on your rate, isn't that right?

A. Yes.

Q. Doesn't that influence your routing?

A. TP&W routing?

Q. Yes.

A. Yes, it does.

Q. Whose property are you located on over in East Peoria?

A. TP&W property.

Q. Do you know what the proposal of the Rock Island is in this proceeding?

[fol. 698] A. No, I don't, sir.

Q. Has anyone ever discussed that with you?

A. No, sir.

Q. Who talked to you about this case?

A. Oh, I have talked to Mr. Hemphill and Carl Bagge.

Q. Did they tell you anything about the Rock Island's position in this case?

A. No, they didn't.

Q. Then you have no opinion in regard to what the Rock Island might or might not do?

A. No, I haven't.

Mr. Cassell: That is all.

Cross examination.

By Mr. Broker:

Q. Would those same answers apply to the Nickel Plate?

A. We don't have any reason to use the Nickel Plate to a great extent. I don't know a great deal about it.

Q. You don't understand, though—let me put it this way. You said you were interested in Santa Fe control because it would improve the tracing of cars, is that what you said?

A. Yes, that would be one of the factors that would certainly help, I would think.

Q. Haven't you read their representations that this will be operated as an independent railroad?

A. Yes, I have.

[fol. 699] Q. If it is independent, how does the ownership come into play in tracing the cars?

A. Well, it is hoped that possibly some changes can be made to improve the situation.

Q. Do those changes need to be made on the TP&W or on the Santa Fe?

A. Well, I would say on the TP&W, definitely, because of its location.

Q. What it comes down to, then, to shorten this, is that you would like to see the Santa Fe management come in, is that right?

A. I can't help but think it would improve.

Mr. Broker: Thank you.

Exam. Alous: Are there any further questions?

Mr. Wheeler: Yes.

Further cross examination.

By Mr. Wheeler:

Q. How many cars did you receive in your East Peoria yard last year?

A. Oh, about 240, sir.

Q. Do you know how many cars of Interstate Wholesaler's, destined Interstate Wholesaler's came east over the M&StL?

A. It would be a guess, sir, and I wouldn't venture a guess. I wouldn't know, not being involved in the routing where the shipper routes.

Q. Would your service over the M&StL be with a par of [fol. 700] the services you have received on other routings?

A. I do know that there has been little or none go over the M&StL, so I wouldn't know, but I know it is a good railroad.

Mr. Wheeler: I have no further questions.

Further cross examination.

By Mr. Broker:

Q. I am not sure that this question was answered, although I believe it was asked, have any of the applicants held out that you would receive a transit at East Peoria?
A. Absolutely not.

Mr. Broker: That was my understanding.
Thank you.
Exam. Albus: You are excused, Mr. Stamper. Thank you, sir.

(Witness excused.)

[fol. 701] Exam. Albus: Next witness.
Mr. Bagge: May I call Mr. Roark, Mr. Examiner.

James R. Roark was sworn and testified as follows:

Direct examination.

By Mr. Bagge:

Q. Would you state your full name, please.
A. James R. Roark.
Q. Where do you reside, Mr. Roark?
A. Bushnell, Illinois.
Q. What is your business or occupation?
A. I am a partner in a men's and boys' clothing establishment.
Q. Do you hold any offices in a civic organization in Bushnell?
A. I am President of the Chamber of Commerce in Bushnell.
Q. Would you tell us something about the Chamber of Commerce in Bushnell.
A. The Chamber of Commerce in Bushnell attempts to improve the customer and the business relations with the farmers, with industries, and attempts to bring new industries to town and just more or less oversees the, well, the whole setup of the town.

Q. Have you anything to add to the comments—Mr. Bertolino made reference to the fact that he sounded like a chamber of commerce—do you have anything to add to that speaking, as president of the chamber of commerce of Bushnell?

A. Well, nothing except we would like to see more industry come to town, and we feel that we have the pos- [fol. 702] sibilities there for the labor situation and the land available for industry.

Q. In your opinion, would the granting of the application of the Santa Fe and Pennsylvania Railroads—

Mr. Broker: (Interrupting) Excuse me. Why don't you put it this way, what would be the effect of the granting of the application. I object to the leading question.

Mr. Bagge: All right, sir.

Exam. Albus: Objection sustained.

By Mr. Bagge:

Q. What would be the effect on your organization of granting the application of the Pennsylvania and Santa Fe Railroads to acquire control of the TP&W Railroad?

A. We feel, as an organization, I feel personally, that more or less the merger—it is not called a "merger", I know, but the joint purchasing of the TP&W Railway by the Santa Fe and the Pennsylvania Railways will help to further the TP&W Railroad, make a better railroad of it.

Q. Would it do anything beyond furthering the TP&W Railroad?

A. Well, I believe with more or less a transcontinental hookup there between the two large railroads, the Santa Fe and the Pennsylvania, with the bridge on the TP&W, that it would help to establish trade both east and west.

Q. From Bushnell?

A. Yes.

Q. Has your organization taken a position in connection with this application?

A. Last October, I believe it was, that the Chamber went [fol. 703] on record as saying, at a regular meeting, that they favored the sale of the railway to the Santa Fe and the Pennsylvania.

Q. And did they authorize you to intervene in this proceeding at that time?

A. At that time, why, I was not president, but it was voted that we would intervene.

Q. And you did file an intervening petition, is that correct?

A. That is correct.

Q. What position does your organization, the Bushnell Chamber of Commerce, take with respect to the application of the M&StL Railroad to acquire control of the TP&W?

A. Well, we feel that, being that the two railroads, the Santa Fe and the Pennsylvania, hook on to both ends of the TP&W, that they would do all in their power to maintain the railroad and expand it and improve it.

Q. Let me restate my question. What position has your organization taken with respect to the application of the M&StL to acquire control of the TP&W?

A. We did nothing—there was no action taken on the M&StL, other than we did desire that the Santa Fe and Pennsylvania purchase the railroad.

Mr. Wheeler: I object.

Exam. Albus: Proceed.

Mr. Bagge: I was about to say—

By Mr. Bagge:

Q. Was the—

[fol. 704] Mr. Broker: He said his organization took no position, period.

Mr. Bagge: And I am trying to—

By Mr. Bagge:

Q. In taking this action, Mr. Roark, did the members of the organization consider the position of the M&StL Railroad?

Exam. Albus: He may answer that.

A. It was discussed at the meetings that the M&StL, the Rock Island and the Nickel Plate were also desirous of

buying the TP&W, and even after discussion we felt that the Santa Fe and the Pennsylvania were the best railroads to have it.

Q. And that information was available to you, was it, when you took this action?

A. Well, it has been discussed off and on since last October, yes.

Q. In your discussion concerning the possible ownership of the TP&W by the M&StL, what position did your organization take in those discussions?

Mr. Wheeler: I object. This is repetition.

Exam. Albus: That has been answered. They have taken no position, he said.

Mr. Bagge: All right, I will withdraw the question.

Exam. Albus: Is that correct, Mr. Roark?

The Witness: We just felt it was better that the Santa Fe and the Pennsylvania acquire the railroad.

[fol. 705] Exam. Albus: In other words, we didn't pass a resolution against that.

The Witness: No, we did not.

By Mr. Bagge:

Q. Is it fair to say that on the basis of your—

Mr. Wheeler: I object.

Exam. Albus: Sustained.

Mr. Bagge: That is all. Thank you, Mr. Roark.

Cross examination.

By Mr. Wheeler:

Q. Mr. Roark, did you have the application of the M&StL before you or before your organization when you passed the resolution in October of 1954?

A. We did not.

Q. Did you have the application of the Santa Fe-Pennsylvania before you when you passed that resolution?

A. We did not.

Q. What did you have before you?

A. We had just the knowledge from the newspaper and so forth that the Santa Fe was attempting to buy the TP&W.

Q. What newspaper?

A. I don't recall that. It was in the Peoria, the Macomb, the Chicago paper.

Q. And on the basis of those newspaper stories you took your action, is that correct?

A. Well, it was fully discussed.

Q. You mean the articles were fully discussed?

[fol. 706] A. Well, the proposition of the Santa Fe buying the TP&W Railway.

Q. Did you understand what the provisions of the agreement between the Santa Fe and the Pennsylvania and the trustees of the McNear estate were?

A. No, we didn't have the application at that time. But it was understood that the McNear estate desired that the Santa Fe buy it.

Q. Supposing the Santa Fe and the Pennsylvania had been buying it in order to abandon it because it was competitive with another route, would your association of commerce have taken the same position?

A. No.

Mr. Wheeler: I have no further questions.
Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. At the time you took your action with the chamber of commerce did you have—what was the source of your information about the Rock Island?

A. The Rock Island, the Santa Fe and the Pennsylvania were the only ones that were brought up at that time—they came in later.

Q. You had no information about the Rock Island, then, at that time?

A. No.

[fol. 707] Q. Then, your chamber has taken no position in regard to the Rock Island, has it?

A. It has been discussed, and that is all.

Q. It has taken no position?
A. No.
Q. You don't make any carload shipments in your own business, do you?
A. No.
Q. You have no use for carload shipments at all by rail?
A. No, sir.
Q. Your merchandise all comes in by truck?
A. Yes, it does, by truck and parcel post and express.

Mr. Cassell: That is all.
Exam. Albus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. Did your organization take a position in respect to the Nickel Plate?
A. No, sir.

Mr. Broker: No questions.
Exam. Albus: Any further questions?

(No response.)

Exam. Albus: You are excused, Mr. Roark.

(Witness excused.)

[fol. 708] Mr. Lucas: I will call Mr. McKey.

Paul W. McKey was sworn and testified as follows:

Direct examination.

By Mr. Lucas:

Q. Mr. McKey, will you state your name and your residence for the record, please?
A. Paul W. McKey, Gridley, Illinois.
Q. Are you engaged in some business capacity at Gridley, Illinois?
A. Yes, sir, in the grain.
Q. In what capacity, please?
A. Grain business. We operate a grain elevator.

Q. And in addition to the business that you carry on there are you a representative of the village of Gridley?

A. I am one of the village trustees.

Q. What is the setup of the administration of the village of Gridley? Is there a mayor and a board of trustees?

A. There is a mayor and six trustees.

Q. And you are one of the six trustees?

A. Yes, sir.

Q. And how long have you acted as a trustee of the village of Gridley?

A. Well, six or seven years. It is my second term.

Q. The village of Gridley filed a petition of intervention in this proceeding, did they not?

A. They did.

[fol. 709] Q. You had hoped or thought you would have your village attorney here today, did you not?

A. He was unable to attend.

Mr. Lucas: Mr. Examiner, I am pinch hitting for the village attorney, if I may.

Exam. Albus: Very well, proceed.

By Mr. Lucas:

Q. How long have you conducted your business, Mr. McKey, at Gridley?

A. Ten years.

Q. How large, by the way, is the village of Gridley?

A. Approximately eight hundred.

Q. And during the 10 years you have operated there it has been on what railroad, please?

A. The T. P. & W. Railroad.

Q. What is the form of your operation, corporation or partnership?

A. We have a partnership.

Q. And your partner is who, please?

A. Mr. L. E. Roegge.

Q. What service do you employ generally beyond the T. P. & W. railroad service?

A. Well, we ship grain to various points in the United States. Most of it goes south, southeast, and east. Approximately two-thirds of our business is transacted by

rail, one-third by truck, and we use—we ordinarily take the shipper's instructions on billing. Much of our grain has gone out over the Pennsylvania and the Wabash and [fol. 710] N. Y. C. to southeastern points.

Q. How far west of Effner, Indiana, is Gridley?

A. I should say approximately 70 miles. I don't know the exact mileage.

Q. The movements through Effner, of course, is in conjunction with the Pennsylvania Railroad beyond the T. P. & W.?

A. That is right?

Q. And the movement that you have referred to over the New York Central is through Sheldon?

A. Yes, sir.

Q. Mr. McKey, I just talked with you a few minutes ago; did I not, outside the hearing room?

A. Yes.

Q. I found you had undertaken to set down some things that would give the Examiner and the Commission a little idea of your business and so on. Will you just take your own notes and proceed, please.

A. We have an approved warehouse licensed under the Illinois Commerce Commission for 285 thousand bushels. We have a contract with the Commodity Credit Corporation for grain storage in the same amount. We ship from seven hundred fifty thousand to one million bushels of grain per year. Last year we loaded out 385 boxcars, grain cars. We brought in 21 cars of fertilizer. We have just recently completed a shipment of 27 cars of oats, Quaker Oats Company, at Akron, Ohio, over the P. R. R. at Effner. [fol. 711] Last November we shipped 175, approximately 175, cars of Commodity Credit corn with destination at Baltimore and Philadelphia via the Pennsylvania.

During the extreme shortage we contacted officials of the T. P. & W. We also worked with the officials of the Pennsylvania. We talked to Mr. Plummer in Chicago. We talked to the Logansport office, using every method we could to secure cars for these shipments.

Q. Does that complete your notes?

A. Yes.

Q. In connection with the eastbound movement of your cars have you had good service on the part of the T. P. & W. and the Pennsylvania Railroad?

A. Yes, with the exception of car shortage, and everybody experiences the same.

Q. And has it coordinated schedules as far as you have been shipping T. P. & W.-P. R. R. and given you good service?

A. I think that is all right.

Q. Do you have anything else to add, Mr. McKey?

A. No, sir.

Mr. Lucas: That completes the direct.

Exam. Albus: Cross-examination, Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. In connection with your cars and other service from the T. P. & W. do you contact the local agent?

[fol. 712] A. Yes, sir.

Q. And I believe you said you contacted the Pennsylvania officials by telephone?

A. That is right.

Q. You don't have any trouble using the telephone to contact these officials, do you?

A. Not very much.

Q. I believe you said you had no particular complaint about the car supply that has been furnished you by the T. P. & W.?

A. Well, generally, like right now it is all right, but in periods of great shortage, why, all the lines experienced about the same thing, I think.

Q. Have you had occasion to check the M. & St. L. to determine whether or not they had the elevators on their lines, had any shortages for any length of time in car supply during the 1955 season?

A. No, sir.

Q. You don't know, I gather, what the car shortage situation on the Pennsylvania was during 1955?

A. They had a car shortage, too.

Mr. Wheeler: I have no further questions.
Exam. Albus: Mr. Cassell?
Mr. Cassell: No questions.
Exam. Albus: Mr. Broker?
Mr. Broker: No questions.
[fol. 713] Exam. Albus: You are excused, Mr. McKey. Thank you.

(Witness excused.)

Mr. Bagge: Mr. Examiner, I think I informed you earlier about our problem in regard to the witnesses today. We have two here in the city. We are expecting the Peoria Junior Chamber of Commerce and the City of Peoria through the Mayor to appear later. It will be approximately ten or fifteen minutes. If I could ask that we adjourn right now—
Exam. Albus: We will take a short recess.

(Short recess.)

[fol. 714] Exam. Albus: The hearing will please come to order.
May we have the next witness, please.
Mr. Cation: Mr. Schwarzloss.

Thomas Schwarzloss was sworn and testified as follows:

Direct examination.

By Mr. Cation:

Q. Would you state your name, please.
A. My name is Thomas Schwarzloss.
Q. Where do you reside, Mr. Schwarzloss?
A. I live at 124 Ridgemont Road, Peoria, Illinois.
Q. What is your business or occupation?
A. I am sales manager of Traders' Realty Corporation.
Q. Are you a member of the Peoria Junior Chamber of Commerce?
A. I am the President of the Peoria Junior Chamber of Commerce.
Q. Will you please state to the Examiner the number of members of your organization.
A. We have approximately 400 members.

Q. What is the age group of these members?

A. The age group is 21 through 35.

Q. What are some of the activities of the Peoria Junior Chamber of Commerce?

A. We carry on a lot of activities, a lot of projects, each year. All of these are designed to improve and better our community. That is what we are most interested in. We are a group of young men who are interested in the future of Peoria.

[fol. 715] Q. Was a petition for leave to intervene filed by your organization in Finance Docket No. 18991?

A. Yes, it was.

Q. What is the basic position of the Peoria Junior Chamber of Commerce with respect to the application of the Santa Fe and Pennsylvania Railroad Docket No. 18991?

A. Our organization has gone on record as endorsing the petition of the Santa Fe and Pennsylvania Railroad.

Q. What specific reasons does your organization have for supporting this application of the Santa Fe and the Pennsylvania?

A. Our organization is most interested in the offices and the management of the TP&W remaining with us in the Peoria area. We also are certainly aware of the civic willingness and civic-mindedness of the management of the TP&W, particularly Mr. Coulter, its president, and Mr. Egbert, its chief engineer, and we certainly feel it would be a great loss to our city to see either of these men or any of the management of the TP&W moved from Peoria, from the Peoria area.

We are also extremely interested in the industrial development of our community. As young men looking into the future and having a stake in our community, that is most important to us. And again Mr. Coulter, president of the TP&W, and Mr. Egbert, who is chief engineer of the TP&W, we know, have been very active in industrial development, and we feel that they, working with the industrial development resources of the Santa Fe and Pennsylvania [fol. 716] can certainly make great strides in the future in the industrial development of our community.

Q. I am sure you are aware, Mr. Schwarzloss, that certain other railroads have petitioned to intervene in this case, have requested to participate equally with the Santa

Fe and the Pennsylvania. What is the position of your organization with respect to this intervention in joint of multiple ownership?

A. We are opposed to multiple ownership. We feel that it would be economically unsound for more than the two railroads, the Santa Fe and Pennsylvania, to own the TP&W. It is certainly true, I believe, that the greater the investment the more interest that the railroad is going to have. Certainly with the two, with the amount of investment that they would have, they would certainly be more interested in the industrial development along the lines of the TP&W than would three or four railroads who had lesser investments.

Q. Now, admitting that the ownership of or by two railroads is multiple ownership, what position would your organization take with respect to that multiple argument as against the single ownership of the M&StL.?

A. We feel that there perhaps we would look at past experience. The M&StL. has been here for a number of years and I do not know of any industrial development that they have done, and the management of the TP&W has certainly done a lot toward industrial development, and we are interested in them staying here in order that they [fol. 717] can continue that development.

Q. Were you asked by either representatives of the Santa Fe or the Pennsylvania to appear as a witness in this case?

A. We were not asked to appear as a witness. We were asked to intervene in behalf of the Santa Fe and the Pennsylvania. A representative of the Santa Fe appeared before our board of directors. Before our board of directors would take a stand, we felt that it was only fair that both sides should be heard. As a result, we asked Mr. Heineman, Chairman of the Board of the M&StL. to appear before our board and Mr. Heineman was kind enough to come to Peoria. Certainly he has a busy schedule and we appreciated him taking the time to come and appear before our board. After hearing both sides, we felt that a stand should be taken. In order that we did not make any rash or quick decisions, we did not make an immediate decision, but a week after Mr. Heineman's appearance we called a

special board meeting to discuss this matter. After a very lengthy meeting and a lot of discussion the board recommended to the membership that we support the petition of the Santa Fe and Pennsylvania. At our next membership meeting the matter was brought before the membership of the Junior Chamber of Commerce and they decided to endorse the petition of the Santa Fe and Pennsylvania.

Mr. Castion: That is all, Mr. Examiner.

Exam. Albus: Cross-examine.

Mr. Wheeler.

[fol. 718] Cross examination.

By Mr. Wheeler:

Q. Are you aware of the M&StL participation in the industrial work of the association—have you a senior chamber of commerce here?

A. I have been told that they gave money toward industrial survey.

Q. Are you familiar with the fact that an officer or employee of the M&StL serves on the committee of the senior chamber for industrial development?

A. No, sir.

Q. Do you know the facts with reference to the cooperation or the work of the Santa Fe in connection with the industrial development in Peoria?

A. The question is what—

Mr. Wheeler: Read the question.

(The last question was read.)

A. No, sir.

Q. Would your answer be the same with respect to the Pennsylvania Railroad?

A. Yes, sir.

Q. Are you aware of the fact that the Santa Fe derives a substantial amount of traffic from industries in the Peoria area over its lines west of Lomax?

A. I am not a railroad man.

Q. Are you familiar with the fact that industries located in Peoria ship over the Santa Fe west of Lomax?

[fol. 719] A. Again, I am not a railroad man, I am not too familiar with interchange, or with the connection, whatever the terminology is there.

Q. Would your answer be the same with respect to the Pennsylvania?

A. Yes, sir. I am not a railroad man.

Q. Mr. Schwarzloss, don't you believe that the Pennsylvania and the Santa Fe now have an interest and in the past have had an interest in the industrial development of Peoria?

A. Perhaps some, but I would not know to what extent.

Q. Wouldn't you think, as the two end carriers on this bridge line connecting their two transcontinental systems, they would have an interest in the principal city on that bridge line and its industrial development?

A. I would think there should be some interest there.

Q. Do you know of anything that either of those railroads has ever done in connection with the industrial development of Peoria, Mr. Schwarzloss?

A. No, sir.

Q. Now, Mr. Schwarzloss, are you familiar with the absence of industrial property ownership by the M&StL in Peoria?

A. I am sorry, I don't understand the question.

Q. What I asked you is are you familiar with the fact that the M&StL does not own any industrial property in the Peoria area?

A. I do not know whether they might own any or not.

[fol. 720] Q. Are you familiar with the fact that by reason of its location and entry into the town there is no property adjacent to the M&StL lands which could be used for industrial purposes?

A. No, sir, I didn't know that.

Q. Are you familiar with the fact that one of the main purposes for the acquisition of the TP&W by the M&StL was to acquire the industrial development property in the Peoria and East Peoria area?

Mr. Thomas: May I register an objection? Mr. Wheeler is testifying here and the M&StL hasn't stated what its purposes are on the record here.

Exam. Albus: I am sure they will.

Mr. Wheeler: Yes, sir.

Exam. Albus: You may answer, Mr. Witness, if you have any answer to that.

The Witness: What is the question, please?

(The last question was read by the reporter.)

A. I did not know that was one of their main purposes.

Mr. Broker: Just to make it clear, it is not established on the record that it is, is it?

Exam. Albus: No, definitely not.

Mr. Wheeler: We haven't put our case in, I don't believe.

Mr. Broker: I understand.

Exam. Albus: Just because Mr. Wheeler asks the question doesn't make it necessarily so, you realize that?

Mr. Broker: Yes, sir.

[fol. 721] By Mr. Wheeler:

Q. Mr. Schwarzloss, do you know any industry that has been recently—by that, I mean within the past five years—been located on property owned by the TP&W in the Peoria-East Peoria area?

A. I don't believe I am in a position to answer that.

Q. Wouldn't you know whether you did know or you didn't know?

A. I do not know whether there has been any industry located on the property of the TP&W in that period of time.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Mr. Schwarzloss, you said you thought it would be fair to invite people who had different points of view or who had propositions to appear before you and express themselves, and you invited the M&StL, is that right?

A. That is correct.

Q. Did you invite the Rock Island?

A. At that time it was our understanding that the M&StL was the only one that had intervened.

Q. Are you taking any position in regard to the Rock Island?

A. Our petition states—or excuse me, we have endorsed the petition of the Santa Fe and the Pennsylvania.

Q. Are you taking any position with regard to the Rock Island?

A. Yes, we are.

Q. Have you ever invited the Rock Island to explain its position to you?

[fol. 722] A. As I stated previously, at the time that we were hearing the M&StL and the Santa Fe we did not know of any other railroads that intervened and a stand was taken after hearing those two?

Q. Then, your stand was taken without knowing what the position of the Rock Island was?

A. Yes, it was.

Q. I take it, one of the things that you are interested in is the preservation of the local management for the benefit of the community that you have already experienced.

A. Yes, sir.

Q. That is Mr. Coulter and the other gentleman whom I believe is also a member of your junior chamber who is their chief engineer, are the ones you are interested in.

A. We are interested in the management of the TP&W, and as stated, Mr. Coulter and Mr. Egbert, in particular.

Q. And you would like to see those men and their staff and their policies preserved?

A. We would.

Q. And a plan which does that is what you want, isn't it?

A. It is.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker, please.

Cross examination.

By Mr. Broker:

Q. The Nickel Plate was not invited, was it, to express [fol. 723] its views before your organization?

A. No, sir.

Q. In response to Mr. Cassell's questions about the formulation of your organization's position, without con-

sidering the Rock Island or without taking a position on the Rock Island, the same is true of the Nickel Plate, isn't it?

A. Yes, sir, that is true.

Q. Now, I believe you felt that the greater the investment in the particular area, the greater the incentive to promote industrial development. Is that right?

A. Yes, sir.

Q. Now, Nickel Plate has had a large investment, has it not for years in this area?

A. I don't know. I assume they have. I am not sure how long they have actually been in the area.

Q. Well, just for the record, since the railroad was the Lake Erie & Western, which was consolidated into the Nickel Plate in 1922, but I take it that is beyond your knowledge?

A. Yes, sir.

Q. Do you know that the Nickel Plate is a part owner of the P&PU?

A. No, sir.

Q. The P&PU has very extensive industrial development, doesn't it?

A. I am sure that they are interested in the industrial development.

[fol. 724] Q. One other question, do you know whether or not the line of the Nickel Plate into Peoria is a good line or a bad line?

A. No, I am sorry, I don't.

Q. Do you know that the Pennsylvania has had a line of railroad into this city for many years, too?

A. I believe they have on a rather—I don't think it has been too active.

Q. Do you know anything about the condition of that railroad?

A. No, I do not.

Q. Didn't you testify that in part your decisions, the position you took was based on past performance, wasn't that your testimony?

A. As far as the TP&W, yes.

Q. But not as far as the Pennsylvania and the condition of its line and the Nickel Plate and the condition of its line, those were not factors taken into consideration?

A. I am sorry, I don't quite understand your question.

Q. It comes down to this, the Pennsylvania has been in here for many years, you are aware of that fact. Would you not have expected a railroad that was vitally interested in industrial development to maintain a grade A, topnotch railroad into this city?

A. I would think there would be a lot of factors to consider there, depending upon the type of traffic, whether it was freight or passenger. I would think there would be a lot of

[fol. 725] Q. Let's assume it is all freight.

A. I still think it would depend—

Q. Well, let me rephrase the question, to speed this up. Wouldn't you expect a railroad's interest in industrial development in this city to be reflected in the character of the railroad that operates into the city?

A. Yes.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions?

Mr. Cation: Yes.

Exam. Albus: Redirect.

Redirect examination.

By Mr. Cation:

Q. Mr. Schwarzlose, do you think a railroad would show more interest in industrial development along a line that it owned rather than along a line where it merely transported cars?

A. I think so, I would certainly think so, yes, definitely.

Mr. Wheeler: Mr. Examiner, may we inquire what transported cars, what he means by that?

Exam. Albus: Yes, indeed you may.

Mr. Wheeler: I would like to move to strike the question and answer until a definition of "transported cars" is supplied for the record.

Mr. Cation: Not being a railroad man, Mr. Examiner, and not knowing the technical answer that these gentlemen pre-

[fol. 726] fer, I am trying to get from the witness whether or not he wouldn't feel that a railroad would be more interested in development along a line which it actually owned rather than on a line into which it interchanged cars.

Exam. Albus: Or connecting line.
Mr. Cation: Or connecting line.
Exam. Albus: I think that is broad enough.

A. My answer is yes.

Mr. Broker: Could you read the question and answer again.
I thought it called for a yes or no.
Exam. Albus: He answered yes.
Mr. Broker: Or possibly even another answer.

(The last question was read.)

Mr. Broker: Does that mean yes, he thinks that a railroad is more interested in industrial development on a line that it owns?
Exam. Albus: Is that what you mean?
The Witness: That is what my answer would mean, what the yes would be.
Exam. Albus: Mr. Cation.

By Mr. Cation:

Q. Is it not the stand of your organization that the Peoria area would be served better from an industrial standpoint by ownership of the Pennsylvania and the Santa Fe of the TP&W rather than the ownership of the TP&W by the M&StL?

Mr. Wheeler: Mr. Examiner, I object to that on the [fol. 727] basis it is repetitious.
Exam. Albus: I sustain the objection.

By Mr. Cation:

Q. Mr. Schwarzlose, Mr. Heineman spoke before your group, and he did not make mention, did he—

Exam. Albus: Ask the witness what he mentioned.

[fol. 728] By Mr. Cation:

Q. When Mr. Heineman spoke before your group did he mention the plan, proposed plan, of the M&StL as to industrial development along the line?

Mr. Wheeler: Mr. Examiner, I object to the question as being leading.

Exam. Albus: It is a little leading but I am going to permit him to answer.

A. Industrial development was mentioned by Mr. Heineman, but it was, I would say, a secondary point. It wasn't discussed at any length by Mr. Heineman to where we, at least, felt that he was going to do too much about it.

By Mr. Cation:

Q. Do you know whether or not the Rock Island and the Nickel Plate had intervened in this case at the time the decision was made by your organization.

Mr. Cassell: I object to that. That has been asked and answered.

Exam. Albus: I agree with you.

By Mr. Cation:

Q. Was the position of your organization changed after the Rock Island and Nickel Plate intervened?

Mr. Cassell: Same objection.

Exam. Albus: Overruled.

What is the answer to that, Mr. Schwarzlose?

A. Our position was not changed.

Mr. Cation: That is all, sir.

Exam. Albus: Is there any further recross-examination?

[fol. 729] Mr. Cassell: Yes.

Recross examination.

By Mr. Cassell:

Q. As responsive to the last, you have never invited the Rock Island to come in before you, have you?

Mr. Cation: I object to that. He has answered that, sir.

Exam. Albus: He has answered that, too, but he may answer it again.

A. We have not.

By Mr. Cassell:

Q. So you are still without information as to the Rock Island's position, aren't you?

A. We are without detailed information.

Q. What details do you have or information do you have? When was that obtained and from what source?

A. It was not received in an official way by the J.R.'s. Any information that we got after our stand had been taken was from the press.

Q. You took no official action, then, after your original stand?

A. No, sir.

Mr. Cassell: That is all.

Exam. Albus: Are there any further questions?

Mr. Broker: Yes.

Recross examination.

By Mr. Broker:

Q. Is that true on other intervening railroads as well?

[fol. 730] A. Yes, sir.

Mr. Broker: Thank you.

Exam. Albus: You are excused. Thank you very much.

(Witness excused.)

[fol. 731] Mr. Lipkin: The City of Peoria as an intervenor wishes to present a witness.

Exam. Albus: Very well.

May we have a witness, please.

Mr. Lipkin: Mr. Morgan.

Robert D. Morgan was sworn and testified as follows:

Direct examination.

By Mr. Lipkin:

Q. Your name is Robert D. Morgan?

A. That is correct.

Q. And you are the Mayor of the City of Peoria?

A. Yes, sir.

Q. And you have held that position since May of 1953, is that correct?

A. That is right.

Q. You are a resident of the City of Peoria?

A. I am.

Exam. Albus: Let him testify, please.

Mr. Lipkin: Mr. Examiner, I was not aware that these types of questions required his testimony directly.

Exam. Albus: No, it doesn't, but I think he knows them just as well as you do.

By Mr. Lipkin:

Q. Where do you live, Mr. Mayor?

A. 551 West Armstrong Avenue, in the City of Peoria, Illinois.

Q. Are you a professional man?

[fol. 732] A. I practice law, yes, sir.

Q. How long have you practiced law in the City of Peoria?

A. Since 1937.

Q. How long have you lived in the City of Peoria?

A. I was born here almost 44 years ago.

Q. During the time that you have practiced law in the City of Peoria have you had any interest in the industrial and business activities and development of the City of Peoria?

A. I have.

Q. Have you held any official position with any civic or charitable organization in the City of Peoria?

A. I have, several.

Q. Would you tell us just briefly what those are?

A. Well, I served a term on the Board of Directors of the Peoria Association of Commerce after a number of years of service on various committees in that organization. I served as a vice-president of that organization for, I believe, two years. I have been active in a number of charitable organizations, including the Y. M. C. A. and the Community Chest.

Q. Have you held any offices in the Y. M. C. A.?

A. I was president of that organization for six years, yes.

Q. What is the position of the corporate authorities of the City of Peoria with respect to the application of the Pennsylvania and Santa Fe Railroads in this matter?

A. Our city council by unanimous resolution resolved [fol. 733] that that approval of this application was in the public interest.

Mr. Lipkin: At this time, Mr. Examiner, I would like to have identified as intervenor, City of Peoria, exhibit, would it be Exhibit 1?

Exam. Albus: No; we take them in order. It will be H-17.

Mr. Lipkin: Which is a certified copy of the resolution adopted by the city council of the City of Peoria for 1955.

Exam. Albus: Do you have copies for circulation?

Mr. Lipkin: No, I don't, but I can get them.

Exam. Albus: Very well, with that understanding the resolution is marked for identification H-17.

(Intervenor City of Peoria's Exhibit No. H-17, Witness Morgan, was marked for identification.)

OFFER IN EVIDENCE

Mr. Lipkin: Just so I don't forget, I would like to offer this exhibit at this time.

Exam. Albus: Is there any objection?

Mr. Bagge: No.

Exam. Albus: It is received.

(Intervenor City of Peoria's Exhibit No. H-17, Witness Morgan, was received in evidence.)

By Mr. Lipkin:

Q. Mr. Morgan, if you know, what are the specific reasons for this position taken by the corporate authorities of the City of Peoria?

A. Of course I don't know all of the reasons that may have motivated all of the members of the council who [fol. 734] voted for it. I know my own and some of the reasons that have been voiced by other councilmen.

Q. Will you tell us what they are?

A. They are in brief that the T. P. & W. runs through the City of Peoria, across Illinois, and this application represented an opportunity, since the present owners wanted to, the majority owners wanted to, sell out their interest, it represented an opportunity for this road to be owned by a large eastern road that reaches to the east coast and a large western road which seemed to me and to the other members of the council with whom I have talked to represent almost an ideal type of ownership from the standpoint of future development of the T. P. & W. line. The home offices of the T. P. & W. are in Peoria, and, of course, a good many of its employees live in the City of Peoria and in the surrounding area. Any development, expansion, of the service of the T. P. & W. would affect the city in that way.

We were also encouraged by the fact that the application and the contract, as I understand it, between these two petitioning roads provides for independent operation of the T. P. & W., and the control of that road by a board of directors which at all times would have six out of 11 members unconnected with either the Santa Fe or the Pennsylvania. I think just briefly, as I have said, this presents to me a very appealing picture for the future development of the T. P. & W. road and industrial development along [fol. 735] its line, including in and near our city.

Q. What is your position as to the application of the M&St.L. Railroad to obtain control of the T. P. & W. Railroad?

A. Well, I do not believe that would represent near all of the values that I have tried to detail in connection with the Pennsylvania and Santa Fe application.

Q. What is your position as to the request of the Rock Island Railroad and the Nickel Plate Railroad that they participate with the Santa Fe and the Pennsylvania in the ownership of the T. P. & W.?

Mr. Broker: I object. There is no evidence that any action was taken by this city subsequent to the intervention by the Nickel Plate.

Mr. Cassell: I join in that objection as to the Rock Island.

Mr. Lipkin: I would merely like to point out what his position was, not that of the corporate authorities.

Exam. Albus: Very well, the objection is overruled.

Mr. Cassell: That is his personal, private citizen's opinion?

Mr. Lipkin: Yes, sir.

Exam. Albus: Proceed, Mr. Mayor, please.

The Witness: Will you read the question.

(Question read.)

A. Well, it seems to me that broadening the participation of any other roads or interests in the ownership of the [fol. 736] T. P. & W. would tend to water down the interest of any single segment of ownership in building up the road and in developing the area of the road industrially.

Mr. Lipkin: Cross-examine.

Exam. Albus: Mr. Wheeler, please.

[fol. 737] Cross examination.

By Mr. Wheeler:

Q. What reasons are set forth in the resolutions for this council's support of the Santa Fe-Pennsylvania application?

A. As I recall, there are no reasons set forth.

Q. No reasons set forth?

A. That is my recollection. I may be wrong. You have it before you.

Q. If any reasons were set forth they would be the ones on which the council had agreed, would they not?

A. Oh, I think so, yes.

Q. And the other reasons that you have stated here, then, would represent your personal views as distinct from the views adopted by the council by this resolution, Exhibit H-17, is that correct?

A. Well, I think I stated as clearly as I could that what I was recounting here was my own reasons plus those of other councilmen who had voiced them to me.

Q. Now, that would be hearsay, would it not, Mr. Morgan?

A. It would as to other council men.

Q. Yes, sir.

A. But not as to myself, of course.

Q. When did the Pennsylvania-Santa Fe file their application with the Interstate Commerce Commission?

A. I don't remember. I think it was late in the spring, [fol. 738] early summer.

Q. Where did the council get its information with respect to this application?

A. Well, the most detailed information was at a luncheon to which the members of the council were invited. I believe the TP&W Railroad was host and the president of both the Santa Fe and the Pennsylvania were here in this room and detailed at some length their proposal.

Q. I believe the record shows that the application was verified on July 7, and probably filed on July 8, 1955. What day was the luncheon?

A. I don't recall the exact day.

Q. Did the luncheon intervene between the filing of the application and July 19, the date of the resolution, Exhibit H-17?

A. I'd have to check that up, I don't recall.

Q. You did not, at the time the council took its action it did not have any information with respect to the M&StL's position in this matter, did it?

A. Not to my knowledge. I didn't.

Q. The M&StL is not mentioned in the resolution of the council, is it?

A. I don't believe it is, no.

Q. Mr. Morgan, are you aware that the M&StL has for generations been publicizing itself as the Peoria gateway railroad?

A. I am aware of the fact that they have been doing [fol. 739] that for some time. I don't know about generations.

Q. Are you aware that they have for a long time been soliciting the Peoria gateway?

A. I assume they have, yes, I know that.

Q. Are you aware of the fact that they have advertised Peoria and the Peoria gateway throughout the country?

A. Yes.

Q. To your knowledge has the Santa Fe ever undertaken such a publicity drive on behalf of the city of Peoria?

A. Well, I wouldn't like to characterize the M&STL's campaign as on behalf of the city of Peoria, but the answer to the question is no, I know of no similar campaign by the Santa Fe.

Q. Have you seen the M&STL ads?

A. I have seen some of them, yes.

Q. Have you seen their boxcars?

A. Yes.

Q. And the name Peoria appears on those boxcars, does it not?

A. Yes, it does.

Q. Have you seen the stationery employed by the M&STL?

A. I don't recall that I have, no.

Q. Now, do you or don't you believe that advertising the name Peoria, Illinois, is beneficial to your city or not?

A. I would say just publicizing the name is generally beneficial, but it seems pretty nebulous.

Q. How about 4,000 moving signboards around the coun [fol. 740] try, is that pretty nebulous publicity for Peoria?

A. It is certainly publicity. I say the value is perhaps nebulous.

Q. Do you know whether or not the Pennsylvania Railroad has ever advertised the name of Peoria, Illinois, throughout the length and breadth of the country?

A. I have no knowledge that they ever have, no.

Q. Do you know of any other railroad that has done so?

A. Toledo and Western Railroad has done so to some extent.

Q. To the same extent that M&STL has?

A. I would doubt that it is quite the same extent. I don't really know.

Q. And yet in the face of that the Peoria Chamber Council adopted a resolution in favor of a competitive application and takes a position in favor of a competitive application before the Commission without ever hearing the M&StL, is that correct?

A. I don't care to argue with you. I think my testimony has been clear, as clear as I could make it. I am trying to state what I believe, and to the extent that the city council has accounted what the council believes to be in

the public interest of the City of Peoria, and I don't consider I am being a participant in competitive activities between competing railroads, except to the extent that that occurs automatically from my view of what the public interest is.

[fol. 741] Q. Do you believe that the advertising and other publicity that the M&StL has given to the city of Peoria has tended to promote the location of industries in Peoria?

A. I would think it would have that tendency, yes.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Morgan, your Exhibit 17, which is a copy of the resolution of July 19, is that right?

A. That is correct, yes.

Q. Both that exhibit and your petition, then, the action taken in regard to them, was had before the Rock Island had filed its petition in this case, isn't that right?

A. I am quite sure that is true, Mr. Cassell, yes.

Q. And the City of Peoria has taken no official action since the Rock Island has been in this case, has it?

A. It has not.

Q. You expressed an opinion in regard to this application which was your own opinion, I believe, you said as a citizen and just as an individual?

A. I have expressed some of both.

Q. Have you had any railroad experience, Mr. Morgan?

A. Very little, except as a passenger, Mr. Cassell.

Q. Then the answers you gave were not based on any experience you have had in making shipments?

[fol. 742] A. No, they were not.

Q. Or in the management or control of the railroad?

A. I have had no such experience.

Q. So it comes down to the fact that your opinions, then, were based on your observations as a passenger?

A. And as a citizen.

Q. However, I believe you are a lawyer, aren't you?

A. I am.

Q. And as such have some knowledge of corporate affairs?

A. I think some, yes.

Q. Who elects directors?

A. The stockholders is my understanding.

Q. And under the scheme proposed by the—and who controls them?

A. Who controls directors?

Q. Yes.

A. I don't know that anybody controls them after they are elected until the next election. They are sort of like public officials in that respect.

Q. The electorate or the stockholders, as the case may be, has a very definite ability to take care of the stockholders on the next—I mean the directors on the next election, though, doesn't it?

A. That is my understanding.

Q. Then who would elect the board under the scheme, it [fol. 743] would be the Santa Fe and the Pennsylvania, wouldn't it, under the scheme they have proposed?

A. They would have a substantial number of votes between them, yes.

Q. In fact, they'd have all of them, wouldn't they?

A. I don't know who all of the owners are of the TP&W. I understood the contract that brought about this petition involved 82 per cent of the shares. I don't know whether they would or do or may in the future control all of them at all.

Q. Well, assuming that the Santa Fe and Pennsylvania between them owned each 50 per cent of the stock, wouldn't they elect all the directors?

A. Yes, they would.

Q. And they would elect not only the two Pennsylvania and the two Santa Fe directors but also the other directors on the Board?

A. Yes, they would.

Q. So that although you have called them independent, still they would owe their election and choice to the Santa Fe and Pennsylvania?

A. They would owe their election to the stockholder that is correct.

Q. And those would be the Santa Fe and the Pennsylvania?

A. On the assumption that you stated.

Q. Hasn't the Rock Island shown a great deal of interest in

[fol. 744] A. It certainly has.

Q. Not only presently but all through the years, hasn't it?

A. I think it has, yes.

Q. The Pennsylvania comes into the City of Peoria with its own railroad today, doesn't it?

A. Yes, I think it does.

Q. Has it shown as much interest in Peoria as the Rock Island?

A. I must say it has not provided passenger service of the caliber of the Rock Island between here and Chicago.

Q. Nor any place else?

A. Not to my knowledge.

Q. Does it provide any passenger service at all?

A. I don't it does.

Q. Do you anticipate as a result of this application the Pennsylvania will?

A. I don't anticipate that. I can hope, can't I?

Q. Is that one of the reasons why this application is supported?

A. No, I wouldn't say that it was, Mr. Cassell, although I know there is a strong feeling on the part of many people in Peoria that future development might include passenger service of some kind over this road. Whether that is justified or not I have no basis for hazarding a guess.

Q. Don't you think the Rock Island would be interested in continuing the furtherance of the interest of Peoria?

[fol. 745] A. Oh, I feel quite sure it would, surely.

Q. If it were a participant in this acquisition wouldn't it have that interest?

A. I personally would doubt, Mr. Cassell, that obtaining of a one-third interest in the TP&W would increase or decrease materially the interest that the Rock Island Rail

road has shown in this city and in this area. As I stated, I think that any division of the ownership into smaller parts would tend to decrease the interest of any particular owner in the industrial development and in the promotion of traffic along the line.

Q. Now you speak in one-thirds or halves and percentages of ownership, don't you think that the actual amount of the ownership, the investment might have some interest and bearing?

A. Oh, I would think so, yes.

Q. If you put a $100 into a venture and Mr. Rockefeller puts $150 in the venture—

A. (Interrupting) Mine is more important to me.

Q. Similarly on the Rock Island, the Rock Island is offering to put in something in the neighborhood of three to four million dollars, wouldn't you consider that a substantial amount of money?

A. It seems very substantial to me, yes, sir.

Q. Wouldn't you think that would be a rather substantial
fol. 746] interest in any piece of property?

A. Yes, sir.

Q. And, as a matter of fact, might not $4,000,000 to the Rock Island be more important to it than six million to the Santa Fe?

A. Well, I honestly don't know whether it would or whether it wouldn't.

Q. Don't you think that is a factor in the interest that a line might take in the property that is under consideration

A. I think it is one among several, yes.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker, please.

fol. 747] Cross examination.

By Mr. Broker:

Q. You stated that division of ownership in smaller parts would decrease the interest of any individual owner. Do you think, therefore, that a company which has one hundred per cent interest in a venture has a greater interest than one with a fifty per cent interest?

A. I think that automatically follows. I don't think that that's only one factor which I don't believe should be controlling. It is not controlling in my view of this case.

Q. But when you get below 50 per cent, then it is controlling, is that right?

A. No, I don't think it alone is controlling at any point of percentage of ownership.

Q. So that this alleged dilution of ownership that we have been hearing about, that necessarily isn't determinative of the problem before the Commission, to the best of your knowledge, is it?

A. Well, please understand me, I am not trying to usurp the authority of the Commission here. I am stating a viewpoint, an opinion.

Q. In the council's consideration of the matter, did you say that they gave consideration to Exhibit D, the contract between the Santa Fe and the Pennsylvania?

A. I don't know how many of the members of the council did. I was aware of that.

[fol. 748] Q. And were you aware of the provision that said that the maintenance of the T. P. & W. was a separate and independent carrier would be solely for the benefit of the Santa Fe and the Pennsylvania and not for the benefit of anybody else?

A. I would assume that would be true.

Q. Why?

A. Well, I think that's one of the principal incidents of ownership, as I understand it.

Q. That a railroad would not necessarily consider another party or non-party?

A. Well, we don't need to talk philosophy, I don't believe. I think any business organization has to consider its customers as well as its owners.

Mr. Broker: No other questions.

Exam. Albus: Is there any further cross-examination?

(No response.)

Exam. Albus: Is there any redirect?

Mr. Lipkin: No, sir.

Exam. Albus: You are excused, Mr. Mayor. Thank you very much.

(Witness excused.)

Mr. Lucas: Mr. Examiner, one of my colleagues has asked me question that I am not entirely sure I made in the record on the part of Mr. McKey. May I call him back for just a few questions?

[fol. 749] Exam. Albus: Yes, indeed.

Mr. Lucas: Mr. McKey, will you take the stand again, please.

PAUL W. MCKEY was sworn and testified as follows:

Direct examination.

By Mr. Lucas:

Q. Mr. McKey, in the testimony that you have presented earlier this afternoon, was that on behalf of the Village of Gridley as well as your individual business capacity?

A. Yes, sir.

Q. And in the support of the applicants as stated in your petition of intervention, was that also on behalf of you as a business man at Gridley as well as the trustees?

A. Read that, please.

(Question read.)

A. That is correct.

Mr. Lucas: That is all.

Exam. Albus: Is there any cross-examination?

(No response.)

Exam. Albus: You are excused, Mr. McKey.

(Witness excused.)

Exam. Albus: Since there is so little time left before 5 o'clock that it would hardly be worthwhile to start another witness, this case will be adjourned until tomorrow morning at 9 o'clock, in this room.

(Whereupon, at 4:50 p.m., an adjournment was taken until 9 a.m., Tuesday, February 7, 1956.)

[fol. 749a] Secretary's Certificate to foregoing transcript (omitted in printing).

[fol. 750]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

LaSalle Room,
Pere Marquette Hotel,
Peoria, Illinois.

TRANSCRIPT OF HEARING—February 7, 1956

Met, Pursuant to adjournment, at 9:00 a.m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCE:

Howard P. Robinson, 11 S. LaSalle, Chicago, Illinois, [fol. 750a] appearing for Elizabeth M. McNear, individually, and as guardian for John W. McNear; William McDowell Frederic and Commercial National Bank of Peoria, as executor of estate of Clinton M. McNear, The Hanover Bank of New York.

* * * * * * *

[fol. 752] PROCEEDINGS

Exam. Albus: The hearing will please come to order.

Before we continue with the witnesses for the applicants Mr. Robinson has a statement to make.

Mr. Robinson.

Mr. Robinson: I am counsel appearing for the McNear interest.

Exam. Albus: Have you entered your appearance yet?

Mr. Robinson: No, I have not.

Howard P. Robinson, member of the firm of Sidley, Austin, Burgess and Smith, appearing for the McNear heirs and the Hanover Bank.

Statement by Mr. Robinson on Behalf of Mrs. McNear and Exceptions Thereto

If the Examiner please, I appear in behalf of certain intervenors who are interested in the stock of the TP&W, either as individual owners or as beneficiaries under the trust created by the will of George P. McNear, Jr., or both. 73,800 shares of the TP&W stock or 82 per cent of the total are held by the trustees under the trust, and Mrs. McNear alone is an income beneficiary as to 50 per cent of the stock held in trust.

So far as the individual holdings are concerned the intervenors whom I represent own a total of 14,373 shares of TP&W stock.

The details as to their ownership of stock and their beneficial interest in the trustees' shares are shown in the intervening petition which we have filed. I mention them at this [fol. 753] point only for the purpose of emphasizing the very substantial interest which these intervenors have in these proceedings.

I also wish to advise the Examiner that we do not intend to call any witnesses or to introduce any documentary evidence at this time. However, I would like permission to make a very short statement of our position in these proceedings.

As the Examiner knows, from the evidence introduced thus far the intervenors whom I represent and the trustees have agreed to sell their stock to the Santa Fe on the terms and conditions which appear in the record. It is our position that the sale of stock contemplated by those agreements is consistent with public interest, that those transactions should be approved by the Commission and that the authority sought by the Santa Fe and the Pennsylvania should be granted. This position is based on several considerations.

The first and perhaps principal consideration is the profound conviction of these intervenors that the best interests of the TP&W and of the entire community which it serves should be furthered by the sale of stock to the Santa Fe and the Pennsylvania—

Mr. Wheeler: Mr. Examiner, I object to this. This is an Ex Parte statement by a lawyer. If he wants to file a brief

in this case I think he ought to do so but I don't think he ought to testify in this regard. This gentleman is from Chicago.

[fol. 754] Exam. Albus: This gentleman isn't testifying. He is making a statement on behalf of Mrs. McNear. It is merely a statement by counsel. That is why he wasn't sworn.

Continue, sir.

Mr. Cassell: He is making a statement purporting to be why this matter is in the public interest, their reasons for it, they aren't here to examine. It seems to me it is wholly improper to put things of this kind in the record.

Exam. Albus: He is stating his position and he may do so.

Mr. Robinson: These intervenors are intimately familiar with the past history and operation of the TP&W.

Mr. Wheeler: Mr. Examiner.

Exam. Albus: Yes, sir.

Mr. Wheeler: I would like to have a running objection to any statement of fact made by this man with respect to the knowledge of any of the parties, as a matter of fact, with respect to any facts that goes into the record. I do not think that they are properly evidence in this case.

Mr. Cassell: I join in that action, Mr. Examiner, please.

Exam. Albus: Yes, Mr. Cassell.

Mr. Broker: And for the Nickel Plate, too. These are not statements of positions, they are statements of alleged fact.

Exam. Albus: They are not being offered as proof, though. The gentleman isn't sworn. He is making just a bare statement as to his representation. I am going to [fol. 755] permit it. Each of you have exceptions to everything that goes in here.

All right, Mr. Robinson.

It is only a short statement. There is only one more page. If we are patient I think we can get this over within a few minutes.

Mr. Robinson: They know the TP&W is essentially a bridge and that the vast majority of the inter-line traffic is received from or delivered to the Pennsylvania. They also know that the opening of the Lomax interchange with

the Santa Fe has been the most direct responsible cause of the prosperity which the TP&W has experienced in recent years and that the traffic handled through that interchange point has increased substantially since the early 1930's, in contrast to the pattern of traffic interchanged with TP&W's other connections. From this these intervenors concluded that a heavy movement of traffic over the TP&W has been found to be to the best interest of the Santa Fe and the Pennsylvania and it certainly is in the best interest of the TP&W. That being so we believe that the ownership of the TP&W stock by the Santa Fe and the Pennsylvania would be consistent with and would promote the future well-being of the TP&W. The advantage to all citizens of the TP&W territory having a successful TP&W operation are very obvious.

A second consideration, which has prompted these intervenors to favor the application in Finance Docket No. 18991, is the fact that the TP&W's relation with the Santa [fol. 756] Fe and the Pennsylvania for the past several years have been most cordial and satisfactory. Mrs. McNear in particular who has been closely connected with the operations of the TP&W appreciates very much the co-operative efforts which helped to build the traffic of the TP&W following the opening of the Lomax interchange. While this spirit of co-operation might well have been influenced by the self-interests of the roads involved. It would appear that that fact would argue well for the future of the TP&W under the control of the Santa Fe and the Pennsylvania.

A third and final fact, which has influenced the position taken by these intervenors is the concern for the future welfare of the personnel which the McNear family brought to the TP&W, these intervenors feel some responsibility for the future welfare of these individuals and are convinced that their future would be best served under the joint control of the TP&W by the Santa Fe and the Pennsylvania.

For these reasons, therefore, we urge approval of the application in Finance Docket No. 18991.

I thank you, sir.

Exam. Albus: You are very welcome.

[fol. 757] MOTION TO STRIKE STATEMENT AND OVERRULING THEREON

Mr. Cassell: Mr. Examiner, I will ask that the entire statement after the statement of the clients whom he represents, who will not be present, be stricken.

Mr. Wheeler: I join in that motion.

Mr. Broker: I concur.

Exam. Albus: The motion is overruled. You still have your exception.

COLLOQUY BETWEEN COURT AND COUNSEL

Now I think we are ready for a witness.

Mr. Cassell: Mr. Examiner—if you will excuse us, please Mr. Bagge—

Mr. Bagge: Surely.

Mr. Cassell: Before the presentation of the first witness I have a document which I would like to present.

Exam. Albus: Oh, surely.

Mr. Cassell: That is, the original of a petition for leave to amend the intervening petition of the Rock Island in Docket 19086. I have the service copies here for all other parties to the proceeding.

Mr. Broker: Mr. Examiner, to expedite this, I have a comparable petition for the Nickel Plate.

Exam. Albus: Very well.

Mr. Broker: I will give service of that at this time.

Exam. Albus: Thank you.

The record will show that the intervening petitions of the Rock Island and Nickel Plate are received at this time.

[fol. 758] Mr. Cassell: I would like to call the Examiner's attention to the fact that we have furnished information in support of the petition of the Rock Island in the Santa Fe's docket, but it does not run to Docket 19086. I should like to request that that information in support of the position of the Rock Island be allowed to serve in Docket 19086 as well as the Santa Fe docket.

Exam. Albus: That will be understood.

Mr. Cassell: I believe you will find the information is applicable to both dockets except in the matter of a board

resolution. Our board is to meet next Monday, and I would like permission to file the resolution as a late-filed exhibit.

Exam. Albus: You may file that within 15 days.

Mr. Cassell: Thank you, sir.

(The document described to be furnished by intervenor Rock Island.)

Mr. Broker: Mr. Examiner, our Exhibit H-2 is entitled "Finance Docket No. 18991." We request that information be deemed applicable equally to 19086.

Our resolution, we believe, is broad enough to cover this intervention or this amendment and request for inclusion in the Rock Island transaction.

Exam. Albus: Very well.

Mr. Broker: But if there is any question about it, our next board meeting is in March and I would request permission, if need be, to file a copy of such resolution as might [fol. 759] be passed by the Board at that time.

Exam. Albus: What time in March?

Mr. Broker: The third Tuesday.

Exam. Albus: Very well, you may have that permission.

Mr. Broker: I am not sure that it is necessary.

Exam. Albus: If you decide it is, then you may file it as a late-filed exhibit.

(The document described to be furnished by intervenor Nickel Plate.)

Mr. Broker: Apparently I said "Rock Island" when I should have said "M&StL".

Exam. Albus: Right. The record will be corrected accordingly. I noticed that, too.

Mr. Broker: Is our petition accepted?

Exam. Albus: Yes.

Mr. Broker: And the exhibit, to make it applicable in this other docket?

Exam. Albus: Yes.

Mr. Broker: Thank you.

Exam. Albus: You are very welcome.

Mr. Lucas: Mr. Examiner, while we are distributing papers, I wonder if it would be agreeable to you to dis-

tribute an exhibit which was not ready until, I think, yesterday really.

Exam. Albus: Yes, sir.

Mr. Lucas: Which is further statistical information.

[fol. 760] Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

The record will show the statistical data now being distributed by the applicants Pennsylvania and the Santa F will be marked as Exhibit H-18.

JOHN JACOB CLUTZ was sworn and testified as follows.

Direct examination.

(Applicant's Exhibit No. H-18, Witness Clutz, was marked for identification.)

By Mr. Lucas:

Q. Mr. Clutz, the document that has been identified as Exhibit H-18, was that prepared under your supervision and direction?

A. It was.

Q. Will you state very briefly, please, the purpose of Exhibit H-18?

A. In Exhibit H-5, on pages 5 and 13, certain data with regard to interchange between the T. P. & W. and its principal connecting carriers is shown, and that applies only to revenue, road haul cars, as noted in the footnote on page 5 cars receiving only switch movements on the T. P. & W. and/or its connections are excluded.

Now, the purpose of Exhibit H-18 is to further break down the figures on pages, rather in column 8 on page 5 and [fol. 761] column 6 on page 13 of Exhibit H-5 to show for, statistically and graphically the interchange by interchange points and by cars received by the T. P. & W. and cars delivered by it to the connecting carrier.

Page 1 of Exhibit H-18 shows this statistically, and will be noted that the total figures for each road shown

column 4 are the same as those in column 6 on page 13 of Exhibit H-5, and in so far as the Pennsylvania and the Santa Fe are concerned can be derived from the figures in column 8 on page 5 of Exhibit H-5.

Page 2 of Exhibit 7 of Exhibit H-18 are maps showing the same information graphically at each interchange point the number of cars received by the T. P. & W. from the connecting carrier and the number of cars delivered by it to the connecting carrier are shown with arrows pointing either toward or away from the T. P. & W. but appropriately with the number of cars shown by a numeral.

Q. And the arrows to which you have just referred will show the cars received and the cars delivered?

A. That is correct.

Q. That is, they are directional arrows, are they not?

A. That is correct. The arrow pointing toward the T. P. & W. are cars received by it and the arrow pointing away from it are cars delivered by it to the connecting carrier.

Q. Is it correct that the seven principal connections only [fol. 762] are shown for road haul freight?

A. That is correct.

Q. What about cars interchanged in switching service?

A. Those are excluded. It includes only cars involving a road haul both on the part of the connecting carrier and the T. P. & W.

Q. I note on page 1 there has been inserted the word "carload"?

A. That is correct.

Q. That you intend to have in addition to the heading?

A. We wish to make it clear this did not include any empty cars.

Q. May we summarize what you have said that this additional statistical data shown on page 1 and pictorially on the additional pages of H-18 is from the same sources as the statistics that appear in Exhibit H-5?

A. That is correct.

Q. And particularly to pages to which you have addressed your testimony?

A. That is correct.

Mr. Lucas: I believe that is sufficient.

By Mr. Lucas:

Q. Beyond that, does the exhibit pretty much speak for itself in your opinion, Mr. Clutz?

A. That is the purpose.

Mr. Lucas: I believe that completes the direct, Mr. Examiner.

Exam. Albus: Is there any cross-examination?

[fol. 763] Mr. Wheeler: I have a question.

By Mr. Wheeler:

Q. Do you have the entire information with respect to the Pennsylvania at Chicago and at St. Louis—east St. Louis Gateways? I had thought I had obtain that information from Mr. Carpi when he was on the stand, but in reading the record I found it was not there and I was wondering if you had that information with you.

A. Interchange with whom?

Q. Your total interchange at the Chicago Gateway and your total interchange at the St. Louis Gateway?

A. I do not have it here, but I think we can get it.

Q. Would you supply that information for the record?

Mr. Lucas: I think probably if Mr. Wheeler will address us in written form so we can be sure we know what he wants and what we supply meets the request.

Exam. Albus: Very well.

Do you have any cross-examination, Mr. Wheeler?

Mr. Wheeler: Only this.

Cross examination.

By Mr. Wheeler:

Q. On page 2 of this exhibit referring to the Atchison, Topeka and Santa Fe you show arrows going both ways out of Lomax. That is intended to indicate that that is the total interchange at Lomax?

A. That is correct.

Mr. Wheeler: Mr. Examiner, addressing myself to my

[fol. 764] previous request, I am just wondering how we

are going to handle this in so far as having it made a part of the record, that that is the interchange figure and the other information that I am going to request of the Pennsylvania by this letter to Mr.—

Exam. Albus: Will that information be presented before the hearing closes?

Mr. Lucas: Mr. Examiner, we will be very glad to develop it as rapidly as possible. If Mr. Wheeler could give me, say, either later in the day or tomorrow his several requests that he has asked for, we will send it immediately, and it might possibly be a late filed tabulation.

Exam. Albus: I know, but I would like to avoid that if it is possible to do so.

Mr. Lucas: We would too.

Exam. Albus: If you will get your request to Mr. Lucas as soon as you can, Mr. Wheeler, and as soon as the information is compiled we will get it in the record before it closes, otherwise, we will make the information a late filed exhibit.

Mr. Lucas: Much detail through Chicago and St. Louis that would mean almost a revenue study. I think we are getting into some pretty voluminous data. But if it can be held down to the limits of this case and some approximation, why, we will be glad to furnish that as quickly as we can.

Exam. Albus: That will be fine. Thank you very much. Mr. Cassell, please.

[fol. 765] Cross examination.

By Mr. Cassell:

Q. Mr. Clutz, on your Exhibit H-18, on page 2—4, I beg your pardon, you have shown the interchange with the Rock Island as item 4, and this is again reproduced graphically, as you say, on page 4, isn't that right?

A. That is correct.

Q. Now, let's turn to page 4 and directing your attention to Peoria where you have two arrows shown above it, do you know whether that traffic went out over the line which angles to the northwest and to which you have nota-

tions C. R. I. & P. R. R. or over the other line to the northeast which has no designation on it?

A. No, sir.

Q. Do you have any information in your figures as to whether or not any of that traffic which is shown coming to and from Peoria via the Rock Island passed through Kansas City?

A. No, sir.

Q. Do you know the origin or destination of any of that traffic which you have shown in those 2 figures and by the arrows at Peoria?

A. I believe we could derive the origin and destination states only.

Q. But at the present time you do not know, for instance, whether that all came from the Pacific northwest or from the east or whether it came from?

A. That is correct.

[fol. 766] Q. So you do not mean to imply that this is competitive traffic?

A. No, this is to show the actual interchange at interchange points.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. You show where the figure is on this exhibit the figure 10896 with arrows pointing in two directions. Do you have a breakdown between that which goes northeast and that which goes southwest?

A. No, sir.

Q. Turning to page 1, Item 5, you have "A" Peoria and "B" Farmdale. If you will turn to page 5 which graphically shows the interchange between the TP&W and the Nickel Plate, the figures 753 and 3037 are the equivalent of "A", are they not?

A. That is correct.

Q. And the 2929 and 6871 are the equivalent of "B"?

A. That is correct.

Q. So that that represents a distinction between Peoria and Farmdale?

A. That is the way the interchange points were reported to us from the TP&W records.

Mr. Broker: Thank you.

Exam. Albus: Is there any further cross-examination?

[fol. 767] OFFER IN EVIDENCE

Mr. Lucas: May we offer the Exhibit, Mr. Examiner.

Exam. Albus: Any objection?

(No response.)

Exam. Albus: Let the record show the exhibit is received.

(Applicant's Exhibit No. H-18, Witness Clutz, was received in evidence.)

(Witness excused.)

Mr. Bagge: At this time, Mr. Examiner, I would like to call Mr. Willis Maley to the stand.

Exam. Albus: Mr. Maley, please.

WILLIS E. MALEY was sworn and testified as follows:

Direct examination.

By Mr. Bagge:

Q. Will you state your name, sir.

A. My name is Willis E. Maley.

Q. Where do you reside, Mr. Maley?

A. I reside at 630 Chateau Place, Los Angeles 5, California.

Q. What is your business or occupation?

A. I am general traffic manager for Pacific Coast Borax Company.

Q. Would you describe the location and the nature of the business in which Pacific Coast Borax is engaged.

A. The Pacific Coast Borax Company mines and refines borates. We have our principal mine at Boron, California, with our refinery at Los Angeles Harbor, California.

Q. Would you describe briefly your traffic experience and [fol. 768] tell us what organizations national in character of which you are a member.

A. Well, I have been traffic manager for the Pacific Coast Borax Company since 1946. Prior to that time I was in their traffic department for seven years. I have been most recently Chairman of the Freight Traffic Section of the California Manufacturers' Association, member of the Committee of its Car Service and Transportation Division.

I am Vice-Chairman of the Freight Claims Committee of the National Industrial Traffic League. I am a member of the board of directors of the League and a member of the executive committee.

Q. Would you describe briefly what might be characterized as Pacific Coast Borax's truck as contrasted with its rail markets.

A. Well, our truck traffic is limited primarily to local delivery. Our rail service, I say, is between 95 to 97 per cent of our business, is handled by rail service.

Q. I take it, then, that you are dependent to a large extent upon rail service for the distribution of your products?

A. Yes.

Q. Would you describe the extent to which Pacific Coast Borax uses the TP&W Railroad as an intermediate carrier.

A. We use approximately 450 cars a year over the TP&W.

Q. How long a period of time has the Pacific Coast been making use of the TP&W?

[fol. 769] Q. How long a period of time has the Pacific Coast been making use of the TP&W?

A. To my knowledge, since 1939. It was apparently being used prior to that time.

Q. What specific factors motivate Pacific Coast Borax to utilize the services of the TP&W Railroad as an intermediate carrier in the transcontinental movement of your traffic?

A. Well, it has been our experience that it is one of the fastest connections that we have between the originating and destination carriers of which are the Santa Fe and, to a large extent, the Pennsylvania Railroad. We avoid the Chicago gateway, and in more recent years we have been

dependent a great deal upon prompt passing reports for lease-covered hopper cars which we have in our service and it has been very helpful to us to be able to receive this information promptly.

Q. And those services are available to you, are they, by the use of this routing?

A. That is correct.

Q. Are you familiar with the application which has been filed by the Santa Fe and Pennsylvania Railroads in Finance Docket 18991?

A. I am.

Q. Have you read that application, sir?

A. Yes, I have.

Q. What is the position of Pacific Coast Borax and what [fol. 770] is your position with reference to the application of the Santa Fe and Pennsylvania Railroads to acquire the TP&W?

A. We are in favor of the application.

Q. Now, would you tell us briefly what specific reasons the Pacific Coast Borax has for supporting the positions in Finance Docket 18991.

A. We are primarily a Santa Fe shipper, located on the Santa Fe at Boron, and, using transit services at our refinery, we therefore originate a large portion of our traffic via Santa Fe. The Pennsylvania Railroad is the largest terminating line in the East for us, and it is the most logical situation for us, as far as we can see, to have the two roads that are primarily involved with our traffic interested in the TP&W owning that stock and seeing that the railroad is operated.

We are interested in seeing that the railroad is kept an independent operation with the services provided that they are now providing, or improved services, if possible.

Q. Does the largest volume of your traffic move via the Santa Fe and then the TP&W at Lomax, is that correct?

A. That is correct.

Q. In connection with your routings and your use of the TP&W, are any other routings used other than Santa Fe, Lomax-TP&W, Effner to the Pennsylvania?

A. Yes, we have approximately, I'd say one-third of our TP&W traffic is moving to Lomax, Peoria and C&IM.

[fol. 771] Q. Would you describe that, please? To what destination is that?

A. That is moving primarily into the Ohio regions.

Q. It moves via the TP&W to the Chicago and Illinois Midland, is that correct?

A. Yes, and thence B&O to destinations.

Q. What is the junction to which that traffic is interchanged from the TP&W to the CP&IM?

A. Peoria.

Q. Now, in connection with your routings over the TP&W, are there any other connections which Pacific Coast Borax utilizes?

A. Yes, we use the Keokuk gateway on cars where we have used Burlington or Rock Island DF cars and are giving them a haul because of use of their cars and we want to route with TP&W. We also use frequently Burlington covered hoppers by the TP&W gateway for the same reason.

Q. Is it a fact that in connection with your use of cars that you will route, give the Rock Island or the Burlington its long haul, but you specify Keokuk?

A. Yes, we do.

Q. If you did not specify Keokuk on a routing via the Rock Island Railroad and specify the TP&W, where would the Rock Island take that haul?

Mr. Cassell: I object to that.

Exam. Albus: On what ground?

[fol. 772] Mr. Cassell: No showing that he would be in a position to know what the Rock Island does with it.

Exam. Albus: Objection overruled.

Do you have an answer to that?

A. I don't know of any other connection which the Rock Island could take it to the TP&W on except Peoria. If TP&W was in the routing, as I understand it, it would move over Peoria.

By Mr. Bagge:

Q. Is it not a fact that railroads move traffic via their longest haul?

A. That is correct.

Mr. Broker: I object to that.
Mr. Cassell: I object to this.
Exam. Albus: The objection is sustained on that.
Mr. Bagge: All right.

By Mr. Bagge:

Q. On a movement which you have described from the Burlington Railroad, if you specified Burlington, thence TP&W, without specifying Keokuk as a junction, do you have an opinion as to where the Burlington would interchange that car with the TP&W?

A. It is my understanding they would interchange at Peoria.

Q. Why is that, sir?

A. Because they normally take the longest haul that they can get where the junction isn't specified.

[fol. 773] Q. Now, sir, are you an is Pacific Coast Borax interested in maintaining the gateways which you have described at Keokuk and with the C&IM at Peoria?

A. We are.

Q. What effect would the granting of the application have, that is, the application of the Santa Fe and Pennsylvania Railroads, to acquire control of the TP&W have on service via these gateways?

A. It is my understanding the service would be maintained.

Q. Why do you say that, sir?

A. It would be in the interest of the carriers involved to maintain these routes because, if they didn't, they would then lose a certain portion of the route or the traffic involved which they are now handling, that is, if they didn't maintain the Keokuk gateway, then the cars would normally move to Peoria and they would just then reduce their revenues by that amount.

Q. Which carriers do you mean?

A. The Santa Fe or the interested carrier, the TP&W, the Santa Fe and the Penn.

Q. With regard to the connection with the C&IM would you describe why you believe that that connection would be maintained?

A. Well, if the connection were not maintained via the C&IM the cars could move to Nemo via the M&StL and thence to Peoria and then C&IM.

[fol. 774] Q. Is it a fact alternatives routes are available and those connections were not maintained and service was not continued to be maintained?

A. That is correct.

Q. In view of the foregoing do you have an opinion regarding the necessity for stock ownership on the part of these other connecting carriers to maintain their relative positions in these connections with the TP&W?

A. Because it would be in the interest of the Santa Fe and the Penn to maintain these routes and develop all the possible traffic. I don't believe it would be necessary for other lines to be involved in the stock ownership.

Q. To what extent does Pacific Coast Borax specify the routing, on your over-all traffic, just generally?

A. About 80 to 85 per cent of the traffic we route.

Q. In these routings do you specify junction points?

A. Normally, no, except where we have a hopper car or a DF car where we feel that it is necessary to do that to—

Exam. Albus: Who routes the other 15 or 20 per cent?

The Witness: The customers, it is on customer request.

Exam. Albus: The consignees?

The Witness: Right.

By Mr. Bagge:

Q. Mr. Maley, you are aware of the fact that the M&StL Railroad has petitioned this Commission for authority to acquire the TP&W, are you not?

[fol. 775] A. Yes.

Q. What is the position of Pacific Coast Borax with respect to the possibility of the M&StL acquiring control of the TP&W?

A. We feel that the financial stability of the railroad would be better enhanced by having the two large carriers who are primarily involved in the traffic that is handled between the east and the western parts of the United States owning the railroad, to have a smaller railroad who proposes to introduce economies, handle the railroad, we feel

could very well lead to a reduction in the type of service that we would get over the Lomax gateway, which to us is the normal direct route.

Q. Now, in saying that has Pacific Coast Borax shipped cars over the M&StL?

A. Oh, yes.

Q. Your answer is based, having in mind what your experience has been with them as a carrier, is that correct?

Mr. Wheeler: Just a moment.

Mr. Bagge: I will withdraw the question.

By Mr. Bagge:

Q. Now, Mr. Maley, if you were assured that the M&StL agreed to the imposition by this Commission requiring that service be maintained over the west end of the TP&W would your attitude change with respect to the desirability of the M&StL's acquiring the TP&W Railroad?

A. Well, I feel that it would be better to have a route for service maintained on the basis of its economic ability [fol. 776] to stand on its own rather than on a prescription of the Commission that traffic that was handled that way could very well be handled via Nemo and that the solicitation would be via Nemo since that is the normal route on the preponderance of traffic—

Mr. Wheeler: Mr. Examiner, I move that this answer be stricken on the ground that the witness is now testifying about something he can't possibly know the answer to, and that is with respect to future solicitation policies of the M&StL in the event they acquire this property.

Exam. Albus: That portion of it could be stricken.

Read the answer so far.

(Answer read.)

Exam. Albus: That answer is in response to his experience as a traffic manager. I am going to let it stand. You can take it up with him on cross-examination where he got it.

Are there any further questions?

Mr. Bagge: No, that is all I have of this witness, Mr. Examiner.

Cross examination.

By Mr. Wheeler:

Q. When your traffic moves over the Santa Fe and T. P. & W. where is your interchange point?

A. Lomax.

Q. Didn't you just testify that the normal route was Nemo rather than Lomax?

[fol. 777] A. No, I said that I would assume that the normal route would be Nemo if the M&StL were in control of the—

Q. (Interrupting) Why do you make that assumption?

A. Because the preponderance of traffic on the M&StL now moves over the Nemo gateway in coming from the northern part of the country.

Q. Do you think if the M&StL owned a 100 per cent of TP&W would have no interest in the latter?

A. I think they would have interest but they are saying they would introduce economies, and one of the economies that could be introduced was to handle all the traffic possible via the route where the largest preponderance of traffic is now moving.

Q. Where did you hear this testimony with respect to the introduction of economies by the M&StL?

A. It is named in their application, as I recall, in reading the application, it states that they plan to introduce economies which would be beneficial both to themselves and the TP&W.

Q. Do you know what the nature of those economies are?

A. No, I don't. I am only assuming that they would be—

Q. (Interrupting) Abandonment of the Lomax Peoria route?

A. Not certainly if the Commission prescribed that as a condition of the sale that they were to maintain the service, but they would certainly try to keep all the traffic possible moving via one route.

[fol. 778] Q. And that is the basis upon which your testimony is based, is that correct?

A. It is on that basis.

Q. It is on that assumption?

A. That is one of the bases, yes.

Q. I want to know all the bases. What other bases other than you think they would want to concentrate the traffic between Nemo and Peoria?

A. As I said, prior to that the maintenance of the road by prescription rather than by economic feasibility to me isn't sound. It is better that a route be mantained because it is an economical route and the movement is normally there.

Q. Now, you moved away from your prior testimony. We were talking about economies, the economies that might be effected, and you said that economies might be effected with respect to the Lomax, Peoria gateway, or route, did you not, and that was the reason you thought that the M&StL would move the traffic through Nemo rather than Lomax, is that not correct?

A. I don't recall that I said that.

Q. What is your testimony as to why, if the M&StL acquires the property, your traffic will flow through Nemo rather than Lomax?

A. Will you go back and read my testimony, then?

Exam. Albus: No, the record will show what you said. The thing is what do you want to say now?

[fol. 779] A. My testimony was that we would oppose the, or be opposed to the acquisition of the TP&W by the M&StL even if the agreements was made that, one of the conditions was made that the route via Lomax was to be maintained because we felt that the route should be maintained on an economic basis rather than on a prescription by the Commission. That was the first point I made.

The second was that we felt that if the M&StL acquired the TP&W the tendency would be for the traffic to be solicited via Nemo because the preponderance of the M&StL traffic moves via Nemo to Peoria and if they were introducing economies it would seem logical to us that one of the economies would be to get all the traffic possible moving by a route where they are now handling the volume of traffic.

Q. And those are the bases for your position?

A. That is correct.

Q. In favor of the Pennsylvania-Santa Fe application as against the M&StL, is that correct?

A. Yes.

[fol. 780] Q. You say that at the present time, as to one of your reasons you said, the M. & St. L. now solicits for the Nemo-Peoria route?

A. Correct.

Q. Why do they now solicit for that route?

A. That is their only route.

Q. Why don't they solicit for the Lomax-Peoria route?

A. Because they don't have any interest in it.

Q. Would you expect them to do otherwise?

A. No.

Q. Would you expect, if they owned the Lomax-Peoria route, that they might solicit for that route providing it was an economical route for them?

A. I expect they would.

Q. If it were shown that the Lomax-Peoria route would be highly desirable from an economic standpoint to the M. & St. L. in the event it acquired the T. P. & W. one of the reasons for your conclusions would be eliminated, would it not?

A. But if it were shown then I'd think one of the reasons stated in the M. & St. L. application wouldn't have been necessary, that they agree to the prescription by the Commission in keeping that route open.

Q. Are you aware of the fact that the Santa Fe-Pennsylvania application has a similar agrees to the prescription of a similar condition?

A. I am.

[fol. 781] Mr. Broker: I object. I don't think it agrees to the same condition. So I don't know whether you are asserting that as a fact.

Mr. Wheeler: I asked this witness whether he was aware that there was a similar prescription.

Mr. Broker: Thank you.

A. As you recall the Santa Fe-Penn application has agreed to keep all routes open.

By Mr. Wheeler:

Q. Do you think that the routes which they agree to keep open which are not economic to them they will let deteriorate, that is, the Pennsylvania-Santa Fe?

A. I don't think so.

Q. Wouldn't that be consistent with your prior testimony with respect to what M. & St. L. would do with the Lomax-Peoria run, if it was kept open solely on the basis of prescription rather than economics?

A. Well, many of the other routes which the T. P. & W. is now involved in there are also routes which could result in a lessening of the traffic, the revenue to the railroad.

Q. To what railroad?

A. To the T. P. & W. and by that to the Penn-Santa Fe and their ownership of that railroad.

Q. So it might be to their detriment, it might be to the Santa Fe-Penn, to maintain some of these routes open?

Mr. Bagge: I object to that. That is precisely what he [fol. 782] did not say, Mr. Examiner.

Mr. Wheeler: I have the witness on cross-examination, Mr. Examiner. I think I am entitled to ask him the question.

Exam. Albus: Very well.

Mr. Wheeler: Would you read the question back to him, please?

(Question read.)

By Mr. Wheeler:

Q. Isn't that correct?

A. It might be to their detriment to close them is what I said.

Q. Might it not be to their detriment to keep them open also?

A. No, I can't see where it would be.

Q. You don't think that the preservation of all of these gateways might be against the economic interest of the combination Santa Fe-T. P. W.-Pennsylvania, is that it, is that your statement?

A. I don't think it would be.

Q. And you think that testimony is consistent with your testimony with respect to the operation of the Lomax-Peoria route by the M. & St. L.?

A. Yes, I do.

Q. Would the T. P. & W. be short hauled if traffic were given to the Nickel Plate at Peoria rather than carried to Effner?

A. Yes.

Q. Would it be to the detriment of the T. P. & W. to be short hauled? You answer the question yes or no and then give your explanation.

A. Yes, it would be to the detriment of the T. P. & W. to [fol. 783] be short hauled unless the alternative was that they would not get the traffic at all. In the maintenance of these routes they get a certain amount of traffic which could very well move other gateways and not in connection with the T. P. & W. at all.

Q. The same would be true with respect to the T. P. & W. regarding the Lomax-Peoria route, would it not, if they would not otherwise get the traffic, if they closed that route, it would be to their detriment to close it, would it not?

A. I don't understand the question.

Q. Just as it might be to the detriment of the T. P. & W. to close its gateway or its route with the Nickel Plate because it would lose the entire movement off the Nickel Plate so might it not be to the detriment of the T. P. & W. to close its Lomax-Gateway, might it not?

A. Under what ownership?

Q. Under the ownership of the M. & St. L.

A. No, I don't think so because it could then move via Nemo.

Q. Supposing the traffic did not move via Nemo?

A. Then the traffic could move via any other route if the M. & St. L. were soliciting the traffic via Nemo as compared to traffic via Lomax, I don't see that it would be to the detriment of the T. P. & W. if controlled by the M. & St. L. to have the traffic move over Nemo.

Q. Supposing the Santa Fe solicited the traffic either via Chicago or Lomax and that was the alternative, would it be [fol. 784] to the interest of the T. P. & W. to maintain Lomax Gateways?

A. Yes.

Q. Under control by the M. & St. L.?

A. Providing the traffic was solicited either one gateway or the other, yes.

Q. Now, you say you have shipped over the M. & St. L. Has the M. & St. L. accorded you good service on those shipments?

A. They have.

Q. Do you have any reason to believe that you would get any inferior service from that that you now receive on the M. & St. L. if they acquired and ran the T. P. & W.?

A. No.

Q. And as a shipper you are primarily interested in service, is that correct?

A. Yes.

Q. Would you have a preference—wouldn't you rather see the T. P. & W., instead of having it an independent operation or a joint operation, wouldn't you rather see the Santa Fe absorb the T. P. & W. by itself?

A. No.

Q. Why not?

A. Because they are our major connection with the Pennsylvania Railroad and it is in the interest of the service to have, as far as we are concerned, to have the two major lines involved in the T. P. & W.

[fol. 785] Q. Do you have a preference for having as few, in general do you have a preference for having as few, railroads in your routing as possible?

A. Yes.

Q. So that the introduction of an additional road is the introduction of an undesirable factor in your routing, is it?

A. That is correct.

Q. Have you been satisfied with the service you have been getting from the Santa Fe and the Pennsylvania and their service in connection with the T. P. & W. in the past?

A. Yes.

Q. Do you believe that the T. P. & W. route and service you receive over it will be altered in any way regardless of who acquires the property?

A. Well, I wouldn't be testifying as I have if I didn't believe that.

Q. Now, you have given us what basis for that conclusion?

A. That I felt that the service might be altered if the M. & St. L. acquired the T. P. & W.

Q. And that is the basis that you have previously given with respect—that is based on your testimony with respect to the Peoria-Lomax route, is that correct?

A. Yes.

Q. Wouldn't you prefer to see the Pennsylvania and the Santa Fe take the T. P. & W. and split it equally between [fol. 786] them, merge it into their lines?

A. No, I feel that with the representation and the independent operation of the railroad that we are able to get a more personal service from the route.

Q. A more personal service?

A. A more personal service in obtaining the passings, the information that we need on our covered hopper cars.

Q. You mean you wouldn't get that information from the Santa Fe—you say the Santa Fe controlled or merged the west end of the T. P. & W. into their operation, do you believe you wouldn't get that information from the Santa Fe?

A. Not as personally as we do now.

Q. Where are you located?

A. Los Angeles.

Q. Where is the Santa Fe located? A. Los Angeles.

Q. You believe you would get better personal service farther away than you would closer at home?

A. I didn't say that.

Q. Well, I am asking you.

A. No, I don't think you would.

Q. Will you explain this personal service that you speak of?

A. The T. P. & W. has representatives in Los Angeles who are soliciting that business very actively in connection with the T. P. & W. The Santa Fe would be soliciting it just [fol. 787] as a part of their route, and we are able to, by the personal contact with the representatives of the T. P. & W., to get the information that we need promptly and personally.

Q. It really doesn't make any difference to you, then, whether or not you are contacting a representative of a railroad personally or whether you are contacting the home office personally, is that correct?

A. Well, it has been our experience that we get the better service from having the personal representatives there. I

don't know about contacting the home office of the railroad. We don't contact the home office of the Santa Fe.

Q. But you get adequate service without contacting the home office, is that correct?

A. That is correct.

Q. And that is their representatives?

A. Yes.

Q. If after acquiring the T. P. & W. the Santa Fe-Pennsylvania were to abandon it, wouldn't the Santa Fe get a longer haul to Chicago?

A. Not necessarily. They might then give it to the M. & St. L. at Nemo.

Q. To go into Peoria?

A. Yes, sir.

Q. And thence?

A. Any other connections.

[fol. 788] Q. To the Nickel Plate, for instance?

A. To the Nickel Plate.

Q. Didn't you testify on direct that you intend to give the originating carrier the long haul?

A. Yes, we do.

Q. What percentage of your traffic over the Santa Fe goes to Chicago as compared to Lomax?

A. This will have to be an estimate. I would say comparing the two that the Lomax traffic is about 50 per cent of the traffic that goes to Chicago.

Q. Does that mean that of the total traffic moving over the Santa Fe from your company eastbound that gets to Lomax and goes through the Lomax Gateway?

A. Would you ask that again?

(Question read.)

Mr. Wheeler: I will give you another question.

By Mr. Wheeler:

Q. Does that mean that twice as much traffic from your company moves through Chicago as moves through Lomax?

A. Correct.

[fol. 789] Q. Does the Santa Fe solicit the long haul to Chicago from you?

A. They solicit primarily Illinois junctions. They, of course, express a desire for the Chicago traffic but they don't object greatly to the Illinois junctions.

Q. When you speak of Illinois junctions, are you speaking about Lomax?

A. Lomax, Nemo, Streator.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. You said the Santa Fe solicits primarily Illinois junctions?

A. Correct.

Q. What they are interested in is the long haul west of Illinois, isn't it?

A. That's right.

Q. So they would much prefer the long haul west of Illinois rather than the haul from Keokuk east on the TP&W, wouldn't they?

A. Would you repeat that question?

Q. They would much prefer the long haul west of Illinois rather than trading that for a haul on the TP&W east of Keokuk, wouldn't they?

A. Yes.

Q. And you said your normal gateway is Lomax, isn't it?

[fol. 790] A. Correct.

Q. You are located on the Santa Fe?

A. Correct.

Q. It is only the exceptional shipment that doesn't go out through that gateway, isn't it?

A. That is right.

Q. So you really have no interest in any other east-west gateway, do you, with the TP&W?

A. Other than—

Q. (Interrupting) Rather than Lomax?

A. Yes, we are interested in Keokuk, because we depend on the bridge lines in many cases, that is, the Rock Island and the Burlington particularly to supply us with DF cars and with covered hopper cars.

Q. How many times a year does that occur, those shipments?

A. I can't recall offhand. I know that we are using four, five, maybe ten Rock Island cars, DF cars, a month, and as many Burlington cars. They don't all, of course, move in connection with the Pennsylvania or the TP&W.

Q. I am then going back to one of your questions that you made on direct. I am not sure whether I understood you correctly or you perhaps mis-spoke yourself. You said if the Rock Island got a haul it would interchange with the TP&W at Peoria, didn't you mean Keokuk?

A. If we show the junction, the Keokuk junction, yes, [fol. 791] they interchange at Keokuk, but if we don't show the junction in connection with the TP&W they interchange at Peoria.

Q. How do you know that?

A. It is my understanding they do. I don't know it.

Q. You don't know that?

A. No.

Q. Do they have a service route via Peoria from your origin?

A. I believe they do.

Q. Do you think that a carrier would risk loss of business by moving it over a route which took one or two or three more days in transit time than another route?

A. In handling dead freight I think it is possible they would, yes.

Q. The Santa Fe has an interchange with the TP&W at Eureka, which is about, oh, some miles east of Peoria, wouldn't they then use their Eureka connection with the TP&W fo their eastbound shipment?

A. I don't know. I guess it would depend on what their dividend setup was and what the general economics of the operation were.

Q. The same would apply to the other route, couldn't it?

A. That is right.

Q. You really don't have any information as to that Peoria route of the Rock Island, do you?

A. No, I don't.

[fol. 792] Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. In discussing the M&StL you said that you opposed imposition of conditions as a means of protecting service, is that right?

A. That is correct.

Q. Now, that would apply to any railroad, wouldn't it?

A. Right.

Q. In other words, you are not just singling out the M&StL?

A. No.

Q. Now, why is that?

A. Well, those conditions can be changed at a later date under application to the Commission. It doesn't seem to me it is economical to have to depend on the imposition of the conditions to maintain something, that the service should be maintained on the economics of it rather than on the prescription by the Commission.

Q. Do you think that even without going to the Commission solicitation can be used to direct the flow of traffic or to influence a shipper in the routing of cars?

A. Yes, I do.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions on cross-examination?

[fol. 793] (No response.)

Exam. Albus: Is there any redirect?

Mr. Bagge: Yes, sir.

Redirect examination.

By Mr. Bagge:

Q. What percentage of your total traffic moves Chicago versus Lomax at the present time? Just an approximation.

A. I would say roughly about 20 per cent of our total traffic destined to points beyond the Chicago-Peoria-St. Louis gateways moves via Chicago and about 10 per cent of it moves via Lomax, Peoria.

Q. Now, would you state what you understand the Santa Fe's solicitation policy to be in connection with the present routing via Lomax as related to Chicago?

A. Well, actually the Santa Fe's policy, as I said before, has been to solicit by Illinois gateways, or Illinois junctions, and within the last year or two years I think it is because of the service involved they have tended to lean toward the Lomax gateway about as freely as they do the Chicago gateway.

Q. Now, sir, do you know what the solicitation policy of the Santa Fe will be in the event that they are granted a 50 per cent ownership in the TP&W?

A. We have been informed that it would be the same, they would solicit it Lomax equally with Chicago.

Mr. Bagge: Thank you.

[fol. 794] Exam. Albus: Is there any recross?

Mr. Wheeler: No, sir.

Exam. Albus: You are excused, sir. Thank you very much.

(Witness excused.)

[fol. 795] Mr. Lucas: Mr. Examiner, I will call Mr. Schmidt as the next witness.

Exam. Albus: Mr. Schmidt, please.

C. H. Schmidt was sworn and testified as follows:

Direct examination.

By Mr. Lucas:

Q. Mr. Schmidt, will you give your full name and residence for the record, please?

A. C. H. Schmidt, 5410 Lowell Avenue, Indianapolis, Indiana.

Q. You have prepared a short statement here in support of the application of the Santa Fe and the Pennsylvania railroad to acquire control of the T. P. & W., have you not?

A. I have.

Q. Will you proceed, please, with your statement?

A. My name is C. H. Schmidt and I am General Traffic Manager of Stokely-Van Camp, Inc., with headquarters located at 941 North Meridian Street, Indianapolis 6, Indiana.

After approximately ten years of railroad experience, I became associated with the traffic department of Stokely-Van Camp, Inc., in 1932, and have been Assistant Traffic Manager for twelve years until October 1, 1955, on which date I was appointed General Traffic Manager.

Stokely-Van Camp, Inc. are processors and packers of a complete line of canned fruits and vegetables and own and operate approximately sixty canning plants throughout the [fol. 796] United States. Our products are distributed throughout the country, and we also do a very substantial export business.

In my capacity, I supervise the routing of all of our tonnage and have a first hand knowledge of all available routings to permit movement in the most dispatch manner, which is a very vital factor in the distribution of our various products. Many of our customers operate on a very close inventory and it is, therefore, highly important that our shipments reach destination with the least possible delay.

I have read thoroughly and am familiar with the application of the A. T. & S. F. Railway Company and the Pennsylvania Railroad Company for authority under Section 5 (2) of the Interstate Commerce Act to acquire control of the T. P. & W. Railroad Company by purchase of its capital stock.

One of our large plants is located at Indianapolis, Indiana, and is served by the Pennsylvania Railroad; additionally, we have plants located on the Pennsylvania Railroad at Greenwood, Indiana, Milford Centre and Plain City, Ohio, Trenton, New Jersey, and Rehobeth, Delaware. We also have very large warehouses and plants located on the A. T. & S. F. at Lawrence, Kansas, and on the G. C. & S. T. at Dallas, Texas. Also have a large plant and warehouse at Alameda, California, served by A. T. & S. F. and a warehouse at Los Angeles, California, served by A. T. & S. F. Railway. We accordingly have a very substantial move-

ment between our various eastern plants mentioned above [fol. 797] and our western plants and warehouses, all of which must necessarily move in the most di patch manner.

In addition to the above inter-plant movements, we also ship from the east to various other destinations in the west and southwest where A. T. & S. F. routing is required and ship from our western plants eastbound to our own plants and warehouses, as well as direct to customers. Prompt handling is essential in connection with all of the above movements and we have found that the T. P. & W. has rendered excellent service both eastbound and westbound.

From the above, it will be noted that the most prompt possible service must be maintained in order for us to properly service our customers and our own warehouses, and as we feel that our interests can best be served by continuation of the best service obtainable, we hope that the A. T. & S. F. and Pennsylvania will control the operations of the T. P. & W. We believe that the A. T. & S. F. and Pennsylvania are in much better position to maintain the best service by acquiring control of the T. P. & W. because actually the present schedules will undoubtedly be retained and probably be improved, if at all possible.

According to the application, the revenue the T. P. & W. receives from traffic interchanged at Lomax and Effner with the Santa Fe and Pennsylvania is substantially greater than its entire revenue from other sources. This fact alone should prove that control of the T. P. & W. by the A. T. [fol. 798] & S. F. and Pennsylvania will assure continuance of this fast and dependable service which we require.

We do not see how any other carrier or group of carriers, if they acquired the T. P. & W., could hope to equal the present service which we are enjoying as their geographical location does not place them in the advantageous position enjoyed by the A. T. & S. F. and Pennsylvania.

The tonnage which we are presently routing beyond the T. P. & W. in connection with carriers other than the A. T. & S. F. and Pennsylvania, principally the N. K. P. and N. Y. C. in the east, and the C. B. & Q., C. R. I. & P. and M. & St. L. in the west, will not be affected in any way, but we do feel that the business which must necessarily

be routed via the A. T. & S. F. and Pennsylvania can best be handled if they actually control the intermediate line, the T. P. & W.

For these reasons we trust that the Commission will grant the application of the A. T. & S. F. and Pennsylvania to acquire control of the T. P. & W.

Q. Mr. Schmidt, you have just referred to the extent to which your company makes use of certain connections on the western part of the T. P. & W. Your company is interested in the maintenance of the T. P. & W. and its service and schedules west of Peoria?

A. We are.

Q. You would not wish to see anything happen that [fol. 799] would in any way impair or impinge upon the present setup of the T. P. & W. west of Peoria?

A. Definitely not.

Q. And do you use the M. & St. L., for instance, out of Peoria and up into the northwest, do you?

A. We give them considerable business into that area, yes.

Mr. Lucas: That completes the direct examination.

Exam. Albus: Cross-examination, please.

Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. I note you have shipped over the M. & St. L. Have you gotten good service from them?

A. Very good.

Q. Are you familiar with the fact that the M. & St. L. proposes new and faster time schedules between many origins and destinations on the basis of a unified operation with the T. P. & W.?

A. I understood they do, yes.

Q. From whom did you understand that?

A. From the M. & St. L. representative at Indianapolis.

Q. Would you be interested in the accomplishment of those faster time schedules?

A. Very much so if I could depend that that would be better than the present service.

Q. Haven't you found the past promises of service by the M. & St. L. representatives to be good promises?

[fol. 800] A. Substantially so.

Q. Now, the geographic location and the advantageous position enjoyed by the Santa Fe and the Pennsylvania, I take it that you refer to, are the east and west connections with the T. P. & W.?

A. That's correct.

Q. What about the Pennsylvania's route into Peoria?

A. I have used that very seldom, and I do not—the last time I used it the service was not as good as via Effner.

Q. Does your company have an interest in specialized equipment, specialized cars, railroad cars?

A. We do.

Q. Have you or officers of your company had discussions with the M. & St. L. regarding such specialized equipment?

A. So far as I know they have.

Q. Do you know the program of the M. & St. L. in this regard?

A. I do not.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Schmidt, I take it you haven't used the service of the Rock Island very extensively, have you?

A. That is not correct. We do use the service of the Rock Island extensively.

Q. Have you found that service satisfactory?

A. Very good.

[fol. 801] Q. And have you found the management of the Rock Island cooperative, interested in your problems?

A. I have.

Q. And then you wouldn't have any reason to believe that if the Rock Island were included in here, it wouldn't still be interested in your problems, do you?

A. I definitely think they would be interested in so far as destinations or origins are concerned, so far as the Rock Island is concerned, but our business going to the

Santa Fe for points, as I outlined here, is so much greater that we definitely feel that the Santa Fe and the Pennsylvania would be in better position to maintain that service. We sincerely hope that the Rock Island will maintain as good, if not better service, regardless of who acquires it for business going to points on their line.

Q. Then your position is motivated primarily by the fact that you have your plants located in most instances either on the Pennsylvania in the east or on the Santa Fe on the west, isn't that so?

A. That is a tremendous influence in connection with my appearance here.

Q. If there were a shipper who had its plants in the east on the Pennsylvania and plants in the west on the Rock Island, its position would then, if it were similar, would support the Pennsylvania and the Rock Island?

[fol. 802] A. I presume he would, but that's not my position.

Q. I see. Now, you don't have any information, do you, that the Rock Island intends to abandon or impair any of these services if the application is granted to include it, do you?

A. I haven't heard of any, no.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker, please.

Cross examination.

By Mr. Broker:

Q. In response to a question from Mr. Lucas I think you said you were very much interested in the maintenance of the western half roughly of the T. P. & W., is that right?

A. Well, I am anxious to see that present service is maintained.

Q. I see.

A. For the through routing, both east and west.

Q. And do you think the Commission should take every precaution to protect that line of the T. P. & W. west of Peoria?

A. I do.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions on cross-examination?

(No response.)

Exam. Albus: Is there any redirect?

Mr. Lucas: No redirect, Mr. Examiner.

Exam. Albus: You are excused, Mr. Schmidt. Thank you very much.

[fol. 803] (Witness excused.)

Mr. Bagge: At this time, Mr. Examiner, some of the intervenors from Keokuk, Iowa, would like to be heard, represented by their own counsel.

Exam. Albus: Very well.

Mr. Walker: Mr. Examiner, when I made my appearance here last week, I suggested to you that I was appearing for the Keokuk Chamber of Commerce, the City of Keokuk, the Hubinger Co., and the Bridge Commission.

Exam. Albus: Yes, sir.

Mr. Walker: All of which are intervenors. I have with me today as witnesses that I would like to introduce to your Honor and question the witness for the City of Keokuk, the Chamber of Commerce, and two traffic men from the area. The witness for the intervenor as to the Hubinger Co. unfortunately could not be here until tomorrow nor could Mr. Logan for the Bridge Commission, both of which are intervenors but we have these four gentlemen and with your indulgence I would like to call them.

Exam. Albus: Very well.

Mr. Walker: I will call Mr. Berryhill first.

[fol. 804] George McKinley Berryhill was sworn and testified as follows:

Direct examination.

By Mr. Walker:

Q. Will you state your full name for the Examiner, please.

A. George McKinley Berryhill.

Q. Where do you live?

A. Keokuk, Iowa.

Q. What is your business?

A. I am director of purchases and traffic for the Keokuk Electrometals Company.

Q. For how long have you been associated with the Keokuk Electrometals Company, Mr. Berryhill?

A. Well, directly with them for about 18 years.

Q. And what is your capacity with that company?

A. Director of purchases and traffic.

Q. For how long have you served in that capacity?

A. I have had that title about five years, but I served in that capacity prior to that time.

Q. How long have you been associated with traffic matters in connection with the Keokuk Electrometals Company or other companies?

A. Well, directly with the Keokuk Electrometals Company for about 18 years. I don't think that my prior experience is relevant. I was with the Express Company many [fol. 805] years ago. I always worked for a railroad.

Q. The Keokuk Electrometals Company is in what business?

A. Manufacturer of silvery pig iron.

Q. Will you explain to the Examiner what that really is and what it is used for.

A. Silvery pig iron is a material made of scrap iron, coke and silica rock and contains a certain percent of silicon. In the form of pig iron, that silicon percentage will range anywhere from maybe 10 to 25 per cent. In our particular case, our range is more nearly 16 to 17 per cent. It gets its name from the fact that when it is fractured it has a silvery appearance.

You, I believe, asked me how it is used. Well, I am not a metallurgist, but—

Q. (Interrupting) It is used in the curing of steel, is it not?

A. I understand that it is used in the beneficiation of certain steel. It is largely used in gray iron foundries for two purposes, for the introduction of silicon into the castings, for certain virtues that that has, and also because one of its virtues is the better utilization of other alloys.

Q. Mr. Berryhill, in the production of your product, is it necessary for you to use freight carriers, both into and out of your plant?

A. Yes.

Q. And what type of carrier do you use in that respect?

[fol. 806] A. Well, we use railroads, we use the truck-lines, and we use water carriers.

Q. As to the railroads that you use, do you use the TP&W?

A. Yes.

Q. And can you give me an idea about the number of cars that are shipped by your company over the TP&W yearly?

A. Last year we gave them slightly under fifteen hundred cars.

Q. Well, that was outbound?

A. Both in and out.

Q. In and out?

A. Yes, sir.

Q. You use other railroads, in addition?

A. Yes.

Q. What railroads?

A. There are four railroads serving Keokuk, the TP&W, the Wabash, the Rock Island and the CB&Q.

Q. Are you familiar with the application of the Santa Fe and the Pennsylvania to the Commission for the authority to purchase and operate the TP&W Railroad?

A. I think I am.

Q. You have, then, seen that application—

A. Yes.

Q. (Continuing) Or had an opportunity to examine it?

A. Yes.

Q. Or discussed it with counsel?

A. Yes.

[fol. 807] Q. Are you familiar with the application of the M&StL for the authority of the Commission to purchase the TP&W?

A. Well, I haven't seen the application of the M&StL.

Q. Have you had an opportunity to discuss it with counsel?

A. Not their counsel. I have seen excerpts from their application.

Q. And you have had an opportunity to discuss it with your counsel?

A. Yes.

Q. Will you explain to us in your use of the TP&W as a freight carrier for your products what points you use in that connection on that railroad.

A. Well, we are located at Keokuk, which is a terminal of the TP&W. Actually our plant is situated on the tracks of the CB&Q, who do our switching for us, but there is reciprocal switching in Keokuk and our traffic is routed by any of the four lines serving us.

Q. You would use the TP&W going east?

A. Yes, we might even use it going west, although our shipments to the west, of course, are very few, but from Keokuk to Lomax and Santa Fe on west is a good route if we are going down into the Southwest.

Q. When you say that you would use it going west, you mean that you would use the TP&W from Keokuk over to Lomax to the Santa Fe interchange?

A. That is right. Of course, the great bulk of our busi- [fol. 808] ness moves into the middle west, in what might be called central freight territory, north of the Ohio River, east of Buffalo, and, well, we will say, west of Buffalo and east of Missouri, although we have scattered shipments beyond those places. From our plant at Keokuk—now, we have another plant at Wenatchee, Washington.

Q. If you are shipping east on the TP&W, you would ship to Effner and then via Pennsylvania?

A. It depends on where it is going. We might ship via some near junction point if it was going into Illinois.

Q. Do you ship any of your products on the M&StL?

A. Our business at Keokuk with the M&StL has been comparatively small; however, we did give the M&StL about 150 cars last year for our Wenatchee plant.

Q. You have said, Mr. Berryhill, that you are familiar with the application of the Santa Fe and the Pennsylvania in connection with their desires to purchase the TP&W. Will you explain to the Examiner your position in that connection.

A. Well, of course, I have anticipated that question and I don't consider myself too readily articulate. I have made some notes on the subject.

Q. You are perfectly at liberty to refresh your memory or to read from them.

Exam. Albus: You are doing all right, too, Mr. Berryhill.

A. We were very happy with the TP&W as it was, es- [fol. 809] pecially as it has been operated in the last few years. I think it has an aggressive and progressive management who have shown an interest in the business of my company and the welfare of Keokuk. But since the present owners want to sell, I am glad that the Santa Fe and Pennsylvania want to buy it and hope that they are permitted to do so on the basis they propose. In fact, I think with an undivided financial interest the cooperation of these two fine railroads in the control of the TP&W will give it ever greater potentialities than before. The Pennsy may have slipped a little from its broad position in the world, but I think it is going to come back strong. The Santa Fe, I believe, has always been one of the best.

I don't put too much store in this, but I am a native of Keokuk, and you can tell from my middle name I have spent some years there. But I remember as a boy in hearing older people in the town say that Keokuk missed its greatest opportunity when it failed to induce the Santa Fe to cross the river at Keokuk instead of letting it go to Fort Madison. We still won't be on the main line of the Santa Fe, but they will have an interest in Keokuk that they didn't have before.

More to the point perhaps is the fact that the interests of these two railroads are not opposed to each other and the TP&W is a logical link between them that should make for faster transcontinental service and if developed it could relieve to some extent the congestion in the Chicago area, [fol. 810] which would mean some improvement in service through that gateway. Any doubt that I may have had about this proposal was removed by the assurance of the presidents of the two companies that if they are permitted to buy the TP&W on a fifty-fifty basis they will not discriminate against the TP&W in their own solicitation of traffic. The bulk of the business that the TP&W has enjoyed has been from these two lines.

Now, I understand that it got this business, not because of them, but in spite of them, by its own solicitation. With

continued autonomy of the TP&W, they should continue to get this business plus business that these two lines will now throw their way, because they no longer have as great a selfish interest in keeping it to themselves, since they will profit by the prosperity of the TP&W probably just as much as though they didn't interchange.

On the other hand, I think they have probably been tolerant of the independent solicitation by the TP&W in the past because, being natural connections for the latter, the TP&W has probably been soliciting for them as well as for itself and they have thus gotten business that might have gone to their competition by some other route. Therefore, I think that they have been friendly to the TP&W, and I think it is better to have them for friends than for enemies.

Q. Now, Mr. Berryhill, as I understand it, you as a shipper feel that you would best be served if the Santa Fe and the Pennsylvania were allowed by the Commission to purchase and operate the TP&W as an autonomous unit, is that correct?

A. Yes.

Q. Over any other plan about which you have heard or have any knowledge?

A. That is right.

Q. You are familiar with railroads and railroad practices, Mr. Berryhill, and let me ask you if you are familiar with what occurs on a railroad when a shipment is sent by a shipper from one point to another with a designation of two or three, two or more, railroads and no designation in connection with the interchange point.

A. Lord knows sometimes.

Q. But you are familiar with what happens?

A. Well, generally speaking, I think the originating carrier would treat itself to the biggest share of the cake.

Exam. Albus: Let the record show a recess until 11 o'clock.

(Short recess.)

[fol. 812] Exam. Albus: The hearing will please come to order.

We will continue with the direct testimony of Mr. Berryhill.

By Mr. Walker:

Q. Mr. Berryhill, just before recess I was advising with you about your knowledge of the railroad practice in connection with the hauling of freight where there is another designated carrier but no designated interchange point. You told me that it was your understanding that railroads in most instances carried their freight on their own line as far as possible. I will ask you if you know or have an opinion with regard to what happens to freight eastbound that is designated over the Rock Island and the TP&W if no interchange point is mentioned.

A. I do not.

Q. And do you have any ideas at all as to where the interchange points of the Rock Island and the TP&W are?

A. Well, one is at Keokuk and there is another at Peoria.

Q. But you are not familiar with how they interchange if there is no interchange point designated?

A. No. It would only be speculation on my part.

Exam. Albus: That is all right, Mr. Berryhill. If you don't know, just say so.

Mr. Walker: I think that is all.

You may inquire, Mr. Wheeler.

Exam. Albus: Is there any cross-examination?

Mr. Wheeler: Yes.

[fol. 813] Exam. Albus: Mr. Wheeler, please.

Cross examination.

By Mr. Wheeler:

Q. Mr. Berryhill, you said you shipped over the M&StL. Did you find their service good?

A. Yes.

Q. You stated that you understood from the testimony here that the Pennsylvania and the Santa Fe would not discriminate against the TP&W. I gather you meant in their solicitation?

A. That is right.

Q. Are you familiar with the testimony given by Mr. Symes to the effect that they would solicit it first for their St. Louis-East St. Louis gateway?

A. No.

Q. Did you hear the testimony of Mr. Gurley?

A. No, sir.

Q. So that your statements in that regard were based on something somebody told you regarding that, isn't it?

A. That is right.

Q. Do you understand that the Pennsylvania and the Santa Fe would be, to use your words, enemies of the TP&W if they don't get control of that railroad?

A. Enemies is a rather hard word and I am sorry I used that, it was only to emphasize the contrast between friendly relations and a relationship that might exist if they were competitive. Competitors are sort of friendly enemies.

[fol. 814] Q. In other words, you think their solicitation policy with respect—your testimony is based on your belief that their solicitation policies, that is, of the Pennsylvania and the Santa Fe, would be different if they controlled the TP&W than it is now?

A. Yes, if my understanding of what they have been doing is correct.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell, please.

Cross-examination.

By Mr. Cassell:

Q. Mr. Berryhill, on your direct testimony I understood that you talked with members of the staff of the Pennsylvania and the Santa Fe?

A. I don't believe that I said that exactly. I believe that their attorney asked me something about discussion with counsel. It is true that I have talked with them.

Q. Whom did you talk with?

A. Representatives of these railroads?

Q. Yes, of the Santa and Pennsylvania.

A. Oh, I have talked with their new manager in New York, with their traffic manager in New York, the Pennsylvania that is. I have talked with their local representative Mr. Hemphill of Chicago. Well, I have been around

with them since I got here and I can't recall the people that I have talked to but there are a lot of them.

[fol. 815] Q. Who is the president of your company?

A. G. L. Weisenberger.

Q. Did Mr. Gurley and Mr. Symes come over to Keokuk recently?

A. I understand that they did. I don't believe that I was home then.

Q. You weren't in town when they made that trip?

A. I am not sure but I don't believe I was there.

Mr. Walker: Who is this you are speaking of?

Mr. Cassell: Mr. Symes and Mr. Gurley, the presidents of the two railroads.

By Mr. Cassell:

Q. Do you know whether Mr.—is it Wisiger?

A. Weisenberger.

Q. (Continuing) —Weisenberger was in town at that time?

A. No, I don't.

Q. Have you talked this case over with Mr. Weisenberger?

A. Yes.

Q. And do you know whether or not he has had any conversations with representatives of the Santa Fe and Pennsylvania?

A. Yes, I know of at least one conversation, and I suspect that there have been others. I think he has met, I am sure he has met Mr. Gurley and Mr. Symes, but one conversation that I know of.

Q. Was that since this application was filed?

A. Yes. When this whole thing became a problem for us to decide what our attitude was to be we were naturally [fol. 816] interested in knowing as much about it as possible.

Q. That is right.

A. And, may I—

Q. Surely.

Exam. Albus: Yes, finish your answer.

A. As a part of informing ourselves we had talked with representatives of the TP&W, the Pennsylvania, the Santa Fe, I wanted the other side of the story. Now, the M&StL people had not called on me so I made a long distance call to Minneapolis. I talked to their general solicitor, Mr. Musenbrock, I believe, to find out what the M&StL had to say about this. I talked to Mr. Capron, vice-president of the CB&Q, as to what he thought about it, and it was at that time that Mr. Weisenberger called the attorney of the Santa Fe, Mr. Starr Thomas, is it?

By Mr. Cassell:

Q. Yes, he is one.

A. (Continuing) —to find out if there had been any further developments and if he had anything to add to our little store of knowledge at the time.

Q. You said you called the officials of the Burlington and the M&StL in their home offices. Did you make similar calls to the Rock Island?

A. No. At that time I didn't know that the Rock Island was interested.

Q. Why did you call the Burlington?

A. Because the Burlington is a railroad that we count as [fol. 817] a friendly line since we are on their lines, they do our switching, we have a lot of dealings with them beyond the mere routing of cars, and I thought that since I hadn't heard them mentioned in connection with an interest in this thing that they might be able to give me sort of an objective point of view as between the one side and the other.

Q. Has it ever been suggested in any of these conversations, Mr. Berryhill, that one of the new directors of the TP&W would be located in Keokuk, to manufacture a term, could hope that there might be one, but I don't think that there has been any promise made to that effect or any mention made of that other than this statement in the contract between the Pennsylvania and Santa Fe that they would select some representative citizens along the line.

Q. Do you know whether or not any offer or intimation of a directorship has been made to Mr. Weisenberger?

A. I do not.

Q. It has not?
A. I do not know.

Exam. Albus: He doesn't know.

A. I might embellish that just a little bit. When I reported to Mr. Weisenberger I told him that I thought that that little part of the proposal was more or less to influence favorable response on the part of the people along the railroad that actually the owners are going to select [fol. 818] the directors, as they do in any other business, and the directors are going to be responsible to the owners. However, I qualified it in this manner, that there is no telling what a good man might do in such a position, and I think we can point to a couple of instances right here in this room. I was going to point to Mr. Heineman, whom I thought I recognized from his pictures, but I see his place is vacant there.

Exam. Albus: He is still taking a recess.

A. Mr. Coulter of the TP&W, I think there are cases of men in their positions who have done good jobs. I think even though a director is a representative selected to sort of feel the pulse of the or represent the pulse of shippers along the line, although he might be something of a figurehead, if he is a good man he might have some influence, anyway.

By Mr. Cassell:

Q. In any event, you do know there has been some hope raised over in Keokuk about directorships?
A. Well, it was never a hope on my part.
Q. How about the others that you know of.
A. I heard it mentioned, and I have seen it in the contract, and I suppose you could figure that we would be proud to have a representative on the line.
Q. Mr. Berryhill, do you expect that the service in and out of Keokuk will be any different if the Santa Fe and Pennsylvania are granted this application without the inclusion of anyone else than it would today?
[fol. 819] A. Well, I think it has potentialities for even greater service.

Q. Do you expect to be put on any transcontinental routes?

A. No. We are little bit off the main line of the Santa Fe, and it will be more or less backwash as far as we are concerned.

Q. In that regard you said you had made some shipments out of Keokuk over to LaHarpe and then Lomax and the Santa Fe and you said that was a good schedule. As a matter of fact, wouldn't it take about a day in transit to get from Keokuk over to Shopton, which is just north of Keokuk?

A. Well, I think the service by Lomax is due to certain schedules that wouldn't apply via Shopton.

Q. Isn't the service that goes from TP&W and which leaves Keokuk at 6:44 p.m., is in LaHarpe at 7:32 p.m. and that is about 28 miles away, and then leaves there at 4:30 a.m.?

A. I don't know those times.

Q. You don't know the times?

A. No.

Exam. Albus: He doesn't know the schedule.

By Mr. Cassell:

Q. Do you know how long it takes to get from Keokuk to Shopton?

A. Well, from the time the train starts rolling it hadn't ought to be over an hour.

Q. If you were told that it would take a day's time to get over to Shopton would you consider that good service?

A. No, I wouldn't consider that good service. We made a [fol. 820] shipment recently by the TP&W, I believe it was to Flint, Michigan. I think it got out of Keokuk in the evening and was in the customer's plant around 2 o'clock the second day.

Q. Did that go out over Lomax?

A. No.

Q. How did that move?

A. I think that moved TP&W, I believe C&O.

Q. How many cars have you routed at TP&W, Lomax, Santa Fe?

A. Oh, it would be very few. We don't have too many shipments west out of Keokuk.

Q. If you used the Rock Island out of Keokuk westbound you would be in Kansas City within 24 hours' time with your shipment, wouldn't you?

A. I don't know that schedule either.

Q. Do you ever ship via the Rock Island?

A. Oh, yes.

Q. The Santa Fe's connection is at Lomax, isn't it, with the TP&W?

A. Yes.

Q. And if the Santa Fe is to participate in any long haul traffic, it has to move that via Lomax, doesn't it?

A. From Keokuk?

Q. No. If the Santa Fe on any shipment is going to have a long haul and move a part of that shipment over the [fol. 821] tracks of the TP&W, in order for the Santa Fe to participate in that it has to move out over Lomax, doesn't it?

A. Well, if I understand that question correctly, I don't see how else it could move. That is the only interchange point.

Q. That is the only interchange point they have on the west end. They have one over east of Peoria or Eureka. On business to or from the West we will speak of now, if they are to get a haul, if they are to get any haul at all it has to go out over Lomax, doesn't it?

A. Yes—well, you mean if the Santa Fe gets any haul at all?

Q. Yes.

A. In connection with the TP&W?

Q. That is right.

A. Well, I'd think that would be true, yes, unless they were going to put another line in there.

Q. Yes. Now, if it goes out over Keokuk, will the Santa Fe be the next carrier west?

A. Now, it is coming from the east?

Q. From the east going through Keokuk to the west, will the Santa Fe be the next carrier?

A. No, it couldn't be.

Q. The Rock Island, however, has a connection at Keokuk to the west, doesn't it?

A. That is correct.

Q. Which do you think would have the most interest in [fol. 822] the preservation of the Keokuk gateway, the Santa Fe or the Rock Island?

A. Well, that is a question that I don't think can be answered just one or the other. I think it depends upon the terms of ownership.

Q. Well, assuming they had equal ownership, which would be the most interested in?

A. You mean Santa Fe and the Rock Island had equal ownership?

Q. Yes.

A. You mean those two lines via the TP&W instead of the proposal of the Pennsylvania and the Santa Fe?

Q. Supposing you cut the Rock Island in for a third of that, of the two lines which do you think would have the most interest?

A. I think the two carriers that have applied for purchase, the Pennsylvania and the Santa Fe, make an ideal partner—

Q. (Interrupting) I didn't ask you that. I am asking about the Rock Island and Santa Fe now.

A. All right, if I have to confine myself to that, I'd simply say this, that too many cooks spoil the broth.

Exam. Albus: That has been mentioned before here, too.

Mr. Cassell: It has somewhat of a familiarity.

By Mr. Walker:

Q. You heard that, didn't you, Mr. Berryhill, before this hearing ever came about.

Exam. Albus: All right, let's have the next question, [fol. 823] please.

By Mr. Cassell:

Q. Will you answer my question in regard to which the Santa Fe or the Rock Island would have the greatest interest in Keokuk, I wasn't asking about culinary now, let's talk about Keokuk.

A. Well, I've got to come back to what I said at first, there is just more than the interchange of business at Keokuk that would affect this situation. The interchange at Keokuk is not going to keep the TP&W alive.

Q. Aren't you interested in keeping the Keokuk gateway alive, though?

A. I will say I am.

Q. Now let's come back to my question, which do you think would have the greater interest in Keokuk, the Rock Island or the Santa Fe, in keeping it alive?

Exam. Albus: Do you have any opinion as to that?

A. I can't divorce the Keokuk gateway from the welfare of the rest of the TP&W.

By Mr. Cassell:

Q. Aren't you primarily interested in Keokuk?

A. Yes, and I think that our interest lies in the whole welfare of the TP&W.

Q. Let's just settle Keokuk alone.

A. I can't do it for you.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker, please.

[fol. 824] Cross examination.

By Mr. Broker:

Q. Do you ever route TP&W and Peoria and Nickel Plate?

A. I beg pardon?

Q. Do you ever route your traffic TP&W, Peoria, Nickel Plate?

A. Yes, we do.

Q. How is the service?

A. Very fine.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions on cross-examination?

Mr. Wheeler, please.

Further cross examination.

By Mr. Wheeler:

Q. What proportion of your inbound traffic and outbound traffic is carried by barge and truck as compared to rail?

A. Truck, I think would represent perhaps half of one per cent of our dollar volume. We are substantial shippers by water. Some of our largest customers take their material by water. But regardless of the fact that substantial tonnages are shipped that way, some 95 per cent or better of our customers are served by rail.

Q. What proportion of your tonnage moves by water?

A. That has varied and water movement is a comparatively recent development, I'd say 1952, although there had [fol. 825] been shipments made by boat on the Great Lakes prior to that time by shipping rail to Chicago and transferring. It was about 1952 that we really got into barging direct from Keokuk, up the Ohio, down the Mississippi, up the Illinois and on the Great Lakes, and a variety of circumstances have mitigated against the optimum development of water transportation. Well, in the first place, you have to wait for the river to unfreeze, and that means that our customers probably can't wait for a boat to get there so they have to have some rail. But as we get into this thing we stockpiled some customers with an inventory that will last them through from the end of the navigation season to the beginning of the next. That has varied considerably for that reason, and I would say that in the past year perhaps a third of our total tonnage, not our customers, as I said before, but our total tonnage moved by water.

Q. And that represents a sharp increase in recent years, then, from 1922 to date—1952 to date, I should say?

A. Well, it has been up and down in those years. There have been years when more tonnage moved by water. There has been years when less tonnage moved.

Q. I believe you stated prior to 1952 you moved practically none by water, is that correct?

A. All the way through, no.

Q. And now a third of your tonnage moves by water?

A. That is right.

[fol. 826] Q. The general trend of the water movement is upward?

A. Yes. That's, of course, because—we'd like to see the railroads competitive with water because you don't get customers every day that can take a 5,000-ton boatload of material and you are at a distinct disadvantage with your competitors who maybe have a better rail rate who can ship a car or a few cars, as may be desired, so I'd very much like to see more of that business returned to the railroads.

Mr. Wheeler: I have no further questions.

Exam. Albus: Are there any further questions of Mr. Berryhill?

Mr. Walker: Yes, I would like some redirect.

Exam. Albus: Very well.

Redirect examination.

By Mr. Walker:

Q. Mr. Berryhill, just one or two questions. In the first place Mr. Cassell was interested in this matter of directorship in the TP&W as planned in the program of the Santa Fe and the Pennsylvania. Before I ask you anything further in that connection, tell me something about the size of the business of the Keokuk Electro Metals in the ferro silicon business in the country?

A. Now we are introducing a new term. I said that our manufacturer at Keokuk was principally silvery pig iron. Did you say ferro silicon or ferro alloys?

Q. Either one.

[fol. 827] A. That usually includes higher percentages of silicon starting above 25—

Q. (Interrupting) Let me limit it this way, Mr. Berryhill, what I am interested in is having you tell the Examiner the comparative size of the business—

A. All right.

Q. (Continuing) —of the Keokuk Electro Metals Company as to whether or not it is a small business or a large business or what kind of a business it is.

A. I guess it is kind of a middle-sized business, but we have 800 employees at Keokuk. Actually we are the largest

manufacturers of this particular commodity, silvery pig iron. Our freight bill will run pretty close to $4,000,000 a year.

Q. All right, now, then, Mr. Weisenberger is the president of that company, is that correct?

A. That is right.

Q. At the risk of putting you on the spot to answer to Mr. Weisenberger, do you think he would or would not be a competent man to serve as a director of any corporation that you know of?

Mr. Wheeler: What has these to do with the issues in this case?

Mr. Walker: It has to do with the cross-examination of Mr. Cassell who has suggested that Mr. Weisenberger has been promised a directorship on this railroad.

Exam. Albus: What is the answer to that, Mr. Berryhill? [fol. 828] A. I think he'd be a wonderful man in any business capacity.

Exam. Albus: All right.

By Mr. Walker:

Q. Mr. Berryhill, you testified on cross-examination that you felt that a strong TP&W Railroad was necessary to your plans, not just a strong connection between Keokuk and LaHarpe, but the entire railroad was and its strength was important to your plans as you saw them. Will you explain that in more detail, please.

Exam. Albus: I think that's been covered, Mr. Walker.

Mr. Walker: I thought that he missed, Your Honor, I thought he missed the explanation of why he thought it was necessary for the entire railroad to be strong and not just the Keokuk to LaHarpe branch. Now, if I am wrong—

Exam. Albus: I will permit him to answer if it is going to be brief—

Mr. Berryhill, please.

A. Of course we feel it is better to have a number of railroads represented in our community, that there is better service and better co-operation than if there is competition between them. The TP&W service has been very

good. While they do not get the largest share of our business, for other reasons we do feel that their good service has kept their competition on its toes, and that is helpful to us.

Now, the Wabash is a branch line from Bluffs to Keokuk and we have deliberately given them considerable business [fol. 829] in order so that they could afford to maintain that branch line and thus continue the service of a number of railroads into Keokuk.

Mr. Walker: I have no further questions.

Mr. Broker: I have a question now that you brought that out.

Recross-examination.

By Mr. Broker:

Q. Do you route from Keokuk east over the Wabash?
A. Do we?
Q. Yes.
A. Yes.

Mr. Broker: That is all.

Exam. Albus: You are excused, Mr. Berryhill. Thank you.

(Witness excused.)

[fol. 830] James F. O'Brien was sworn and testified as follows:

Direct examination.

By Mr. Walker:

Q. Your name is James F. O'Brien?
A. Yes.
Q. Where do you live?
A. Keokuk, Iowa.
Q. What is your business, Mr. O'Brien?
A. I am Mayor of the City of Keokuk.
Q. Do you have any other interest or business?

A. I have an abstract and title company and a loan office.

Q. Mr. O'Brien, have you had an opportunity to examine the application of the Santa Fe Railroad and the Pennsylvania Railroad in what is known as Finance Docket No. 18991?

A. Yes, I have.

Q. And have you had an opportunity to give that matter some study and to examine the proposals and the programs that have been suggested?

A. Yes, we have given it quite a bit of thought in the City Council.

Q. You say the council. You are speaking now as the Mayor and the head of the City Council in Keokuk?

A. Yes.

Q. On the basis of what your information has been, will you tell us and the Examiner your feelings about the ap- [fol. 831] plication Santa Fe and the Pennsylvania for the purchase of the TP&W?

A. Well, speaking for the City of Keokuk, we have been very well satisfied with the operation of the TP&W. We are very proud of the way they have improved their service in the last few years and they have become a very important part of our community. So we feel we are not intervening against any railroads, we are intervening for the TP&W. What we wanted is the best thing for the TP&W, not only a matter of pride, but a matter of finances. We own the bridge across the Mississippi that the TP&W and the Wabash have to use and it is a very important source of revenue for the city, so we do have a selfish interest from that standpoint.

But aside from that, in our studies of the thing, of course, we were contacted by the Santa Fe and presented with their plan. That is the only contact that has been made with the City Council that I know of. It might be all right to have a whole bunch of railroads in, but we do know what the Santa Fe proposes to do. We would like to see the TP&W left alone and operate in the way they have in the past. We have the word of both the Santa Fe and the Pennsylvania that that's what they will do. Now, of course, the Santa Fe doesn't go through Keokuk, but it's within a very few miles of us, and the Santa Fe has always been a

good neighbor to Keokuk. While these are simply promises, they are not binding probably, but we do put faith in them, but I think, not only, that if they don't keep their promises, [fol. 832] we will certainly remind them.

Q. Are you familiar with the fact that both Mr. Symes and Mr. Gurley, presidents of the respective railroads, Pennsylvania and the TP&W, have under oath here said they plan to continue the autonomous condition of the TP&W?

A. No, I wasn't aware of that.

Q. Are you familiar with the plan that has been proposed by the M&StL for the purchase of the TP&W?

A. Well, I read about it in the newspaper. I have heard it discussed at various times. That is about it. We were never directly approached on it.

Q. Well, you have discussed the matter with me, have you not?

A. Yes, I have talked it over with you.

Q. And I have given you a brief resume of what the application included?

A. Yes.

Q. On the basis of your knowledge of what that application included, from what I told you and from your knowledge of the application of the Santa Fe and the Pennsylvania for the purchase of the TP&W, do you have an opinion as to which of the two plans would be to the best interests of the City of Keokuk?

Mr. Wheeler: Mr. Examiner, I object to this. This is clearly hearsay. This is a man testifying on the basis of information turned over to him, furnished by him, by his lawyer which was only partial and a purported summary of [fol. 833] a document that the gentleman hasn't ever seen.

Mr. Walker: I don't know, Mr. Wheeler, how you define that as a purported summary, unless you want to examine this witness as to what I told him, but I have only asked him whether or not he has an opinion.

Mr. Wheeler: You so stated.

Exam. Albus? Wait a minute. He may or may not. He may express his opinion as to how the relative applications may have affected his community. There is no question about that.

Mr. Wheeler: If he has seen the applications, I would agree, but he says he hasn't seen the applications.

The Witness: I read the newspaper story.

Exam. Albus: He says he has an opinion. He can get an opinion outside the application.

You may proceed, Mr. O'Brien.

A. Well, of course, the reason we are over here intervening would be enough evidence of what we think of the various plans suggested. We know what the Santa Fe and Pennsylvania say they will do. We have not been promised anything by anybody else. We are interested in the TP&W. So why would we make any other decision? It just can't be done, that is all.

By Mr. Walker:

Q. Now, have you had an opportunity to discuss the matter or become informed about the matter of whether or not the TP&W should be owned by the Santa Fe and the Pennsylvania as opposed to the Santa Fe, the Pennsylvania [fol. 834] and the other railroads who have now made application to become a part owner?

A. Well, of course, I have discussed that several times with the council, too, and we arrived at the conclusion—

Mr. Broker (interrupting): Excuse me. I have to interrupt, I am sorry. But I understand that this petition was filed by you on the 28th of July. Do you know whether the Nickel Plate was in the case at that time?

The Witness: It wasn't filed by me on the 28th of July. I wasn't mayor until January 23. That was filed by the former mayor.

Mr. Broker: Has the city taken any formal action—

Mr. Walker (interrupting): Wait a minute. You can take this man on cross-examination in a few moments.

Mr. Broker: I know I can take him on cross-examination, but he is talking here for the city and I want to know what official action was taken by the city in respect to the Nickel Plate application.

Exam. Albus: Can you answer that, Mr. Mayor?

The Witness: That is the last thing that has been done on it officially by the City Council, on July 28.

Exam. Albus: Continue with the direct.

By Mr. Walker:

Q. Now, Mr. O'Brien, you know of the Nickel Plate's position today, do you not?

A. Yes.

Q. And your testimony is on the basis of having knowl-[fol. 835] edge as to their present position?

A. Yes.

Q. I understood you to say that you had taken the position and your Council had taken the position that the sale of the TP&W to the Pennsylvania and the Santa Fe would be advantageous over a sale to all of the railroads together. Can you give me your reasons for reaching that conclusion?

Mr. Broker: I have to interrupt again. I don't mind him giving his personal opinion, but to give the official opinion of the council on this point, I believe is objectionable.

Mr. Walker: Let me limit it to the opinion of the council as of the time you became mayor and head of the city government.

Exam. Albus: It will be his opinion. Let him state the reasons.

Mr. Broker: Excuse me, Mr. Examiner. He said the council had taken no official action since last July. How can he express an opinion on behalf of the council?

Exam. Albus: This is going to be the Mayor's opinion, not the council's.

What reasons do you have for feeling that way, yourself now, not necessarily the council.

A. Although I might add, we only have three elected officials—there are two commissioners and the mayor—and we have discussed it several times.

[fol. 836] Exam. Albus: Let's have your reasons for prefering the Santa Fe application.

A. My opinion is the less you cut up the road the better off you are going to be. I mean, just common sense kind of puts that on you. Of course, like I said before, we would be very happy if the TP&W would run just as it is running now. However, since the McNear estate wants to divest

themselves of their property, that is all right, but we feel everything possible should be done to protect the TP&W and keep it running as the TP&W and not another system. We do know what the Santa Fe and Pennsylvania propose, so it is an acceptable plan so far as I am personally concerned. Therefore, I am wholeheartedly in favor of it.

By Mr. Walker:

Q. Let me ask you one more question, O'Brien. Is the testimony you have given here today the opinion of the present City Council of Keokuk?

Mr. Broker: I object.
Exam. Albus: Objection overruled.

A. Yes, it is.

Mr. Walker: That is all.
Exam. Albus: Mr. Wheeler may cross-examine.
Mr. Wheeler: I have no questions.
Exam. Albus: Mr. Cassell?

Cross examination.

By Mr. Cassell:

Q. Mr. O'Brien, doesn't the city derive revenues from [fol. 837] the bridge used over the Mississippi by the TP&W?

A. Yes.

Q. And do you know where the cars come from and go to that are using that bridge, that are hauled over it?

A. Well, I am not too much of a railroad man myself. I do know the revenue from the bridge is considerably more now since the TP&W got active in the last few years, more active than it was before. I also realize that most of the cars that cross the bridge at Keokuk don't get there because this line wants to put it across, the other line wants to put it across, it is business that has been kind of created by the TP&W themselves.

Q. Does the Santa Fe come into Keokuk?

A. No.

Q. Does the Rock Island come into Keokuk?

A. Yes.

Q. Would the Santa Fe create any revenue for that bridge?

A. Well, I don't think either the Santa Fe or the Rock Island ever go out of their way very much to create business. What we get is by accident, you might say.

Q. Whether it is accident or not, doesn't all the revenue that that bridge gets, if it comes from either the Santa Fe or the Rock Island, all come from the Rock Island on traffic interchanged with the TP&W?

A. Yes, I imagine most of it does.

Q. And if traffic is diverted away from the Rock Island, [fol. 838] won't the bridge revenue suffer then?

A. We have given that serious consideration, I can tell you that.

Q. Isn't that a fact?

A. We arrived at a conclusion the chances are if business holds about like it is we will be lucky. We don't look for a big spurt regardless of who gets it, but I imagine they will manage to hold their own if they operate the way they have in the past and operate their own company.

Q. You are speaking of the TP&W, then?

A. Yes.

Q. Let's consider the Rock Island, if the Rock Island were to lose business moving through the Keokuk gateway, wouldn't that hurt the bridge revenue?

A. If that were true, it would, yes.

Q. And I understand what your primary interest is in, then, is maintaining the service on the TP&W, this good service you have had in the last few years?

A. Yes.

Q. You said you have had certain promises from the Santa Fe and Pennsylvania as to the maintenance of the present operation corporation and its officers, is that right?

A. Yes.

Q. And that's one of the things that has induced you to take this position?

[fol. 839] A. Yes; at least we know what their intentions are.

Q. If you were given a similar promise by the Rock

Island you would have no occasion to doubt that, would you?

A. No, we wouldn't, except you are getting back to the multiple ownership again.

Q. Too many cooks spoil the soup?

A. Well, I wouldn't phrase it quite that way.

Q. I almost asked you why not. Now, your interest is primarily, isn't it, in Keokuk?

A. Absolutely.

Q. As an elected official of that city, that is your duty, isn't it?

A. That is right.

Q. You are not a shipper yourself, are you?

A. Not a bit.

Q. And don't move carloads of abstracts?

A. No, nor money, either one.

Q. You weren't here yesterday, were you?

A. No, I wasn't.

Q. Do you know who Mr. Bagge is?

A. Yes, I have met Mr. Bagge.

Q. He is the attorney for the Santa Fe?

A. Yes.

Q. I have in front of me here the stenographic report of the hearing yesterday and on page 663 I will read you [fol. 840] part of the questions and answers. Question by Mr. Bagge: "Are there any alternatives available to you as a shipper having these routings in mind in the event that one or any of these gateways were not maintained?

"Answer: We have alternate routes we can use for almost all of the originating traffic.

"Would that include the routing from the Burlington and Rock Island Keokuk to the TP&W?

"Yes, we could route on the Rock Island-Burlington through Chicago if the gateway were not maintained for them."

Now, does that indicate to you that alternative would be in the best interest of Keokuk?

A. Well, not necessarily, no, but like I have stated before, a matter of this nature is a very important thing to the City of Keokuk. The only thing we could do was to look

into it and make up our mind on what we thought was the best on the long haul for the City of Keokuk itself. We made our decision based on that idea.

Q. You would prefer not having traffic routed via one of these alternative routes, wouldn't you?

A. In a way, when we make our decision we are faced with what is the lesser of two or three or four evils, you might say, too.

Q. Would you consider that an evil to have traffic routed via Chicago rather than Keokuk?

A. No.

[fol. 841] Q. Wouldn't you lose revenue on the Keokuk bridge?

A. Well, we are concerned about that, I will tell you that frankly, we are very concerned about losing revenue over the bridge at Keokuk, but by the same token, I don't think the Rock Island or Nickel Plate or anybody else would guarantee so many freight cars across that bridge, either.

Q. Don't you think the Rock Island would have, its connection at Keokuk would be interested in maintaining that gateway?

A. Yes, I think probably they would be. It is another gateway for them.

Q. Don't you think it would be more interested—have you heard the questions here this morning?

A. Yes, I was here all morning.

Q. And you heard that the Santa Fe would not participate immediately as a carrier west of Keokuk if traffic is routed TP&W Keokuk?

A. That is right, couldn't.

Q. And it would, if it were routed TP&W Lomax?

A. We realize that. I mean, they made no attempt to hide that from us at all. They are doing it now.

Q. Don't you think the Rock Island would have more interest in Keokuk than the Santa Fe, then?

A. Well, it is a matter of conjecture. The Rock Island, for instance, could put a lot more cars across Keokuk, if they wanted to, but they put across what they have to, [fols. 842, 843, 844] evidently. I mean, you have your own bridge, too.

Q. That is right, but just the two gateways, the Santa Fe

and the Rock Island, don't you think the Rock Island would have more interest in Keokuk than the Santa Fe?

A. Well, why should they? The business that our bridge gets from the Rock Island Road is business that is sent by request probably that way, most of it. They have their own bridge across the Mississippi. They have their choice. They are hauling across farther north than our bridge, farther south, wherever they want to cross that.

Q. Just take Keokuk-Lomax, the Santa Fe and the Rock Island, the Santa Fe is going to get a long haul west if it goes through Lomax, isn't it?

A. Yes.

Q. And the Rock Island would get a long haul west if it went through Keokuk, wouldn't it?

A. Yes.

Q. Don't you have any opinion as to who is going to have the greater interest in Keokuk?

A. Well, we know that the Santa Fe isn't going to make that their main line, we realize that. We also realize that the Rock Island aren't, either. We looked into this problem as best we could, and like I say, we come up with this decision that we were for this plan because we knew what they intended, they didn't hold any punches on it, they told us [fol. 845] that Lomax would be their chief interchange point, so we knew that. We also realized that as long as the TP&W can operate and operate as a private road they will get their share of business and we will continue about the way we are now.

Q. If the Rock Island made the same assurances as to the independent operation of the TP&W with its present management, would that change your mind any?

A. Well, of course, there you are back to the multiple ownership. If you had come to us and said the Rock Island and Pennsylvania are going to buy it, the two of you, it would look like a good deal, too, then, but when you start getting mixed up with this multiple ownership again, and if something does go wrong and we have to dicker with somebody after the deal is all through, we don't want to have to be dealing with every railroad in the country in order to get anything accomplished. It is much easier to talk to one or two than five or six in getting them to agree on something.

Q. Wouldn't you just talk to the TP&W if it is going to be separate and independent?

A. The guy that's got the money is the guy that's going to run it, in the final analysis.

Mr. Cassell: That is all. Thank you.

Exam. Albus: Mr. Broker.

Mr. Broker: I have no questions. I just want to make an observation unrelated to the witness's testimony. Ref- [fol. 846] erence is made throughout this proceeding to Logansport, Terre Haute, Chicago, Nemo, Lomax and Keokuk as gateways. Now, the only gateways that any talk has been given about at the hearing, true gateways, as I understand it, are Chicago, Peoria or St. Louis. The others are interchange points. Maybe a traffic man here can confirm that, just so that the record is clear.

Mr. Walker: It isn't any of my business, but may I suggest if a traffic man is going to do it he'd better do it under oath.

Mr. Broker: A traffic man, in any event.

Exam. Albus: I think everyone realizes that they are connection points, Logansport and all the others. I don't know what the distinction is, myself, between a connecting point and a gateway.

Mr. Broker: We will develop it in our case, then, Mr. Examiner.

Exam. Albus: That will be fine.

Redirect examination.

By Mr. Walker:

Q. First of all, Mr. O'Brien, some reference has been made by the counsel for the Rock Island here with regard to what your position would be if you had had any offers from the Rock Island. I want you to tell this Examiner whether or not you have had any offers from the Rock Island of any kind.

A. No.

Exam. Albus: I think that has been mentioned two or three times.

[fol. 847] By Mr. Walker:

Q. Secondly, I read you from the record of yesterday that Mr. Cassell read to you from Page 663, it was the record of Mr. Matthews from the Armour Company with respect to how he felt about this matter, and I will read you what Mr. Matthews said and I will ask you whether or not that is or is not your position. "Question: "In view of that, Mr. Matthews, in your opinion, do you believe that there exists a need for the connecting rail carriers to have stock ownership in the TP&W to maintain these connections?" And Mr. Matthews says, "No, I do not. It is our feeling that we would be best served by ownership such as proposed rather than a multiple ownership. Our experience in gateway operation, such as this is, is that in multiple ownership we have difficulty in having any one road assume responsibility to make the operation work efficiently at all times. Where there is a 50 per cent ownership as proposed by these two roads, why, we would not experience any difficulty." Now, is that your position?

Mr. Cassell: Just a moment before we go on. I would object to that on a number of grounds. First of all, there has been no showing that this man has any qualifications that would enable him to have an experience or opinion on gateway operations.

Secondly, leading and suggestive. If that isn't enough, why—

Mr. Walker: Mr. Examiner, that is what I am doing, all I am doing is reading.

[fol. 848] Exam. Albus: It is my turn to object now. We are not going to have any more reading from this record. I have heard it go in the first time and it is just taking up a lot of time.

Mr. Walker: I was just reading on the next page from Mr. Cassell. It seems to me, the excerpt that was read there is exactly what this gentleman was trying to say.

Exam. Albus: Is that your opinion, Mr. O'Brien?

The Witness: Yes.

Exam. Albus: Objection is overruled.

Mr. Walker: That is all.

Recross examination.

By Mr. Cassell:

Q. That opinion you just expressed concerned gateway operations, didn't it?

A. Well, I have had experience of operating a bridge.

Q. Is that a terminal railroad?

A. We are on the terminal end of the TP&W.

Q. How long have you had that experience?

A. Well, I have only been mayor a month and a half.

Q. Is that the extent of your experience?

A. No, not exactly. I have been active in civic affairs about 17 or 18 years.

Q. As a shipper?

A. I am not expert on railroads. I told you that.

Q. How many connections and how many miles of track does that operation have?

[fol. 849] A. Which one?

Q. This terminal operation that you are speaking of.

A. Are you talking about the TP&W?

Q. No, I am talking about the terminal operation that you are talking about.

A. I am not talking about any terminal operation at all.

Q. You don't know anything about any terminal operation at all, is that it?

A. No.

Mr. Cassell: That is all.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, sir, and thank you.

(Witness excused.)

[fol. 850] Exam. Albus: May we have the next witness, please.

Mr. Walker: Yes, Mr. Ward.

D. C. WARD was sworn and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your name, please.
A. D. C. Ward.
Q. What is your business, Mr. Ward?
A. I am traffic manager for Hoerner Boxes, Inc., at Keokuk, Iowa.
Q. Where do you live?
A. In Keokuk.

Mr. Wheeler: Mr. Examiner, to shortcut this a little bit I'd be perfectly willing to stipulate that this gentleman would testify substantially in the same manner that the preceding one testified when he was on the stand, if that will be agreeable to his counsel.

Mr. Walker: Mr. Wheeler, I am not sure I understand what you mean, the preceding witness but one—

Mr. Wheeler: What was his name?

Mr. Walker: Mr. O'Brien and Mr. Berryhill.

Mr. Cassell: Mr. Berryhill you have in mind?

Mr. Wheeler: Yes. Mr. O'Brien was a city official.

Mr. Cassell: I would so stipulate.

Mr. Walker: There is one or two questions I would like to ask this gentleman. I will try to limit it. There [fol. 851] are one or two matters that would pertain to his business alone that would not appertain to Mr. Berryhill's business.

Mr. Wheeler: Would his opinion be any different really?

Mr. Walker: I think so in respect to the amount of his shipping.

Exam. Albus: Let's proceed.

By Mr. Walker:

Q. Mr. Ward, I am going to try to limit my examination of you in accordance with these gentlemen's wishes—

Mr. Cassell: No.

Mr. Walker: O.K. We will go all the way. It is all right with me. I have all the time in the world.

By Mr. Walker:

Q. Mr. Ward, where do you live?

A. In Keokuk, Iowa.

Q. And you are the traffic manager of the Hoerner Boxes?

A. Hoerner Boxes, Inc.

Q. What is the Hoerner Boxes, Inc., will you explain that to the Examiner, please?

A. I am traffic manager in the general office of Hoerner Boxes, Inc. We operate eight corrugated fiberboard shipper container manufacturing operations in the middle west, one of the larger is in Keokuk.

Q. You say fiber boxes, those are the boxes that are made that are used as carrying cases for various products?

A. They are shipping containers.

Q. Mr. Ward, what percentage of your business is han-
[fol. 852] dled by rail?

A. About 95 per cent inbound and about 80 per cent outbound. I will qualify that, let me say about 70 per cent outbound.

Q. Where do you find your markets from your Keokuk plant, which way do you ship generally when you are shipping outbound?

A. Well, we ship generally in the Illinois, Iowa, Missouri area.

Q. How do you generally ship in that connection, that is, by what rail?

A. Via the route?

Q. Yes.

A. Well, generally our shipments into Iowa are northwesterly out of Keokuk and they will go out Rock Island or C. B. & Q.

Q. You are speaking of westerly shipments?

A. Yes.

Q. Easterly how do you ship?

A. Easterly we will ship T. P. & W. or possibly C. B. & Q.

Q. Where do you ship to going easterly?

A. Our markets are generally in the northern part of Illinois, northeastern part of Illinois, and the southeastern part of Wisconsin.

Q. How do your shipments get to their destination when they go into northern Illinois and southern Wisconsin area?

A. Either C. B. & Q. or T. P. & W. and then a connecting line.

Q. If they go C. B. & Q., how do they go?

A. Mostly C. B. & Q. direct.

Q. Direct?

[fol. 853] A. Yes.

Q. If they go T. P. & W., how do they go?

A. Well, they can pick up the connections anywhere along the line of the T. P. & W. into that territory.

Q. If you have a shipment of boxes going to southern Wisconsin, as an example, how do you generally ship it if you ship it via T. P. & W.

A. We have a marked movement to Milwaukee thence T. P. & W. Watseka or—excuse me, that is T. P. & W. Webster-Milwaukee.

Q. Where is Webster, incidentally, with relation to Effner?

A. It is very near the eastern end of the T. P. & W. I don't know the mileage from Effner.

Q. Do you have or can you give us any estimate of the number of cars that you ship annually over this route into northern Wisconsin and northern Illinois and the Madison area?

A. In connection with just the T. P. & W.?

Q. Yes.

A. Around 400 cars a year.

Q. Do you have any other way of shipping that on the same parity, that is, in the sense of service?

A. No, that's the best service, that is the reason we use it.

Q. When you speak of the best service route as compared to the next best service route, how much faster is it?

A. Well, we have found that it has been at least two days faster than other routes.

[fol. 854] Q. Two days faster?

A. Mr. Walker, on the last answer, I mean that isn't a standard two days every time, but it has been as high as two days faster.

Q. I see. Now, are you familiar with the application of the Santa Fe and the Pennsylvania to buy the T. P. & W.?

A. I have read the application.

Q. And are you familiar with the application of the M. & St. L. to buy the T. P. & W.?

A. I have never seen the application. I am just generally familiar with it.

Q. Have you had an opportunity to discuss it with other people?

A. Yes, sir, I have discussed it with counsel and other shippers.

Q. Are you familiar with the application of the Rock Island and the Nickel Plate to become part owners with the Santa Fe and the Pennsylvania in the T. P. & W.?

A. Just to the extent you expressed it, that's all.

Q. Will you give us your attitude and ideas about these applications and which one you favor and why?

A. Well, we favor the Santa Fe-Pennsylvania application. I'd like to preface that by saying we would like to see the T. P. & W. operate independently, because they give us very good service and we have very good close contacts with them. They do an exceptional job of solicitation and follow up on all business they get. The Santa Fe and Pennsylvania has guaranteed that they will keep [fol. 855] that type of personnel, or rather not the type but keep the personnel and keep the operation as a separate entity, and we feel because we know that we think it is a good thing for our company.

Q. Do you have any or have you formed any ideas in connection with the application of the M. & St. L. so far as the purchase of the T. P. & W. is concerned?

A. They made no guarantees of any kind so far as our particular usage of the T. P. & W. would be, so we can't favor something we don't know anything about particularly.

Q. Have you had any such offers or explanations from the Rock Island or the Nickel Plate?

A. We haven't discussed it, no.

Q. All right, now, on the east end of the T. P. & W. is it necessary for you, if you are going to continue to have the same splendid service that you have had in the past, that the T. P. & W. continue to operate as a strong railroad in the area?

A. Well, you just held that to the east end. Don't you mean—I take it to mean the entire railroad. We want the entire railroad to be strong. That is my expression on the thing.

Q. Well, I understand that, but what I am interested in is whether or not you feel that it is necessary for the Milwaukee to have an interest in it in order for you to have a gateway?

A. Oh, no.

Mr. Cassell: I didn't understand the Milwaukee was in-
[fol. 856] volved in this proceeding.

Exam. Albus: I didn't either.

The Witness: Am I out of order in—

Mr. Cassell: Let your counsel—

By Mr. Walker:

Q. Go ahead, anything you want to say is all right with me.

Exam. Albus: You may explain your answer, if that is what you want to do.

A. I think counsel was asking me about the Milwaukee because the Milwaukee is a very important interchange point for us at Webster.

Mr. Walker: I was thinking in terms of multiple ownership that is all.

That is all Mr. Ward.

Exam. Albus: Mr. Wheeler.

Mr. Wheeler: No questions.

Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Mr. Ward, I take it all you are interested in is assuring the future service you have been enjoying, isn't that right?

A. Primarily as a company representative we have to be assured that we are going to have a future good service, yes, sir.

Q. And the service you have had with the T. P. & W. in the past has been satisfactory, hasn't it?

[fol. 857] A. Yes, it has.

Q. And the thing that appeals to you is the present management, is that right?

A. Yes, sir.

Q. And what appealed to you about the Santa Fe and the Pennsylvania was the assurance that that present management and policy would be maintained, isn't that right?

A. Yes, sir.

Q. Would you have any reason to doubt the assurance of the Rock Island if they gave you like assurances?

A. I wouldn't call you a liar, no, sir. I mean why do you ask me that?

Q. Because I want to know.

A. Well, we certainly would trust the Rock Island. I think we have had a good experience with them. We'd trust them as fully. However, I don't know how they'd be approaching me on their assurance, as a sole owner?

Q. If we gave you the same assurance as the Santa Fe and the Pennsylvania have as to—

A. (Interrupting) On what basis, sir?

Q. As to the continuance of the present management and policies, would you have any reason to doubt that the Rock Island would fulfill those promises any more than the Santa Fe or Pennsylvania?

A. I don't know what basis you would be approaching us [fol. 858] with those assurances. Would you explain that? Would you be approaching us as a sole purchaser, as one of a group—

Q. (Interrupting) Just take any basis your want at all.

would you have any reason to doubt the Rock Island any more than you would the Pennsylvania or Santa Fe?

A. Yes, sir, if there were, say, six railroads involved, and I hate to bring this back into the thing, but I don't believe that your assurances would be as strong to me if you were involved with one of the group, as if you were involved all by yourself.

Q. Would you have the same confidence or lack of confidence with the Santa Fe and Pennsylvania under similar circumstances?

A. Their interest would decline, I am sure.

Q. So it isn't that you think that these assurances, then, are either good or bad, depending on how many members are in it?

A. As what their interest in the purchase would be. It is not how many are in there. Now, it seems to me that the Santa Fe and the Pennsylvania have a very strong economic interest in continuing the T. P. & W. as a strong railroad.

Q. Yes.

A. Now, I can't see where any other railroad right now in this particular application has that interest particularly.

Q. Now, then, let's just take economic interest for a moment. The Santa Fe operates west of Keokuk, doesn't it—I mean of Lomax, right?

A. Yes, sir.

[fol. 859] Q. And if the Santa Fe is to get any haul at all, long haul on a shipment that is moving over the T. P. & W. it has to move out via Lomax, doesn't it?

A. Or Eureka.

Q. Or Eureka. Now, if the Rock Island is to participate in T. P. & W. shipments, its connection is at Keokuk, isn't it?

A. Or Peoria.

Q. Of those two carriers which would have the greater economic interest in the Keokuk Gateway?

A. Well, if the Rock Island could get it at Peoria, they certainly would have the least amount of interest, I mean if that's where they wanted to get it. Now, they may go ahead and get it at Keokuk—

Q. (Interrupting) Let's just talk about Keokuk now.

A. We are talking about railroads and the Rock Island isn't just in Keokuk.

Q. Mr. Witness—

A. (Interrupting) I am sorry.

Exam. Albus: That is all right.

By Mr. Cassell:

Q. I am talking just as to the Keokuk Gateway, which of the two railroads, the Santa Fe or the Rock Island, do you believe would have the great interest, economic interest, in the maintenance of the Keokuk Gateway?

A. I'd like to answer you directly, sir.

Q. I'd like to have a direct answer.

[fol. 860] A. I know you would, and I come back to the same thing, on what basis of ownership in the T. P. & W. each line would have as to how their interest would be?

Q. On any basis of ownership.

A. I don't think you would have as much interest if you were one of the six lines owning the T. P. & W., no, sir.

Exam. Albus: Supposing both of them had the same interest?

The Witness: If they owned 50 per cent each?

Exam. Albus: Yes.

By Mr. Cassell:

Q. Who would have the greatest interest in Keokuk, the Rock Island—

Mr. Walker: (Interrupting) I have sat here and never said a word.

Exam. Albus: I have noticed that.

Mr. Walker: These people now are trying to put words in this man's mouth. This is incompetent.

Exam. Albus: All he has to say is he doesn't know.

Mr. Walker: Well, if he will say that, I will be satisfied.

Mr. Cassell: Now who is putting words in his mouth?

Exam. Albus: This has been going on since last Wednesday.

The next question.

By Mr. Cassell:

Q. But you did know a little earlier when you were talking about the Santa Fe, didn't you?

A. I can't remember.

Q. You don't remember?

A. No, sir, that is true, I don't recall exactly what I said. [fol. 861] Q. Don't you know a little earlier when you said the Santa Fe would have greater economic interest in the T. P. & W. than the Rock Island?

A. If I said greater, I may have misphrased it. I thought they would have a great economic interest along with the Pennsylvania.

Mr. Cassell: I give up.

Exam. Albus: Very well.

Mr. Broker.

Cross examination.

By Mr. Broker:

Q. Do you route traffic T. P. & W.-Santa Fe up to Chicago?

A. No, sir, we route it that way to Galesburg.

Q. What is the junction between the Santa Fe and the T. P. & W.?

A. Lomax.

Q. Do you route any eastbound over the T. P. & W. and then Eureka, Santa Fe?

A. No, sir.

Mr. Broker: No other questions.

Exam. Albus: Are there any further questions?

Mr. Wheeler.

Cross examination.

By Mr Wheeler:

Q. I believe you said you are a businessman?

A. I said I was traffic manager of Hoerner Boxes, Inc.

Q. You have a strong economic interest in maintaining a [fol. 862] business competitor, another box company, for instance?

A. Normally I wouldn't think so, however—well, I wouldn't think so.

Exam. Albus: They all belong to an association.

By Mr. Wheeler:

Q. Your economic interest is to the contrary, is it not?
A. As an employee of the company my economic interest is naturally with that company.
Q. As against a competitor?
A. Normally, yes, sir.

Mr. Wheeler: I have no further questions.
Exam. Albus: Are there any further questions?
Mr. Walker: No questions.
Exam. Albus: You are excused, Mr. Ward. Thank you very much.

(Witness excused)

[fol. 863] Mr. Walker: Mr. Darrell Wright.
This is our last witness today, Your Honor.
Mr. Wheeler: Can we stipulate this witness?

Darrell Wright was sworn and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your name, please.

Mr. Walker: If you want to stipulate with regard to Mr. Wright we can stipulate as to him as to Mr. O'Brien's testimony which might save time.
Mr. Broker: What is the name of the witness?
Mr. Walker: Darrell Wright.
Mr. Broker: Who is Mr. Wright?
Mr. Walker: He is with the Chamber of Commerce from Keokuk. His testimony would be substantially the same as Mayor O'Brien's.
Mr. Cassell: Oh, the mayor.
Mr. Broker: Go ahead and stipulate.
Mr. Cassell: I will stipulate.

Exam. Albus: Very well.

Mr. Walker: I guess we have all agreed, Your Honor.

Exam. Albus: That is fine.

You are excused. Thank you very much indeed for coming over.

(Witness excused.)

[fol. 864] Mr. Walker: Those are the only witnesses I have today, Your Honor.

Exam. Albus: Thank you very much, Mr. Walker.

Do you have a short witness for direct?

VINCENT A. O'BRIEN was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you state your name and address for the record, please?

A. Vincent A. O'Brien, Watseka, Illinois.

Q. What is your business, Mr. O'Brien?

A. Automobile dealer.

Q. Do you hold an official position with the Watseka Chamber of Commerce?

A. Retiring president of the Chamber of Commerce.

Q. How long have you been a member of that organization?

A. Approximately 11 years.

Q. Will you describe that organization briefly?

A. Why, it consists of 118 members representing 61 businesses, all types of business, professional and retail.

Q. Are you authorized to speak for the governing body of the Chamber of Commerce?

A. The city administration, yes.

Q. Are you authorized to speak for the governing body of the Chamber of Commerce?

[fol. 865] A. Yes.

Q. And did you say that you were also authorized to speak for the mayor of the city of Watseka?

A. That is correct.

Q. Did he ask that you testify on his behalf in this hearing?

A. Yes.

Q. Will you briefly describe the location, size, and nature of the business in Watseka?

A. Well, Watseka is situated approximately 80 miles due south of Chicago, 100 miles east of Peoria and 12 miles from the Indiana line. The population is approximately 5,000 people, situated in an agricultural community in Iroquois County, the third largest county in the state of Illinois.

Q. Are you familiar with the fact that the city of Watseka has filed a petition of intervention in this proceeding?

A. Yes, I am.

Q. Does that petition represent the view of the city of Watseka relative to the application of the Pennsylvania and Santa Fe railroads in this proceeding?

A. In speaking with members of the council and directors of the Chamber of Commerce it does.

Q. Is that petition in favor of the application of those two railroads?

A. Yes, it is.

Q. Are the reasons that are set forth in that petition [fol. 866] your understanding of the reasons for supporting that application?

A. Yes, it is.

Q. If I were to ask you the reasons would you testify in the same way as they are set forth in that petition?

A. On that basis, yes.

Q. What railroads are in Watseka?

A. North and south CE&I, and east and west TP&W.

Mr. Hunter: No further questions.

Exam. Albus: Is there any cross examination?

Mr. Wheeler: Yes.

Cross examination.

By Mr. Wheeler:

Q. Who drew up the petition of intervention that was filed?

A. The city attorney.

Q. Do you know whether he had any help in that?

A. That I couldn't answer.

Q. Would the Chamber of Commerce be interested in improved and faster service through Watseka in connection with the C&EI?

A. With the C&EI?

Q. Yes, sir.

A. We have no complaints against the CE&I in their service. Of course, naturally we are always ready for improvement in anything.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell.

[fol. 867] Cross examination.

By Mr. Cassell:

Q. Mr. O'Brien, I take it that what you are interested in, according to the petition of the city of Watseka, is, first, that the TP&W will be maintained and improved, is that right?

A. That is correct.

Q. And it will be operated with a separate and independent, as a separate and independent carrier, with responsible local management, is that correct?

A. That is correct.

Q. And that it will have directors interested in the community?

A. That is correct.

Q. And that the present independent management of the TP&W should be maintained as outlined in the application of the Santa Fe and Pennsylvania for the tenure of employees and offers the best in uninterrupted employment for such employees, is that right?

A. That is correct.

Q. Now, what you want is a plan that will give you those assurances, isn't that right?

A. Well, from past experience independent operation has proven very well with the TP&W and our experiences have been very, very good. We could always contact them locally and get immediate action on anything we might need.

Q. And a plan, any plan, which would continue that in [fol. 868] existence would be satisfactory to you?

A. Well, our main interests, we already know the people that are operating, and I understand the present management and so on, type management, will be continued, and

the TP&W has grown along with our own community, and we would like to see it operate on that same basis.

Q. And any plan which does that is what you want?

A. That is what we need.

Mr. Cassell: Thank you.

Exam. Albus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. In looking at the petition filed by the city, in paragraph "D" the statement is made that you favor denial of the petitions of competing lines to participate in the purchase. Are you aware of the fact that the Pennsylvania and the TP&W compete. Would you state your question.

A. Would you state your question again, please?

Q. Do you know whether or not the TP&W and the Pennsylvania railroad compete?

A. Not through our community.

Q. And your opinion and the decision of your city is based on the lack of competition between that line of railroad of the TP&W and the Pennsylvania railroad?

A. Well, there would be no reason for competition through our community east and west.

[fol. 869] Q. Do you know that the Pennsylvania has its own direct line into Peoria?

A. Not through our community.

Q. I know that.

A. We are primarily interested in a strong railroad east and west. We have one north and south, and we want to continue the one we have.

Q. Are you aware that the Pennsylvania competes through St. Louis as well as Chicago?

A. Not through our community.

Mr. Broker: No other questions.

Exam. Albus: What is the population of Watseka?

The Witness: Approximately 5,000.

Exam. Albus: Thank you.

Are there any further questions?

(No response.)

Exam. Albus: You are excused.

(Witness excused.)

Exam. Albus: Let the record show a recess until 2 o'clock.

(Whereupon, at 12:30 p.m., a recess was taken until 2:00 p.m. of the same day.

[fol. 870] AFTERNOON SESSION 2:00 p.m.

Exam. Albus: The hearing will please come to order.

At this time Mr. Wheeler requests that he be afforded an opportunity to put on a special witness who can be here only at this time.

So, if you will proceed, Mr. Wheeler.

Mr. Wheeler: I want to call Mr. Bhear.

FRANK BHEAR was sworn and testified as follows:

Direct examination.

By Mr. Wheeler:

Q. Will you please state your full name, Mr. Bhear?
A. Frank Bhear.
Q. And your address?
A. London Mills, Illinois.
Q. And your occupation, Mr. Bhear?
A: Manager of the Farmers Co-op, London Mills Farmers Co-op.
Q. And that is a grain elevator?
A. Yes, sir.
Q. At London Mills?
A. Yes, sir.
Q. On what railroad is your elevator located?
A. M&StL.
Q. Is it served by any other railroad?
A. No, sir.
[fol. 871] Q. What is the capacity of your elevator?
A. Around 15,000 bushels.
Q. And how many carloads did you ship last year?
A. Forty-eight.

Q. What was your 1955 volume through the elevator, approximately?

A. Oh, I just can't give you that offhand.

Q. Were you supplied with all of the cars you required during the 1955 season?

A. Yes, sir.

Q. Was your elevator ever plugged during the 1955 season?

A. No, only long enough to get grain doors in the car.

Q. Mr. John Morris of Bushnell stated here on Monday that during 1955 farmers that ordinarily deal with you found your elevator plugged and came to his elevator. Do you have any—came to his elevator at Goodlow, do you have any comment on that statement?

A. I don't think so, for it is about 30 miles from us.

Q. Well, were any farmers turned away from your elevator because it was plugged in 1954?

A. Not that I know of.

Q. Well, you would know whether they were turned away, wouldn't you?

A. Yes, I'd think so.

Q. Mr. Morris also stated that you told him that your [fol. 872] elevator was plugged during the last season. Do you have any comment to make on that statement?

A. No, I did not tell him that.

Q. You did not tell him that?

A. No.

Q. Do you know other elevators on the M&StL?

A. What?

Q. Do you know the operators of other elevators on the M&StL?

A. Yes, there is Burwick and Rappatee.

Q. Do you know whether any of them were plugged during 1954?

A. Not that I know of.

Q. Have you had any recent conversations with Mr. John Morris of Bushnell?

A. Sunday night was the first time.

Q. Where was that conversation?

A. At my home.

Q. What was the gist of that conversation?

A. Well, he was wanting to know if I had any grain car shortage.

Q. Grain car shortage?

A. Yes.

Q. And you told him you did not?

A. I told him I did not last year.

Q. Had you ever met or talked with Mr. John Morris of Bushnell prior to Sunday night?

A. No, I did not.

[fol. 873] Q. Have you received any other recent inquiries with respect to grain car supply on the M&StL?

A. Yes, a commission man out of Bushnell. That was Saturday afternoon.

Q. What was his name?

A. Larnex, I think is his name. He is manager for the Coal Grain Company.

Q. Will you tell me of that conversation?

A. He asked me about the car shortage.

Q. On the M&StL?

A. Yes.

Q. And you told him—

A. (Interrupting) The same thing as I told Morris.

Q. Have you found the general railroad service of the M&StL to your satisfaction?

A. Yes, sir.

Q. Do you know whether or not Mr. Morris, John Morris, of Bushnell, Illinois, has any specialized equipment for the handling of grain or the moving of grain?

A. Well, I know he's got some truck. He has one semi is all I know anything about.

Q. Is that a truck especially equipped to haul grain?

A. Yes.

Q. And where have you encountered that truck?

A. I saw it on the road.

[fol. 874] Q. To Peoria?

A. Yes.

Q. In Peoria?

A. No, not in Peoria, I saw it out on the highway.

Mr. Wheeler: I have no further questions.

Exam. Albus: Cross examination, please.

Mr. Bagge.

Cross examination.

By Mr. Bagge:

Q. Mr. Bhear, I noted in your reply to Mr. Wheeler's questions that you were dealing with the 1955 season, is that correct?

A. Yes, sir.

Q. Would you state whether or not your elevator was ever plugged in a 1954 season?

A. No, I wouldn't say that for we had to wait sometimes on cars but not too long.

Q. How long did you have to wait on cars during the 1954 season?

A. Well, not over a day, anyway.

Q. Did you ever have to wait on cars during the 1953 season?

A. Yes, I have at some times. Everybody else did.

Q. On the M&StL?

A. Well, no, not only on the M&StL but all other roads.

Q. Well, did any of your competitors from other shipping points on the M&StL have to wait during the 1954 season?

[fol. 875] A. Well, I couldn't say to that.

Q. Well, you just stated that everyone else had to wait, too, who were you referring to when you stated that?

A. Well, on the Q I had complaints from Fairview; said they didn't have to wait.

Q. Is it your position that you never met Mr. John Morris prior to meeting with him last Sunday night?

A. No, sir, I never knowed him.

Q. Did you ever make a statement to anyone prior to making the statement here today that your elevator was plugged—

A. No.

Q. Just let me finish this question.

Exam. Albus: That's right, you may finish.

By Mr. Bagge:

Q. Did you ever, on any occasion, prior to making the statement here today, have occasion to talk to anyone at any time—

A. No.

Q. I don't want to confuse you, I just want to finish this question. I will tell you when I finish it.

Did you ever have occasion at any time prior to your appearance here as a witness to say to anyone that you had experienced a car shortage or that your elevator was plugged during the 1954 season?

A. No.

Q. Don't you discuss your business experiences with any-
[fol. 876] one in the community?

Mr. Wheeler: Mr. Examiner, I object. He is arguing with the witness now.

A. No.

By Mr. Bagge:

Q. You do not discuss your business affairs with anyone in the community?

A. No.

Exam. Albus: The objection is overruled.

By Mr. Bagge:

Q. Do you discuss your business experience with members of your family?

A. No.

Q. All right. Directing your attention to the 1953 season in which you stated a car shortage on the M&StL. did you ever at any time say to anyone that you had a plugged elevator during the 1953 season?

A. I can't say that I have.

Q. Well, tell me this, when farmers came to your grain elevator during 1953 or 1954 and saw that they couldn't bring their grain to your elevator because it was plugged, isn't it a fact that they would desire that information that way?

Mr. Wheeler: Just a moment, Mr. Examiner. I think this is argumentative. There is no evidence of any kind to support the basis of the question that is being addressed to the witness here.

Mr. Bagge: I believe first of all that there is a basis.
[fol. 877] If the witness says he hasn't told anybody about it, I am simply trying to establish that by the very nature

of this experience, if he did experience a car shortage during those two seasons, that it would come to the attention certainly of the shippers with whom, or the farmers with whom he is dealing.

Exam. Albus: The witness may answer.

(Question read.)

Mr. Wheeler: Mr. Examiner, that very fact has not been established here as a predicate of this question is that he ever turned away farmers from his elevator. Until that fact is established I think this is an improper question.

Mr. Bagge: I think he did establish the fact that he did experience a—

Exam. Albus: All right, let the witness answer.

By Mr. Bagge:

Q. Would you want the question repeated?

A. Yes.

(Question re-read.)

A. Yes, they would derive at that information that way.

Exam. Albus: Any further questions of Mr. Bhear?

(No response.)

Exam. Albus: You are excused, Mr. Bhear. Thank you very much.

(Witness excused.)

Exam. Albus: Now, we will resume with the applicants.

[fol. 878] Mr. Hunter: We will call Mr. Sterrenberg.

H. J. Sterrenberg was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you state your name and address for the record, Mr. Sterrenberg?

A. H. J. Sterrenberg, Crescent City, Illinois.

Q. What is your business, Mr. Sterrenberg?
A. I operate a grain elevator.
Q. Where is Crescent City located?
A. It is in Iroquois County between Gilman and Watseka.
Q. Is that in the eastern part of Illinois?
A. Yes.
Q. What is the approximate size of Crescent City?
A. Three forty-two, I think is the figure on the board outside of town.
Q. Will you describe what your grain business consists of in a general nature?
A. Why, we just operate a general run country elevator. I retail fertilizers and grain, fuel and a few other items, coal.
Q. Do you ship by rail?
A. Yes, we do.
Q. What is the nature of those rail shipments?
A. Well, east and west railroad, our grain normally should go east, but in the last year or more considerable of it has been coming west.
[fol. 879] Q. What railroad is your business located on?
A. On the TP&W only.
Q. Is there any other railroad that serves your community?
A. Not our community, no.
Q. Approximately how many cars did you ship in 1955?
A. I am not sure but I imagine around 150.
Q. Mr. Sterrenberg, have you ever had occasion to call in person at the general offices of the TP&W railroad?
A. I have.
Q. Was that on business?
A. On business, yes.
Q. Was it convenient to you to be able to call at the head offices of the TP&W railroad?
A. It was, yes.
Q. Have you read the application of the Pennsylvania and Santa Fe railroads to assume control of the TP&W railroad?
A. I have, yes.
Q. Are you in favor of that application?
A. Very much so.
Q. What are your reasons, Mr. Sterrenberg?

A. Well, as a shipper I am naturally interested in a good supply of boxcars, and according to the contract, which the Santa Fe and Pennsylvania have entered into, one of the articles is that they agreed to increase the number of
[fol. 880] cars to the recommended requirements of the industry and to help us secure additional cars from the pool.

Mr. Wheeler: May I have that answer read, please.

(Answer read.)

By Mr. Hunter:

Q. Is your present service satisfactory?

A. Well, it is satisfactory inasmuch as the boxcars we get are handled very satisfactorily, but we don't get enough cars in the harvest time and other times when we need them bad.

Q. Does that apply to movements in both directions, Mr. Sterrenberg?

A. Movement in both directions.

Q. What are the general destinations of your eastbound movements?

A. Right now it is Baltimore, Norfolk, export corn.

Q. What is the destination generally of your westbound movements?

A. Peoria, Decatur.

Mr. Hunter: No further questions.

Exam. Albus: Cross examination, please.

Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. You are interested in car supply, is that right?

A. That is right.

Q. Have you checked the car supply figures on the Penn-
[fol. 881] sylvania for any recent year?

A. No, I haven't. I did know that we load a lot of Pennsylvania boxcars, though.

Q. But you don't know whether or not they were short of boxcars in 1955 or not?

A. No, I am not familiar with that.

Q. Did you make any inquiry with respect to the Santa Fe on car shortages?

A. I do remember reading in the heart of the car shortage last fall I remember reading an article in the Wall Street Journal in which some big official in the Santa Fe quoted that there was no boxcar shortage on his lines.

Q. That was in the newspaper?

A. It was in the Wall Street Journal right in the heart of the bean harvest.

Q. About what time of the year was that?

A. It was right in the bean harvest because I cut the article out. I mailed it to Mr. Eslinger of the TP&W in Peoria and asked him to get on the Santa Fe's tail to help us get some more boxcars.

Q. You say it was in the middle of the bean harvest. I am trying to place it in a month.

A. October.

Q. October?

A. Yes.

[fol. 882] Q. Are you relying on that fact, is that one of the reasons you support that application here, because you believe that the Santa Fe didn't have a shortage at that time?

A. Well, I do know the Santa Fe owns a lot of boxcars, and I do know in the fall of the year the Santa Fe doesn't have the harvest in the southwest like we do. I mean their big harvest is in the summer, in the wheat harvest It is my opinion that they should be able to share more boxcars with us in the fall.

Q. The fact that they have a large pool in and of itself may not mean very much, does it?

A. No, but the more cars they have the better chance we have to get them.

Q. But the greater demand they have on their line for those cars the least chance you have to get them, isn't that correct?

A. Well, could be.

Q. Well, don't you think that is correct?

A. They have a far more—

Q. (Interrupting) You say what?

A. They have a larger pool to draw on. That's for sure.

Q. Well, but they serve a larger area than the TP&W. too, do they not?

A. But they must be doing a good job or he couldn't write that in the Wall Street Journal.

Q. You can issue statements about your business, too, can you not?

[fol. 883] A. I could, yes.

Q. The important thing would be whether the statement was correct or not, wouldn't it?

A. Well, I have no reason to doubt it.

Q. And that is what I say, you relied on that?

A. Yes.

Q. Have you checked to see whether or not the M&StL had any freight car or grain car shortages during 1955?

A. No, I haven't.

Q. Have you checked to determine what the relative ownership as against cars on line was for the Pennsylvania, Santa Fe, M&StL?

A. No; I do know I load very few M&StL boxcars. I have loaded a few of those grain cars of M&StL but very few.

Q. Do you understand how the boxcar pool operates or is supposed to operate?

A. Well, I am not too familiar with it, no.

Q. How many TP&W grain cars have you loaded?

A. I imagine about five.

Q. Where in the contract between the Pennsylvania and the Santa Fe does it specify that they will increase the number of cars owned by the TP&W?

A. I don't remember just exactly but it was in some of the literature that I read.

Q. Where did you get that literature?

[fol. 884] A. It was mailed to me by Mr. Hunter.

Q. Who is Mr. Hunter?

A. I imagine he is an attorney for the Pennsylvania.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Mr. Sterrenberg, Decatur is southeast of Peoria, isn't it?

A. Right.

Q. The shipments you made west to Decatur, then, would have been an intrastate shipment and would have turned off the TP&W somewhere east of Peoria, wouldn't they?

A. I would say as a rule not, because most of our shipments to Decatur go to A. E. Staley Manufacturing Company and they specify practically all Peoria I.C. routing.

Q. At any rate, it wouldn't have gone west of Peoria?

A. No.

Q. So you didn't have any shipments west of Peoria, then?

A. No, not shipments. I had some receipts. I get fertilizer from New Mexico and from Kansas.

Q. I see. Substantially, though, your interest is east of Peoria?

A. Right.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

[fol. 885] Cross examination.

By Mr. Broker:

Q. Are you familiar with the supply of boxcars on the Nickel Plate?

A. I am not, no.

Mr. Broker: No questions, thank you.

Further cross examination.

By Mr. Wheeler:

Q. I believe you testified you had a car shortage in '55?

A. Yes, we did.

Q. Was your elevator plugged?

A. No, I maintained some trucks in order to keep it from being plugged. If I didn't have the trucks it would be.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, Mr. Sterrenberg. Thank you very much.

(Witness excused.)

Mr. Hunter: I have a witness who is representing the mayor of Shelton, and I believe he would testify as to Shelton much the same as Mr. O'Brien has as to Watseka. Where applicable we would be willing to stipulate.

Mr. Wheeler: We so stipulate.

Exam. Albus: Is everybody agreeable to the stipulation?

Mr. Broker: May I just look at their petition, please.

For my own information is there any other railroad in [fol. 886] Shelton?

Mr. Hunter: New York Central.

Mr. Broker: I have no questions. I will stipulate.

Mr. Cassell: I will stipulate.

Mr. Hunter: Do you want me to give the name of the witness?

Exam. Albus: If you will, please.

Mr. Hunter: Mr. Gordon Snow of Shelton, Illinois, representing the mayor and trustees of the Village of Shelton.

Mr. Cassell: Is he in the hearing room, Mr. Hunter?

Mr. Hunter: Yes.

Exam. Albus: Let the record show that all counsel agrees with the stipulation.

Thank you, Mr. Snow.

[fol. 887] Mr. Bagge: At this time, with your permission, I would like to call on Senator James Mayor.

James C. Mayor was sworn and testified as follows:

Direct examination.

By Mr. Bagge:

Q. Would you state your full name, sir.

A. James C. Mayor.

Q. Where do you reside?

A. LaHarpe.

Q. Would you tell us where LaHarpe is located, since you are the first witness to appear from that community.

A. Well, LaHarpe is about 85 miles west of Peoria. It is at the junction of the TP&W, one branch goes to Lomax and the other to Keokuk.

Q. Would you tell us more about that, sir.

A. Well, that's about all there is to it.

Q. All right, sir: Would you tell us what your present business or occupation is, sir.

A. Yes. I run the elevator in LaHarpe.

Q. Now, in connection with your position in running the elevator, do you have any other business associated with that?

A. None other, no, sir.

Q. Would you tell us about the rail service which is afforded to you at your elevator at LaHarpe.

A. Yes. I expect our maintenance business is the coal [fol. 888] business, but, you know, most of the corn around LaHarpe is fed, as you will find out later when you hear the livestock report, but we do have a pretty big business in soybeans and wheat and we have had car shortages like the rest of them.

Q. Tell me, what railroad serves your elevator at LaHarpe?

A. TP&W.

Q. Is there any other railroad that serves your elevator?

A. No other railroad.

Q. Is there any other railroad that serves that community?

A. No other railroad.

Q. How long have you personally be using the TP&W?

A. Since 1918.

Q. Now, you are familiar, are you not, with the application which is pending before this Commission which is filed by the Santa Fe & Pennsylvania Railroads?

A. Yes, sir, I have read it.

Q. And you are familiar with it?

A. Yes, sir, I think so.

Q. What position do you take with reference to that application, sir?

A. Well, when I read that I thought that LaHarpe might finally have attained security. You know, we have always had an idea there that some day the Santa Fe and some eastern outlet would have the TP&W, and when we heard it was the Pennsylvania, why, we thought possibly it would be in the hands of two of the strongest lines in the country, [fol. 889] and that we'd have a railroad in LaHarpe. You know, there have been times when we thought we might not.

Q. Beyond that reason of affecting stability to the opera-

tions of the TP&W, do you have any other specific reasons for supporting the operation as a shipper?

A. Yes. I think if we were connected with those two lines we'd get a better supply of boxcars to ship grain. We have been plugged when we couldn't ship grain for a week at times.

Q. What effect do you think the granting of this application in effecting ownership of the TP&W to the Santa Fe and Pennsylvania would have on the service to you as a shipper?

A. We have had pretty good service, but I think with them interested in it as they will be, it would better it, if possible. I think that is their intention.

Q. Are you familiar, Mr. Mayor, in a general way with the fact that the M&StL Railroad wants to acquire ownership of the TP&W?

A. Yes, I have heard that.

Q. Sir, what is your position with regard to that possibility?

A. Well, I don't know too much about the M&StL Railroad. I remember once when I was in the Illinois State Senate it was called a monument, they thought it was going to be abandoned at that time and they had a meeting of the Chamber of Commerce to talk it over. I think maybe it was in receivership at that time. That is about all I know about the M&StL. I just heard lately that they were [fol. 890] in better shape than they had been.

Q. What do you think the effect upon your service and upon your car supply as a shipper would be at LaHarpe if the M&StL got control of the TP&W.

A. Well, I couldn't hardly see how the M&StL would be much interested in the west end of the TP&W. They have a connection with the Santa Fe, I believe, at Nemo. I believe that is the name of the town.

Q. That is correct, sir.

A. And that line into Peoria runs just about parallel with the TP&W into Peoria, from LaHarpe.

Q. Now, assuming that the M&StL agreed to allow the ICC to impose a condition providing that the M&StL would provide the continued service on the west end of the TP&W and providing such a condition were entered, would that

change your attitude regarding the possibility of selling the TP&W to the M&StL?

A. It wouldn't change my attitude.

Q. Why, sir?

A. Well, because I doubt that the M&StL have the backing that the Santa Fe and the Pennsylvania have.

Q. What do you mean by that?

A. What?

Q. What do you mean by that? What do you mean by "backing"?

A. Well, they are not the railroad that—the Santa Fe and the Pennsylvania are big systems. The M&StL, as I [fol. 891] understand it, runs from Peoria to Minneapolis. I believe that is right. I didn't think it was much of a system.

Q. You feel that your interest as a shipper and the needs of your community would be more adequately served by ownership of the TP&W by the Pennsylvania and Santa Fe?

A. I think it can be, yes. I think it could be.

Q. Are you familiar with the position of the Rock Island and Nickel Plate Railroads in this proceeding?

A. No, I don't know a thing about them.

Q. Well, are you aware of the fact—

Mr. Cassell: We object.

Mr. Broker: We object. He said he doesn't know.

Exam. Albus: He doesn't know anything about it.

Mr. Bagge: All right.

By Mr. Bagge:

Q. Are you aware that there are other railroads who want to participate in ownership with the Santa Fe and Pennsylvania?

A. I have heard of that, sir.

Q. What is your position regarding that, sir?

Mr. Broker: He said he didn't know anything about the Nickel Plate and Rock Island.

Exam. Albus: He is not talking about the Nickel Plate

and Rock Island now. He is talking about other railroads that want to get into this deal.

You may answer, sir. The objection is overruled.

[fol. 892] A. It is a question of too many owners, in my estimation. I think two could handle it a lot better than half a dozen or more, if they wanted in.

By Mr. Bagge:

Q. All right, sir. Do you have anything else to say to this commission about this application?

A. Why, I don't think so, no.

Mr. Bagge: That is all I have of this witness.

Exam. Albus: Cross examination. Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. Senator Mayor, you said at one part, you used the phrase "like the rest of them", and it was in connection with your car shortage and your plugged elevator. When you used that phrase, I take it you were referring to other elevators on the TP&W?

A. That is what I thought of, yes, sir.

Q. You are not familiar, I take it, with the car shortages on the Santa Fe or the Pennsylvania, are you?

A. Well, I know nothing, of course, about the car shortages on the Pennsylvania. We do hear from Lomax, there is an elevator at Lomax, and they usually get the cars sometimes when we can't.

Q. They sometimes get them when you can't?

A. Yes, I have known them to get them.

Q. And vice-versa?

A. No, I never heard it the other way, and we have [fol. 893] had grain go to Lomax that should have come to LaHarpe if we had had cars.

Q. You are not familiar, I gather, with the car supply situation on the M&StL?

A. No, I have no familiarity with that.

Mr. Wheeler: I have no further questions.
Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. You went in business in LaHarpe in 1918?
A. No. I was in business in LaHarpe before that, but I came down to the elevator in 1918.
Q. The TP&W was in receiver hip in those years, wasn't it?
A. Well, I don't believe 1918, was it? It could have been.
Q. A long time.
A. I wouldn't say for sure. I know it was in receivership. I think that probably happened after the Chasworth wreck when they got ruined, I remember that, that wrecked them, yes, sir.
Q. That was 1887, was it not?
A. That was a long time ago, but I remember it, yes, sir. We had some folks at LaHarpe badly crippled in that wreck.
Q. Is that so?
A. Yes, sir.

Mr. Cassell: That is all.
Exam. Albus: Mr. Broker, please.

Cross examination.

By Mr. Broker:

Q. During those years, do you know who owned the [fol. 894] TP&W.

Mr. Lucas: Mr. Examiner, are we going into that remote history? I won't object if he wants to bring it in.
Exam. Albus: Do you know?

A. No, I don't know who owned it, no.

By Mr. Broker:

Q. It wasn't in good condition, though, was it?

A. Sir?

Q. Was it or was it not in good condition?

A. Not, surely not too good, if it was in the hands of a receiver.

Q. When did the railroad come back, do you know?

A. I think the railroad started to come back after Mr. McNear purchased it. You know, Mr. McNear had great dreams about that road. He figured that someday the thing would happen that is just about to happen now, that that road, he told me in the office, "One day you might live to see a double track through LaHarpe, if the Santa Fe and the Pennsylvania ever get interested enough in it to make it that way."

Mr. Broker: That is all.

Exam. Albus: Are there any further questions for the Senator?

(No response.)

Exam. Albus: Thank you very much, Senator. You are excused.

(Witness excused.)

Exam. Albus: Next witness, please.

Mr. Bagge: I would like to call Mr. Clyde Stevens of LaHarpe Livestock Shipping Association.

[fol. 895] Mr. Wheeler: Is there any possibility of stipulating the testimony of this witness would be the same as Mr. Mayor's?

Mr. Bagge: How do you feel about that, Mr. Stevens?

The Witness: I operate a different business entirely.

Mr. Bagge: No stipulation.

CLYDE W. STEVENS was sworn and testified as follows:

Exam. Albus: What is your full name, please?

The Witness: Clyde W. Stevens.

Mr. Wheeler: Mr. Examiner, I want to have a running objection to any more cumulative testimony in this record.

Exam. Albus: Very well.

Direct examination.

By Mr. Bagge:

Q. Will you state your full name, sir.

A. Clyde W. Stevens.

Q. And you are at LaHarpe, is that correct, sir?

A. At LaHarpe.

Q. Would you tell us what your business or occupation is?

A. Shipper of livestock.

Q. Would you describe how the LaHarpe Livestock Shipping Association operates and what your function is with that organization.

A. I am its manager.

Q. Would you tell us a little bit about how they operate.

A. We ship for about 325 various farmers and livestock [fol. 896] handlers. We ship them—we do not purchase them, we ship them to a terminal market, practically all of them to the Chicago market.

Q. And you perform that service?

A. I perform that service for them.

Q. Through the association, is that correct?

A. Through the association.

Q. Is it a fact that you are absolutely dependent upon the—

A. We are absolutely—

Q. Strike that. Tell us about your rail service.

A. We are absolutely dependent upon the railroad that goes through our town because we have no other way of transportation.

Q. How many years have you been making this use of the TP&W Railroad for the LaHarpe Livestock Shipping Association?

A. For the LaHarpe Livestock Shipping Association, they have been in operation 36 years, this is my 24th.

Q. Are you familiar and is your organization familiar with the application of the Santa Fe-Pennsylvania Railroads?

A. We are.

Q. What position do you take with reference to that?

A. At a meeting of the board and several and various members and myself, we have come to the conclusion that it is the only safe way for the shipping association as an organization.

Q. Would you tell us why, sir.

[fol. 897] A. Yes.

Q. Briefly.

A. Long years ago our livestock went East, over the Wabash, to Chicago. We had to load as early as 8 o'clock in the morning. The stock traveled the major portion of the day in the heat, when it was hot, with heavy losses on many occasions.

Q. Yes, sir.

A. Now we load and go over the TP&W to Lomax, which is only about 14 miles, and the livestock goes from Lomax to Chicago on the Santa Fe and it is all overnight. We usually load and are out of there about 4 o'clock with the stock, and in the morning from 4 to 6 it is in Chicago and many times in the yards at that time.

Q. I see.

A. With the result that over the long period from morning until the next morning, with a heavy shrinkage of three to four pounds, that would be the lowest that we could get it in the year's average, and last year, in '55, we got through with a quarter of a pound average shrinkage on our hogs.

Q. And that is certainly a record, isn't it, in terms of moving stock, is that correct?

A. Well, to finish it up or go further with it, over the long haul, as it used to be and the present haul of overnight, our losses have decreased over 50 per cent.

Q. Now, sir, what position does the LaHarpe Shipping [fols. 898-899] Association take on the possibility of the sale of the TP&W Railroad to the M&StL?

A. They don't like it.

Q. Would you tell us briefly why?

A. Yes, I will tell you why. Now, maybe we are selfish. I don't know—

Q. Well, we all are. That's all right.

A. But we think that in long years to come, we figure that the M&StL are interested on the eastern end of the TP&W, and we think the time might come when they'd

ask to abandon the west end. We may be wrong. I would hope if the M&StL gets it that we are wrong, because any other method of shipping, aside from the one we are using at the present time, would be ruinous after we have had the good results we have had in the past few years. Then, we think, again, that the M&StL might want to divert the traffic of our livestock the other way, which couldn't be as short a haul as we have at the present time. And we haven't anything against the M&StL or any of the other intervening lines, but it is just the thing that we think is the most advantageous to us as an organization.

Q. What effect do you believe the dilution of ownership of the TP&W would have upon your interest?

Mr. Cassell: I object to that. He doesn't know anything about dilution of ownership.

Mr. Bagge: All right, I will withdraw the question.

[fol. 900] Exam. Albus: Thank you.

By Mr. Bagge:

Q. What possible effect do you think the inclusion into ownership of the TP&W of the Rock Island, Nickel Plate, the Wabash would have upon your need, your interest?

A. We think it would be disadvantageous to the TP&W and to the other major purchasers of the line's services.

Mr. Bagge: Thank you.

That is all I have of this witness, sir.

Cross examination.

By Mr. Wheeler:

Q. Mr. Stevens, do you believe that your present service, that is, by the TP&W-Lomax, Santa Fe to Chicago, would be discontinued if the Pennsylvania and the Santa Fe application is not granted?

A. So far as we know, it would not be, no, sir. I understand that the M&StL in their ordinance that they would put up, should they be the purchasers of the line, would give the same service that they had before. That we do do not know because they never bothered to bring us a

copy of the ordinance or to say anything to us about it, and neither did any of the other lines, while the Santa Fe and the Pennsylvania did.

Q. Really, what you are interested in, Mr. Stevens, is maintenance of that service?

A. That is right.

Mr. Wheeler: I have no further questions.

Cross examination.

[fol. 901] By Mr. Cassell:

Q. I take it, you haven't been told what the plans of the Rock Island are, sir?

A. I beg pardon?

Q. I gathered from the reasons you made to other questions that you haven't been told what the plans of the Rock Island are. Is that right?

A. Neither the Rock Island or any of the other intervening lines have said anything about it to us or approached us in any manner.

Mr. Cassell: That is all.

Mr. Broker: No questions.

Exam. Albus: That is all, thank you.

(Witness excused.)

Mr. Bagge: I will call Mr. Dale H. Dunn, Mayor of LaHarpe.

Exam. Albus: How about stipulating?

Mr. Bagge: What do you say about that, it it reasonable that the testimony you would give would be pretty much along the line of Mr. Stevens and Mr. Mayor? I just want to make certain I don't stipulate your rights away.

Mr. Dunn: I believe it will be the same.

Exam. Albus: Can you add anything to what they have already said?

Mr. Dunn: No.

Mr. Bagge: As to the interest of the community of LaHarpe.

Exam. Albus: Do all the counsel agree to the stipulation?

Mr. Bagge: The City of LaHarpe is an interyenor in [fol. 902] this proceeding.

Mr. Broker: I will stipulate as to position, but not as to what Mr. McNear said.

I will stipulate, Mr. Examiner.

Exam. Albus: I thank you very kindly.

Exam. Albus: Let the record show the stipulation is agreed to.

Mr. Bagge: We have another witness from LaHarpe, Mr. Harold Miller, of the Golden Rule Club, which is, in effect, the Chamber of Commerce in that community.

Do you wish to stipulate?

Mr. Wheeler: I certainly do.

Mr. Bagge: Let me ask Mr. Miller whether the testimony he is going to give is along those lines.

Mr. Miller: I am president of the Golden Rule Club, which is not the Chamber of Commerce.

Mr. Bagge: It is, in effect, the Chamber of Commerce.

Exam. Albus: Is there anything you can add to what the previous gentlemen have said?

Mr. Miller: No.

Exam. Albus: Thank you very much.

Mr. Bagge: I will agree to the stipulation of what his testimony is.

Exam. Albus: Does everybody agree to that?

Mr. Broker: Yes, sir.

[fol. 903] Exam. Albus: Off the record.

(Discussion off the record.)

[fol. 904] Exam. Albus: On the record.

Mr. Bagge: At this time we'd like the intervenors, the City of Warsaw to present their testimony.

Mr. Lamet: City of Warsaw.

Exam. Albus: You have already entered an appearance?

Mr. Lamet: We have. I entered my appearance here on the opening day of the hearing.

Exam. Albus: What is your name?

Mr. Lamet: Lamet.

Exam. Albus: Thank you.

HAROLD G. PARR was sworn and testified as follows:

Direct examination.

Mr. Wheeler: May I suggest the stipulation that this gentleman's testimony would be substantially the same as that of Mr. O'Brien, the Mayor of—

Mr. Hunter: Representing the City of Watseka.

Mr. Lamet: We don't feel we are ready to stipulate.

Exam. Albus: Proceed.

By Mr. Lamet:

Q. Mr. Parr, will you give your full name?

A. Harold G. Parr.

Q. Where do you reside?

A. Warsaw, Illinois.

Q. And what is your business or employment?

A. I am assistant manager of the Warsaw Brewing Corporation.

[fol. 905] Q. Are you not a member of the Warsaw Chamber of Commerce?

A. I am.

Q. Are you not one of the members of its executive committee?

A. That is right.

Q. Will you state, if you know, what the population of Warsaw is?

A. Approximately 2,000 people.

Q. Where is Warsaw located?

A. It is the farthersmost western point in Illinois.

Q. Is it or not along the Mississippi River?

A. It borders the Mississippi River.

Q. And where is it with reference to the route of the T. P. & W. Railroad?

A. Well, the T. P. & W. runs south from Hamilton to Warsaw, what they call the stub, and really the lifeline of Warsaw.

Q. How long a route is that, if you know?

A. I am getting to that. I would say approximately four and a half miles.

Q. Are you familiar with the investment that the Warsaw Brewing Corporation has at Warsaw?

A. I can approximate it. Seven hundred fifty thousand dollars.

Q. How long has it been engaged in business there?

A. The corporation itself approximately 20 years.

Q. Do you know or have any idea how long the establishment was there in the form of a brewery prior to that? [fol. 906] A. I can't give you an exact answer. I know that the plaque out front says 1860.

Q. Do you know, Mr. Parr, of the approximately number of cars that are either loaded or unloaded at the plant of the Warsaw Brewing Company?

A. About 125 per annum.

Q. Is there not a switch from the T. P. & W. to the plant of the Warsay Brewing Corporation?

A. Yes.

Q. Do you know anything about the period of time or history of service to the City of Warsaw of the T. P. & W. Railroad?

A. You mean about the business of the brewery itself?

Q. No, the railroad, if you will, please.

A. I don't understand the question. Would you read it?

(The question was read as follows:)

"Q. Do you know anything about the period of time or history of service to the City of Warsaw of the T. P. & W. Railroad?"

A. If I understand the question right, the T. P. & W. Railroad was originated at Warsaw, if that is what you mean. I think around the 1860's.

By Mr. Lamet:

Q. And do you know about its development from that point or have you heard any historical facts with respect to it in that regard?

A. We know the railroad, of course, has increased substantially since the McNear family has taken care of it. [fol. 907] Q. Are there any other railroads serving Warsaw?

A. None whatsoever.

Q. And do any railroads pass through Warsaw?

A. The T. P. & W. ends there. That is the only railroad.

Q. Mr. Parr, have you had occasion to familiarize yourself with the petition filed in this proceeding by the Santa Fe Railroad and the Pennsylvania Railroad for the purchase of the T. P. & W.?

A. Yes, I have.

Q. Have you discussed the matter of this petition with the Chamber of Commerce and with the management of the Warsaw Brewing Corporation?

A. I discussed with the Chamber of Commerce, with people individually, not at the meetings because I wasn't a member at that particular time, but the management, of course, has had several meetings in which we tried to decide which would be the better for our particular organization or the City of Warsaw mostly.

Q. What is the position of th Warsaw Brewing Corporation with respect to the petition?

A. We would have to cease operation.

Q. If you will give your complete answer again, please.

A. Well, we'd have to quit producing beer if we didn't have a railroad.

Q. What is your position with respect to the application by the Santa Fe and the Pennsylvania Railroad of the pur-

[fol. 908] chase of the T. P. & W.?

A. Well, we feel that by having a strong east and west traffic that the stub or lifeline to Warsaw could be maintained properly.

Q. And do you feel or not that the acquisition by these two roads would strengthen the T. P. & W. Railroad?

A. I think it will.

Q. Have you or not considered the application of the Minneapolis and St. Louis—

A. We have.

Q. (Continuing) —for the purchase of the T. P. & W. Railroad?

A. We have.

Q. What is your position with respect to that?

A. We still favor the purchase of the T. P. & W. by

the Santa Fe and Pennsylvania in pla e of four or perhaps the interest to the City of Warsaw and to our brewery would not be developed by the four people, if you get what I mean, where the two people are interested, the two parties interested would build the track up sufficiently.

Q. If you will answer again, the question was how do you feel about the acquisition by the M. & St. L. of the T. P. & W. alone?

A. We do not favor that.

Q. And will you state your reasons why that you do not favor it?

A. Well, I probably answered ahead of time there, but we still favor—we don't favor the four organizations or [fol. 909] companies buying the railroad because we don't feel that by having four that the City of Warsaw and our industries, which incidentally is the industrial city of Hancock County, would be properly serviced.

Q. What effect, do you think ownership by the M. & St. L. would have?

Mr. Wheeler: Mr. Examiner, he has asked this question three times.

Exam. Albus: I think so.

Mr. Wheeler: I object to it.

Exam. Albus: I will sustain the objection.

Mr. Lamet: I think that is all.

Exam. Albus: Is there any cross-examination?

Mr. Wheeler: I have one question.

Cross examination.

By Mr. Wheeler:

Q. When does your beer move on the T. P. & W.?

A. I didn't say it did move on the T. P. & W.

Exam. Albus: Does it?

The Witness: It has moved on the T. P. & W.

A. All of our freight inbound is T. P. & W. which we couldn't operate if we didn't have it.

By Mr. Wheeler:

Q. What do you mean inbound?

A. Well, our malt, grits, bottles, cans, everything comes by freight, inbound freight.

Q. But your beer doesn't move out at all?

[fol. 910] A. No, we have no control how the customer orders the beer. If he orders by rail, conditions change as to that. If he orders by rail, naturally we ship by rail.

Q. You don't move any beer outbound by rail?

A. We have, yes.

Q. When was the last movement, shipment?

A. I would have to check it. I would say probably 1951.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Warsaw is on the Keokuk branch, isn't it, Mr. Parr?

A. It meets the T. P. & W. at Hamilton and there is a branch that come down to Warsaw.

Q. There are two lines, one up to Lomax and one down to Keokuk?

A. The line goes to Lomax, yes.

Q. The line down to Warsaw doesn't connect with any other line beyond Warsaw, does it, it is the stub end?

A. It isn't the stub end, it is the lifeline of Warsaw.

Q. I mean it doesn't connect with any other railroad?

A. At Hamilton I imagine it does connect with the Wabash, I just couldn't tell you.

Q. What I am driving at, the T. P. & W. Railroad comes down from Hamilton to Warsaw and that is the end of the railroad, isn't it?

[fol. 911] A. That is the end of the railroad.

Q. And it doesn't connect with any other railroad at Warsaw?

A. No, it doesn't.

Q. So your outlet is to the north of the main line of the T. P. & W.?

A. That is it.

Q. And the line which is essential for you to keep in operation is the line from Keokuk to La Harpe?

A. No, the essential line is from, or our particular city, is from Hamilton to Warsaw.

Q. You would be kind of high and dry, though, if you didn't have the line from La Harpe to Keokuk?

A. We would be high and dry if we didn't have it from Hamilton to Warsaw, too.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Mr. Broker: No questions.

Further Cross examination.

By Mr. Wheeler:

Q. How many carloads did you receive over the T. P. & W. in 1955?

A. We will average one hundred twenty-five. I believe you spoke of that.

Mr. Wheeler: That is all.

Exam. Albus: Is there anything further?

[fol. 912] (No response.)

Exam. Albus: You are excused, Mr. Parr. Thank you very much.

(Witness excused.)

[fol. 913] Mr. Lamet: Mr. Sonnerborn.

Frank H. Sonnerborn was sworn and testified as follows:

Mr. Wheeler: Mr. Examiner, may I suggest stipulating the testimony of this witness to be substantially the same as the witness Harold Parr.

Mr. Lamet: We prefer not to stipulate, Mr. Examiner.

Exam. Albus: Why? Is he going to have anything in addition?

Mr. Lamet: We feel that we have a special situation at Warsaw.

Exam. Albus: Very well. All right.

Mr. Lamet: That demands considerable attention.

Exam. Albus: Very well.

Mr. Wheeler: Mr. Examiner, may I ask this of counsel is it you think there is a special situation at Warsaw or is there a special situation that this gentleman will testify that is substantially different than the condition testified to by Mr. Parr?

Mr. Lamet: There is a slight difference. It is not a material difference. We would like to cover something about the industrial plants there.

Exam. Albus: All right, if you are not going to stipulate there isn't anything I can do about it. You may proceed.

Mr. Wheeler: I object to it as being cumulative, Mr. [fol. 914] Examiner.

Exam. Albus: I know it is. These people came in from out of town and they ought to have a chance to say what they think.

Direct examination.

By Mr. Lamet:

Q. What is your name?

A. Frank H. Sonnerborn.

Q. And are you or not the president of the Chamber of Commerce of Warsaw?

A. I am.

Q. And will you state whether or not a petition to intervene was authorized by action of the Chamber of Commerce?

A. Yes, in the September meeting.

Q. Would you state or describe to the Examiner the approximate number of industries that are in Warsaw?

A. Well, we have five major industries. We have a brewery, we have Osgood & Son, that is a manufacturer of clothing, we have Grants' Storage & Battery Company, we have the Hancock Grain Elevator, and we have the Miner-ol Company.

Q. You have heard Mr. Parr's testimony with respect to the population of Warsaw and where it lies generally?

A. Yes, sir.

Q. And are you or not a shipper or receive shipments in Warsaw?

A. Yes, I receive shipments. I do no shipping.

Q. What business is that?

A. Fuel business.

[fol. 915] Q. Would you state whether or not any other modes of transportation serve Warsaw?

A. No, there is no other way I could get my product in, as Mr. Parr stated, I would be out of business in about 30 days without rail shipments.

Exam. Albus: Of course you realize this isn't an abandonment proceeding, don't you?

The Witness: Sir?

Exam. Albus: You realize this isn't an abandonment proceeding, don't you?

The Witness: Oh, yes.

Exam. Albus: All right.

By Mr. Lamet:

Q. Is there an area for possible development in the Warsaw area?

A. Yes, through the Chamber we have made several contacts. Well, I won't say we are assured but we have some very favorable replies.

Q. Now, if the petition filed here for the acquisition of the TP&W railroad by the Santa Fe and the Pennsylvania railroads were allowed what effect do you think it would have, if any, upon the industrial development of Warsaw?

A. Well, I think it would be a betterment for our community because we would have a better outlet both ways, and I think they would work to our interest, mainly where we are located, to help develop us.

[fol. 916] Q. What effect, do you think it would have, if any, upon the strength of the TP&W railroad, particularly with reference to the west end of it?

A. Well, I think it definitely would route more traffic over the west end.

Q. And what effect, would that have, if any, upon the route from Hamilton to Warsaw?

A. Well, definitely from our area—we have an area for about 15 miles for shipping and we have big grain shipments and I think it would increase that tremendously.

Q. You are familiar, are you not, with the fact that a petition has been filed here by the M&StL for the acquisition of the TP&W railroad?

A. Yes.

Q. And what effect would that if, if any, upon the western end of the TP&W railroad, if you have an opinion?

A. Well, my opinion is that they would be interested from Peoria running northeast, or west, I mean, and we would have a better outlet with the through lines connecting on each end of the TP&W.

Q. I suppose you are informed that several railroads have filed petitions here for multiple ownership of the TP&W railroad, and I will ask you to state what your position is on that as president of the Chamber of Commerce.

Mr. Cassell: There is no foundation for the supposition yet.

[fol. 917] Exam. Albus: What do you mean?

Mr. Cassell: He says he supposed he is informed.

Exam. Albus: What is your opinion on multiple ownership?

The Witness: The testimony I heard this morning is about the same thing.

Mr. Lamet: I think that is all.

Exam. Albus: Is there any cross-examination?

Cross examination.

By Mr. Wheeler:

Q. Are you familiar with Niota?

A. The town of Niota?

Q. Yes, sir.

A. Well, I know where it is.

Q. How does its size compare with that of Warsaw?

A. Oh, it is considerably smaller.

Q. Considerably smaller?
A. Yes.
Q. What railroad is it located on?
A. The Santa Fe.

Mr. Wheeler: I have no further questions.
Exam. Albus: Is there any further cross?
Mr. Cassell: Yes.
Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. You mentioned a grain elevator in town.
A. Yes, sir.
[fol. 918] Q. Isn't that a marine shipper?
A. Yes, I think they do. I am not in a position to answer that but I think they ship both ways.
Q. You really don't know?
A. I know they ship some by boat, I definitely know that but how much I couldn't tell you.
Q. The clothing company you mentioned, that ships all by truck, doesn't it?
A. Yes, they ship out by truck but they do have incoming freight by train.
Q. That would be L. C. L. or express.
A. No, it is on—they ship their fuel in by boxcar.
Q. I beg your pardon?
A. They ship their fuel in over the TP&W.
Q. You said there would be more traffic over the west end. Do you think there would be more traffic over that line of the TP&W between LaHarpe and Keokuk?
A. Do I think what?
Q. You said there would be more traffic over the west end, didn't you?
A. Yes.
Q. Would there be more traffic over that part of the TP&W between LaHarpe and Keokuk?
A. I think so.
Q. Where would that be going?

[fol. 919] A. I couldn't tell you. I am not a traffic man, but I think that the merging of the roads would introduce more traffic, and in our area I am sure it would.

Q. Does the Santa Fe connect at Keokuk?

A. No.

Q. Where does it connect?

A. Lomax.

Q. Where would the business, then, be going to and from the Santa Fe?

A. Sir?

Q. How would any business from the Santa Fe get down by Keokuk, then?

A. Well, it would be routed over to the Santa Fe. Now, I am not a traffic manager. I couldn't tell you that.

Q. Well, you really don't know, then, about whether or not there would be any more traffic over the—

A. (Interrupting) No, I don't think any of us know. I think that is just a supposition.

Mr. Cassel: That is all.

Cross examination.

By Mr. Broker:

Q. Do you understand this is a merger?

A. Sir?

Q. Did you say you understood this to be a merger?

A. Maybe I did, I didn't mean it that way. I understand what it is, yes.

[fol. 920] Exam. Albus: I think so, too.

Mr. Broker: No further questions.

Exam. Albus: Mr. Wheeler.

Further cross examination.

By Mr. Wheeler:

Q. I forgot to ask you how far it is from Warsaw to Niota.

A. Oh, by road I suspect it is approximately 25 miles.

Q. As the crow flies how far is it?

A. I don't know, I couldn't tell you.
Q. Well, approximately.
A. Probably 20 miles.

Mr. Wheeler: I have no further questions.
Exam. Albus: Are there any further questions?
Mr. Lamet: I have another question.

Redirect examination.

By Mr. Lamet:

Q. How many cars do you receive a year over the TP&W?
A. Oh, between 50 and 60.
Q. Have you lived in Warsaw most of your life?
A. No, I haven't.
Q. What portion of your life have you lived there, would you say?
A. Oh, I have lived there about eighteen and a half years.
Q. Have you ever heard any discussion with respect to the problem of supporting the branch line from Hamilton to Warsaw?
[fol. 921] A. Would you state that again, please?

(Question read.)

By Mr. Lamet:

Q. I will put it this way: Have you ever heard any discussion with reference to the possibility of seeking abandonment of the line from Hamilton to Warsaw?
A. Oh, I have heard discussion, yes.
Q. Do you feel that the allowance of either of these petitions, referring particularly to the petition by the Santa Fe and the Pennsylvania to acquire the TP&W railroad, would so strengthen the west end of that road that it would make it more secure in the respect of maintaining the spur from Hamilton to Warsaw?
A. I do, definitely.

Mr. Lamet: That is all.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, sir. Thank you very much.

(Witness excused.)

[fol. 922] Mr. Lamet: Mr. Izard.

FRANK IZARD, was sworn and testified as follows:

Direct examination.

By Mr. Lamet:

Q. Will you give your name?

Mr. Wheeler: May I respectfully suggest to counsel that we stipulate the testimony of this witness as being substantially the same as the testimony of the two preceding witnesses or covered by either one of them?

Mr. Lamet: Mr. Examiner, each of these witness is testifying to, we think, a slightly different situation.

Exam. Albus: In what regard? Not with respect to the opinions they have on grating the applications?

Mr. Lamet: Not necessarily with respect to the opinions but to the importance of the strength of that end of the road, to particularly Warsaw.

Mr. Wheeler: Mr. Examiner, I think this counsel through his two witnesses today has made that abundantly clear and we would not contest that.

Exam. Albus: I think that is true.

If you have anything further from this man on that point, I will permit it to go in, if he is going to relate the same situation with respect to saving that line down there from Hamilton to Warsaw from being abandoned, I think you are amply protected with the record in the shape it is [fol. 923] right now, if I may suggest that.

Mr. Lamet: If I may show the extent of this shipper's use of the line—

Exam. Albus: Yes, that is permissible. Yes, indeed. If he has anything in addition to what has already been said about the two previous witnesses, be sure to bring that in, too.

By Mr. Lamet:

Q. Will you give your name, please?

A. Frank Izard.

Q. What is your business, Mr. Izard?

A. Manager of the Hancock Grain Company.

Q. Will you describe what the Hancock Grain Company is?

A. It is a county grain organization with elevators, six elevators, located in various parts of the county, with the principal elevator at Warsaw, Illinois.

Q. And are you or not in direct management of the elevator of the Hancock Grain Company located at Warsaw?

A. I am.

Q. And how long have you been connected with that elevator through its ownership, various ownership?

A. Since 1945.

Q. And was that elevator or not acquired by the Hancock Grain Company since you have been in management of it?

A. Yes, sir.

Q. How many of the Hancock Grain Company's elevators are located on the T. P. & W. Railroad, if any?

[fol. 924] A. Two.

Q. Where are they located?

A. Warsaw and McCall.

Q. Could you give the Examiner an idea of the volume of business that is done by the Hancock Grain Company elevators on the T. P. & W. with respect to rail shipments?

A. Just rail shipment?

Q. Yes.

A. Oh, I would say approximately 300,000 bushel yearly.

Q. And do those go out of Warsaw and McCall?

A. Yes, sir.

Q. In addition to that do you not engage in water shipments?

A. Yes, sir.

Q. What would be the extent of your water shipments?

A. Oh, approximately 400,000 bushel yearly.

Q. Do you know how long the T. P. & W.'s service has been used by the elevator at Warsaw?

A. I really couldn't answer that. Before my time, anyway, I know that.

Q. Is the elevator served by any other mode of transportation other than the T. P. & W. and water service?

A. No, no other.

Q. In your capacity as manager of the Hancock Grain Company do you have knowledge of the extent of operations of elevators in the county in a general way?

[fol. 925] A. I do.

Q. And would you state how the rail shipments of grain from Warsaw compare with other elevators in the county?

A. I would say they are equal to probably a little more than most other rail elevators in the county.

Q. Which way do your shipments usually go from the Warsaw elevator?

A. They work east and south most of the time.

Q. And what rail facilities do you usually use other than the T. P. & W. in making those shipments?

A. Well, we don't use any other because we haven't any other.

Q. I mean when you are going to any other lines off of the T. P. & W., where do your shipments usually go?

A. To the Wabash at Forest, and the C. B. & Q. at Bushnell, and, of course, at Peoria we go to the I. C. and G. M. & O. It is according to where it is going or the destination.

Q. How great a portion of Hancock County do you feel that your elevator serves?

A. Oh, there's times when we buy grain from a distance of 20, 25 miles, but I would say an area of about 15 miles.

Q. What is the pattern or what governs the portion or your grain that is shipped by rail as distinguished from that that is shipped by water?

A. Well, we use our rail facilities more in the winter time, of course, when the river is frozen over than we do [fol. 926] in the summer, but there isn't any time in the year that we don't use the rail facilities and they are very necessary to our operation.

Mr. Lamet: Mr. Examiner, may I ask this witness the question as to his position on this petition?

Exam. Albus: Ask him if it would be the same as the first two.

By Mr. Lamet:

Q. Mr. Izard, you have heard the testimony of Mr. Sonnerborn, the President of the Chamber of Commerce, and Mr. Parr of the W rsaw Brewery, would your testimony be the same as theirs in respect to your preference of ownership of the T. P. & W.?

A. I think so.

Q. And would your opinion also be the same as theirs with reference to your unfavorable opinion of ownership by the M. & St. L.?

A. Yes.

Mr. Lamet: I believe that is all.

Exam. Albus: Is there any cross-examination?

Cross examination.

By Mr. Wheeler:

Q. Do you have car shortages?

A. Oh, at various times we have had car shortages.

Q. You are interested in a more adquate car supply?

A. Sir?

Q. You are interested in a more adequate car supply?

A. All grain people are, I think.

[fol. 927] Mr. Wheeler: I have no further questions.

Exam. Albus? Mr. Cassell?

Mr. Cassell: No cross.

Exam. Albus: Mr. Broker?

Cross examination.

By Mr. Broker:

Q. You ship these to various other interchange points, don't you, Forest, Bushnell, Peoria?

A. Yes, sir.

Q. And you are very much interested that good service continue to be given at each of those interchange points, aren't you?

A. Yes, sir.

Mr. Broker: Thank you.

Exam. Albus: Nothing further, you are excused, Mr. Izard. Thank you very much.

(Witness excused.)

[fol. 928] Exam. Albus: Does that complete the witnesses from Warsaw?

Mr. Lamet: I have one more, which will be brief. I would like to have the mayor.

Exam. Albus: All right.

HENRY THALMANN was sworn and testified as follows:

Mr. Wheeler: Mr. Examiner, may I move that the testimony of the mayor be stipulated to be the same or substantially the same as the witnesses who have appeared from Warsaw.

Mr. Lamet: Mr. Examiner, we will make this short. We won't go into detail about this. We simply want to show the position of the city of Warsaw.

Exam. Albus: It is going to take longer to get the stipulation straightened out than to have the mayor testify.

Direct examination.

Q. Your name is Henry—

A. Henry Thalmann.

Q. And are you or are you not mayor of the city of Warsaw?

A. Yes, sir.

Q. Was there or not a resolution adopted by the City Council of the city of Warsaw authorizing intervention by the city in this proceeding?

A. Yes, sir.

Q. And would you state about when that was?

A. About September 17.

[fol. 929] Q. Would you state the position of the city of Warsaw with respect to ownership of the TP&W railroad by the Pennsylvania and the Santa Fe?

A. I think it would benefit Warsaw and develop industrially.

Q. Is the position of the city of Warsaw therefor favorable to the allowance of that petition?

A. Yes.

Q. Can you state the position of the city with reference to ownership of the M&StL?

A. Not in favor.

Q. Now, Mr. Thalmann, do you feel that you are qualified to testify with respect to interchange of traffic with other railroads along the routes of these two roads?

Exam. Albus: He may feel it but I don't think so.

Are you a shipper, Mr. Thalmann?

The Witness: No, sir.

Exam. Albus: That takes care of that.

Mr. Lamet: That is the answer I wanted to extract from him and that is the end of the testimony.

Exam. Albus: Is there any cross-examination?

Mr. Wheeler: No, sir.

Mr. Cassell: No, sir.

Mr. Broker: No, sir.

Exam. Albus: Thank you, Mr. Mayor, you are excused.

(Witness excused.)

[fol. 930] Mr. Bagge: Mr. Examiner, if it wouldn't be impertinent that I request that we have a recess at this time. I think we can arrange it so we can arrange for the stipulation of the balance of our witnesses and make it as brief as possible.

Exam. Albus: We will take a recess until 3:40.

[fol. 931] Exam. Albus: The hearing will please come to order.

We will continue with the applicants' witnesses, the Pennsylvania and the Santa Fe.

Mr. McMunn: Mr. Woods, please.

VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, APPELLANT,

vs.

UNITED STATES OF AMERICA, ET AL.

No. 27

SOUTH DAKOTA, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

No. 28

MINNESOTA, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

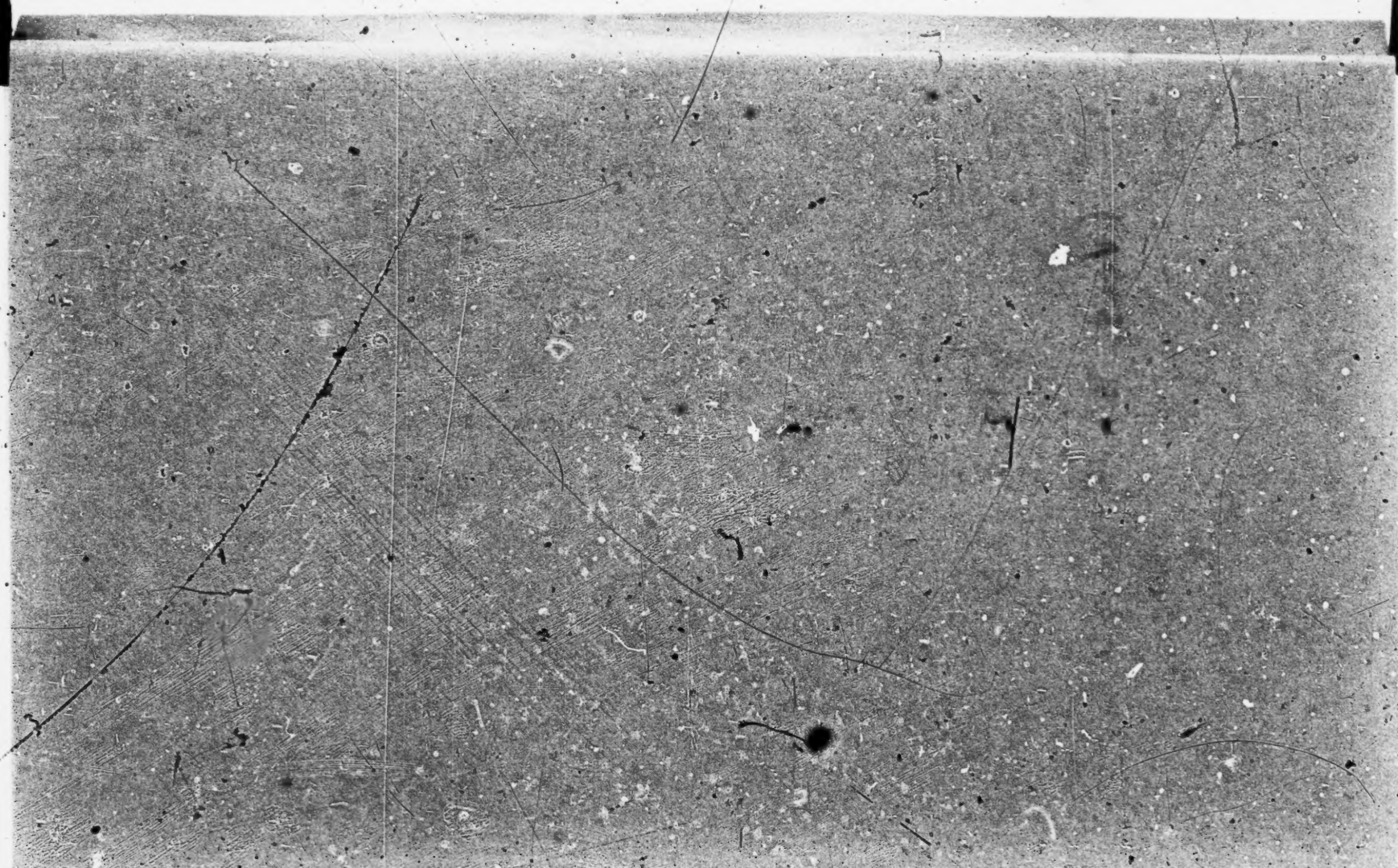
APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

No. 12 filed December 1, 1958

No. 27 filed January 2, 1959

No. 28 filed January 8, 1959

Probable Jurisdiction Noted March 9, 1959



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W. Paul Woods was sworn and testified as follows:

Direct examination.

By Mr. McMunn:

Q. Will you state your name, please?
A. W. Paul Woods.
Q. Where do you reside, Mr. Woods?
A. 105 East Myrtle Street, Canton, Illinois.
Q. What is your occupation?
A. I am a die fitter at the International Harvester Company and mayor of the City of Canton.
Q. How long have you been mayor of the City of Canton?
A. I have been a city official, alderman, for 10 years, and mayor going on seven years.
Q. What is the population of the City of Canton?
A. Approximately 12,500.
Q. And where is it located with reference to Peoria?
A. Approximately 30 miles—I mean west and south.
Q. And what railroads is it on?
A. It is on the T. P. & W. and the C. B. & Q.
Q. They cross in Canton?
A. That's right. They cross at Fourth Avenue and Railroad.
[fol. 932] Q. What business and industries are located at Canton?
A. We have the International Harvester Company and overall company, two overall companies, and the elevator.
Q. Are there any strip coal companies in or near Canton?
A. We have strip mines south and west of Canton.
Q. And some of their headquarters are in Canton?
A. That is right. They have headquarters across—headquarters is across from the city building in the City of Canton.
Q. What is by-far the principal industry in Canton now?
A. International Harvester Company.
Q. And how many men do they employ?
A. It varies at times, from seventeen hundred to about twenty-six hundred.

Q. I will ask you if the city council of Canton took any official action as regards filing a petition to intervene in this case?

A. They did, on September, around September 20, 1955.

Q. And what was that action?

A. They instructed you and I to intervene in the case.

Q. Intervene on whose behalf?

A. In behalf of the city council.

Q. What was the position of the council action in regard to the acquisition of the T. P. & W. Railroad by the Santa Fe and Pennsylvania?

A. They unanimously approved them.

[fol. 933] Q. Do you know the reasons for this?

A. They are interested in the survival of the City of Canton and the people because we have seen times before where it has not been too good of transportation through there once before, before Mr. McNear had it.

Q. What was the reasoning of the council—what was the position of the council with regard to the acquisition of the line of the T. P. & W. by the M. & St. L.?

A. They haven't taken any action of the city council because they adopted the resolution, they stayed by it, and they weren't asked for another railroad.

Q. Have you read the petition of the Santa Fe and the Pennsylvania—

A. I have.

Q. (Continuing) — their application in this case?

A. I have.

Q. Have you also read portions or the application of the M. & St. L.?

Mr. Wheeler: Will you clarify it just to indicate whether it is the application or portions.

Mr. McMunn: Portions.

A. I have read portions.

By Mr. McMunn:

Q. Is your position still the same, I mean the official position of the city council that they are favorable towards the Santa Fe and the Pennsylvania—

[fol. 934] A. That's right.

Q. (Continuing) —rather than the M. & St. L.?

A. That is right.

Q. Since the filing of the petition to intervene or rather since the council action of September 20 have you since learned that there are other roads, namely the Nickel Plate and the Rock Island, who have also asked in their petition to intervene, asked to purchase a proportionate share of the T. P. & W.?

A. I have knowledge of that.

Q. Where did you get that information?

A. Mostly, I believe I did receive some communication from the commissioner or somebody, and also through newspaper readings.

Q. Has this matter been discussed in the city council?

A. Informally.

Q. What in your opinion is the position of the city council as regards what has been termed multiple ownership here?

A. Well, personally myself I think most of them I have talked to they are opposed to it on the strength that sometimes it is hard enough to get one ownership to fix a railroad crossing without having to go to several.

Mr. McMunn: That is all.

Exam. Albus: Is there any cross-examination?

Mr. Wheeler: No, sir.

Exam. Albus: Mr. Cassell.

Cross examination.

[fol. 935] By Mr. Cassell:

Q. Did you understand that you were going to have several railroads managing the T. P. & W. if the various plans were approved?

A. I understand that.

Q. And if you were informed that the Rock Island subscribed to the same position as the Santa Fe and the Pennsylvania, that the present management and present officers of the T. P. & W. would be left intact and the present corporation, which is now serving you, be left intact, wouldn't that serve your purpose?

A. It still wouldn't change my position.

Q. You would have only just one person to go to just as today, wouldn't you?

A. I hope so.

Q. If you had that, that would be what you want, isn't it?

A. Well, you have a point there that we like to, when we ask for something to be done, we can go to one individual. I mean it is easier to get anything done. You realize that and I do too.

Q. Surely. If you were assured of that, that's what you want, isn't it?

A. As far as we are concerned we would be interested in one management of it.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Cross examination.

[fol. 936] By Mr. Broker:

Q. Do you understand that you would have occasion to go to the Pennsylvania and Santa Fe if they alone obtained control?

A. Do that, sir?

[fol. 937] Mr. Broker: Would you read the question, please.

(Question read.)

A. If they would obtain control of it, I presume that we'd still be in the position we are at the present time, that we would, instead of under one management, that they'd have this one line, the TP&W, that they wouldn't deprive it of its present management, and that's who I feel like it would be, if I needed to get anything done, that I could get ahold of them.

By Mr. Broker:

Q. Do you understand that if the Nickel Plate were to gain control it would maintain the same organization that presently exists?

A. I do.

Mr. Broker: No more questions.

Exam. Albus: Your only purpose in being here, Mr. Mayor, is to support the application of the Pennsylvania and the Santa Fe?

The Witness: That is right, sir.

Exam. Albus: Thank you very much.

You are excused.

(Witness excused.)

Mr. Ramsey: I will call Mr. Cole.

KENNETH CHARLES COLE, was sworn and testified as follows:

Direct examination.

By Mr. Ramsey:

Q. Would you state your name, please?

[fol. 938] A. My name is Kenneth Charles Cole.

Q. And your address, please?

A. Canton, Illinois.

Q. And your occupation?

A. I am executive secretary of the Canton Chamber of Commerce.

Q. Mr. Cole, how many members are in the Canton Chamber of Commerce?

A. We have 436 members which comprise the business, professional, industrial, manufacturing interests of the city.

Q. And are all types of business and industry represented in the membership?

A. Yes.

Q. Has the Board of Directors of the Canton Chamber of Commerce had an opportunity to meet and officially take any action in regards to the application of the Santa Fe and the Pennsylvania railroads in obtaining control of the TP&W railroad?

A. Yes, on September 9 at our official board meeting the application, or not the application itself, but there was mention made of the application by the Santa Fe and the Pennsylvania to acquire the TP&W, and the Board approved the then president to file a petition to intervene.

Q. And that petition of intervention was filed, is that correct?

A. Yes.

Q. Was this matter discussed officially by the board of [fol. 939] directors?

A. Yes, it was. At that meeting and also subsequent meetings, as other petitions came to our office.

Q. What is the official position of the Canton Chamber of Commerce?

A. The Canton Chamber of Commerce definitely opposes the Santa Fe and Pennsylvania in their application to acquire the TP&W. Canton is a one-industry town, namely, the International Harvester Company, and since business fluctuations cause fluctuations of employment at the International Harvester, these same fluctuations cause fluctuations in the business and economy of the entire city. As it has been mentioned before, the International Harvester employs twenty-four or twenty-five hundred people. The strip mines in the area employ roughly throughout the county another fifteen hundred.

Exam. Albus: What is your position in this case?

The Witness: Sir?

Exam. Albus: What is your position in this case?

The Witness: I am secretary of the Chamber of Commerce.

Exam. Albus: I know, but what position does the Chamber take?

The Witness: We are supporting the position of the Santa Fe.

Exam. Albus: I understood you to say you were opposing.

The Witness: Oh, no. If I did, I didn't mean it.

Exam. Albus: Now, you may continue.

[fol. 940] Mr. Broker: I thought he said that, too, Mr. Examiner.

By Mr. Ramsey:

Q. Your position is—

A. We are definitely supporting the application of the Santa Fe and Pennsylvania.

Q. What is the economic situation of the town by which you have arrived at these decisions?

A. Well, Canton is the largest city in Fulton County. It does an average retail business of $25,000,000 per year. As I was saying earlier, the prime employment is at the International Harvester and the strip mines in the area. There isn't enough employment to go around. The population was approximately 11,000 and today it is 12,300. However, the hypothetical population of today should be about 25,000 people. There are 276 babies born in Canton every year—

Exam. Albus: What's that going to have to do with this case?

The Witness: I want to show the need for increase in industrial development, which is our main point here. I have a point to make, sir.

Exam. Albus: All right, go ahead and make it.

A. There are 156 deaths in Canton every year which leaves 120 people gained. Over a period of 25 years that would mean another 3,000 people. Now, there are 150 new families move into Canton every year and the average family is at least three people and that would be 450 people per year or a gain of 11,250 persons over the 25 years since 1930 to 1955, or adding that to the 1930 population [fol. 941] we should have 25,000 people in Canton but we only had 12,000 because there aren't jobs available.

The average graduating class of the Canton High School was 279 students, 54 of them going to college, 225 are put on the labor market every year and we don't have jobs for them.

The position of the Canton Chamber of Commerce is one or rather our main project is industrial development. We have been working for several years in trying to attract industry to Canton to take up this unemployment. We have one fairly warm prospect right now who is considering Canton providing, of course, that the Santa Fe acquires the TP&W. True, they may decide not to come to Canton even though the Santa Fe does come in, but at least they are considering us now because the Santa Fe is trying to acquire the TP&W.

By Mr. Ramsey:

Q. In other words, it is essential in your opinion and in the opinion of the Chamber of Commerce that the very active and aggressive railroad, east and west, I should say, be obtained or retained through Canton, is that correct?

A. Yes.

Q. And the basis of that would be primarily for industrial reasons?

A. That is right.

Q. Have you had any occasions to examine or learn about the application or portions of the application of the M&StL?

A. I have read the excerpts from it.

[fol. 942] Q. And other railroads who wish to intervene?

A. Yes, I have seen the petitions.

Q. What is the Chamber of Commerce's position with regard to those railroads or any other railroads?

A. It appears to the Chamber of Commerce as far as the Minneapolis, St. Louis railroad is concerned since they run from northwest to southeast into Peoria and for a great portion of that run they parallel the route of the TP&W it doesn't appear to us that the Minneapolis, St. Louis would maintain the western half of the TP&W. It doesn't seem to us that it would be economically feasible for them to do so.

Q. What is your position with regard to the Rock Island, Nickel Plate railroads obtaining interest and control?

Mr. Casseli: I object to that. It doesn't show that the Chamber has taken a position, it shows to the contrary.

Exam. Albus: Has the Chamber of Commerce taken a position?

The Witness: As the petitions came to our office we have looked them over and talked about them several times since our petition was filed and we have discussed—

Exam. Albus: Have they passed a resolution?

The Witness: They haven't passed a definite resolution but we have discussed it.

Exam. Albus: Objection sustained.

By Mr. Ramsey:

Q. Would you state your opinion with regard to that?
[fol. 943] A. I don't believe, like everyone else has talked about it as far as multiple ownership, as far as development purposes the fewer owners the better especially as to economic reasons, the more owners the less economic interest they would have in that particular area.

Mr. Ramsey: That is all I have.
Exam. Albus: Thank you.
Cross-examination, please.
Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. What industry was it that you refer to as coming into Canton only if the Santa Fe came in?
A. I am not at liberty to say.

Mr. Wheeler: Mr. Examiner, I move that his testimony be stricken, then.
Exam. Albus: With respect to that industry—no, it may stand. What difference does it make?
Mr. Wheeler: Mr. Examiner, how can I determine whether or not this witness is telling the truth or not if he won't answer questions with respect to it.
Exam. Albus: Let the record stand the way it is.
Mr. Wheeler: I have no questions.
Exam. Albus: Thank you.
Mr. Cassell.

Cross examination.

[fol. 944] By Mr. Cassell:

Q. Mr. Cole—
A. Yes, sir.
Q. (Continuing) —you are familiar with the petition which your Chamber filed?
A. I have seen it, yes, sir.

Q. Does that correctly state your position in this case?
A. I believe so.

Mr. Cassell: That is all.
Exam. Albus: Mr. Broker.
Mr. Broker: No questions.
Exam. Albus: Thank you.
Mr. Ramsey: I would ike one more, Mr. Examiner.
Exam. Albus: Very well.

Redirect examination.

By Mr. Ramsey:

Q. Can you tell us why you can't disclose the name—

Exam. Albus (interrupting): He doesn't have to do that. I have already ruled on it.
You are excused.

(Witness excused.)

[fol. 945] Mr. Ramsey: I will call Mr. Murphy.

Francis P. Murphy was sworn and testified as follows:

Direct examination.

By Mr. Ramsey:

Q. Would you state your name, please.
A. Francis P. Murphy.
Q. And your address?
A. Canton, Illinois.
Q. What is your occupation?
A. County judge, Clinton County.
Q. Are you holding any official capacity with a corporation called Canton Industries, Inc.?
A. I am a member of the board of directors.
Q. Would you briefly describe the interest and activities of that organization.
A. Canton Industries is an industrial development fund about two years old which has by popular subscription

raised a sum of money in an effort to attract industry to Canton. Canton Industries feels that the future of the town depends very vitally on the diversification of industry in that town, and we feel, with regard to this particular proceeding, we are very much concerned about transportation. One of our problems in the past has been transportation which was not considered to be too good. The TP&W has improved during the past 10 or 15 years. We are on a branch line of the CB&Q. We know very defi- [fol. 946] nitely from contracts in the past that unless we keep or improve the transportation system that we have today that we are not going to get any, probably not going to get any further industry in the town.

Q. Judge Murphy, are you familiar with the application of the Santa Fe and the Pennsylvania Railroads, the application to acquire control of the TP&W Railroad?

A. I have a pretty good knowledge of it.

Q. Has the Canton Industries taken any official position in regard to that?

A. Yes, action was taken last July and a letter was written to the Commission by the then president of the Canton Industries. At an annual meeting about a month ago the matter was again discussed informally, at this annual meeting, and by the board of directors, and I was brought up to date on our position.

Q. Would you state that position.

A. We are in favor of acquistion of the TP&W by the Santa Fe and the Pennsylvania Railroad.

Q. And can you state briefly why.

A. It is our understanding that first of all the TP&W will be left in the hands of the same management that has control at this time. It has, in our estimate, been progressive. In addition to that, although I frankly am not counting my chickens before they are hatched, I feel that if this is part of the Santa Fe, and a little more remotely, of the Penn- [fol. 947] sylvania Railroad, that when it comes to locating industry we are going to get a chance to talk to some of these people, whereas in the past we have had no bids and, of course, there is no interest on the part of the Santa Fe up to this time to come to Canton.

Q. Are you familiar with the application of the M&StL Railroad?

A. Well, slightly, yes.

Q. Or portions of it?

A. Slightly.

Q. Has the Canton Industries, Inc., taken any position in regard to their application?

A. The feeling of the board, Canton Industries board of directors, has been one rather of an opinion based simply on the fact that the M&StL is a few miles north of the TP&W. It is our understanding that it is, the acquisition of the TP&W is, primarily to connect up two interests, and that the west end of the TP&W from Peoria west, at best, would not be promoted and might very well in the future be neglected and leave Canton to die.

Q. Now, are you familiar with the intervention of the Nickel Plate and the Rock Island Railroads?

A. I know that they have intervened.

Q. And have the Canton Industries taken any official action regarding that?

A. I don't think at the time of our last meeting that we were too familiar with their aims, but the general proposi- [fol. 948] tion was brought up, how do we feel about, may I say, multpile ownership, and the feeling there was that if it was expressed too diversely, the very thing that we are after is somebody, for instance, Santa Fe, who might be interested in our city because it was on their line, if the thing is spread out too many places we are going to be lost in the shuffle, and I'd say, without knowing too much of the facts with regard to the other railroads, our feeling is that we'd rather take our chances with the Santa Fe. And I might add this, we are very selfish about it, we don't care about the Santa Fe, we are looking out for us. If somebody comes along with a better proposition, we'd like to hear it.

Mr. Ramsey: That is all.

Exam. Albus: Cross-examine, please.

Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. Have you inquired with respect to the efforts of the Santa Fe Railroad to aid industrial development in towns on their line in Illinois?

A. My answer is no, but let me add this one point, if I may. A few weeks ago a neighboring town got an industry we would have liked to have received, purportedly on the basis that they wanted to be on the Santa Fe. Now, how they got it and what the details were I don't know, but that is the newspaper report. Maybe we'd had a show on that [fol. 949] if we had been on the Santa Fe or tied in with them.

Q. Is that the same industry as referred to by the previous witness?

A. I don't know. I don't think so, but I don't know.

Q. Do you know the name of the industry?

A. Brown Trailer, or something, something or other, from Toledo to Galesburg.

Q. Now, with specific reference to Lomax, do you know what the Santa Fe has done to encourage development at Lomax?

A. No, I don't.

Q. How does Lomax compare in size to Canton?

A. I don't know. It is considerably smaller, but I don't know the population of Lomax.

Q. Yet it is located on the Santa Fe, is it not?

A. That is right.

Q. Have you looked at a map of the Santa Fe and seen the size of the towns located on its line?

A. I have noticed some of them, yes.

Q. Some of them are very small, are they not?

A. Yes, sir.

Q. Are you aware that some of them have no industries at all located there?

A. Yes, sir.

Q. Are you aware that some of the towns that have been on the Santa Fe for many years still have no industries in them?

[fol. 950] A. Yes, sir.

Mr. Wheeler: I have no further questions.
Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Mr. Murphy, I take it, then, you are not familiar at the present time with the plan of Rock Island in this case?

A. What little I know is mostly from what's been said here today or, shall I say, suggested. I don't know the details now.

Q. I see. One of your principal concerns is the retention of the present management and the policies of that management, is that right?

A. One, yes.

Q. A plan that would give you that, that's what you want, is that right?

A. Well, I added this other point, that I have been told that this is what will follow. I am not naive enough to believe that it's guaranteed, but if the TP&W becomes a part, a subsidiary, if you want to call it that, of the Santa Fe, I think we may have reason to reasonably expect some consideration from the Santa Fe through their industrial development program. Now, let me put it this way, I have no guarantee, I have been given no assurance by anyone, but certainly from what we have today and the possibilities of the other arrangement, I think we have something to gain. At least, it is a gamble.

[fol. 951] Q. Wouldn't these other railroads have industrial departments equally interested in locating industries in Canton?

A. That is, what other railroads, the ones that have intervened?

Q. The Rock Island, for instance.

A. I don't know why it would. It is quite a ways off.

Q. Isn't the Santa Fe just as far off?

A. The Santa Fe will be interested in the TP&W.

Q. Do you know where the Rock Island connects with the TP&W?

A. At Peoria.

Q. Any place else?

A. I think it connects at Keokuk.

Q. And it connects at the western end just like the Santa Fe, doesn't it?

A. Yes.

Q. So it needs the TP&W to provide a route to the east, doesn't it, just like the Santa Fe?

A. If you are asking needs, I don't know. You may want it, it may be advantageous to the Rock Island, I don't know that it is needed.

Q. Isn't the situation of the Rock Island similar to that of the Santa Fe in this case?

A. Yes, I will agree with the point you are making. The point I am making is, we feel that if the TP&W is identified enough with one major line, in this case the Santa Fe, we are going to be better off than if it is a subsidiary of half [fol. 952] a dozen different railroads.

Q. Do you understand that the Santa Fe service is going to come through Canton?

A. No. I say if the TP&W is identified with the Santa Fe.

Q. Wouldn't the identification with another strong railroad help, too?

A. Yes, it would, providing there aren't too many. Let's put it this way, if there are six of you identified with, interested in, the TP&W, I just wonder how much interest any one is going to have in Canton, Illinois.

Q. Wouldn't you suppose any line that was putting up four million dollars would be pretty interested?

A. Four million dollars where and for who?

Q. To buy in.

A. I don't know that they would be interested in Canton, Illinois.

Q. Wouldn't you think that would be enough to interest them in the line they are buying?

A. Yes, it would. I am not saying that they wouldn't be interested, that they might not do something. I am out in the sticks and I am looking at it from our viewpoint, and we think if it is spread out too much we are not going to have the interest that we might have from one or two. I might say this, under certain circumstances, I would prob-

ably say I'd only want to see one. However, this seems to be a link between two major lines.

[fol. 953] Q. Well, now, let's put it this way, Mr. Murphy, suppose you had $50,000 invested in a company and John D. Rockefeller had $50,000 invested in a company, which of you would have the major interest in that company?

A. Obvious.

Q. Who would that be?

A. Practically or on paper? On paper it would be the same. Practically, I think there might be a little more influence on one side or the other.

Q. Practically which one of you are going to be more concerned about that fifty thousand bucks?

A. I am.

Q. Sure. So it isn't controlled just by the percentage that you have in a company, then, is it?

A. No, that's right, I will agree.

Q. And anybody who puts in four million dollars might be pretty interested in it, mightn't they?

A. Yes, I don't know that their interest is in Canton. Their interest may be in saving their own skin, which is the interest in Canton I am concerned with.

Q. Have you been told that the Santa Fe was just interested in Canton?

A. No.

Q. What about its skin?

A. They are looking after themselves, too, but I think we [fol. 954] have a little more opportunity and, as I say, I don't trust them much more than I trust anybody else, but from a practical standpoint I think there is a little bit more opportunity of getting some consideration from them if they are primarily interested, if they are the big interest holder in the TP&W.

Now, of course, the proposition is two in this particular situation, the Pennsylvania and the Santa Fe, but let's not get too many in here, because we are just going to have a little old tip up through there.

Q. Don't you think that a line which would put in so substantial an amount of money in that would be interested in developing it on your basis, now, your Rockefeller

versus yourself, wouldn't you be a lot more interested in seeing that $50,000 prosper than Mr. Rockefeller?

A. The analogy is perfect except there may be some other reason for that four million dollars. I don't know what it is.

Q. So far as you know, it looks like anybody who would put up four million dollars would be pretty interested in preserving the whole line, doesn't it?

A. For their own advantage.

Q. And that would have to result to yours, too, wouldn't it, the only way they can prosper is by having the railroad prosper, isn't it?

A. I told you I am from the sticks, I don't know all the answers.

[fol. 955] Q. How do you make dividends on an investment?

A. How do you make dividends by an investment?

Q. By making the investment prosper, don't you?

A. That is right.

Q. That's about the only way the Rock Island could make a return on its four million dollars, then, isn't it?

A. Yes.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

[fol. 956] Cross examination.

By Mr. Broker:

Q. How far away did that other industry locate that you sought for your town?

A. About 45 miles. I say we didn't seek it. It was located and the report that I received—remember, I have no facts, shall we say. The report was that they wanted to locate on the Santa Fe.

Q. Your interest apparently is to seek identification of the T. P. & W. with, let's say, the Santa Fe?

A. I think it would help in talking to prospective industry to show that we are connected with two of the major lines.

Q. Now, you seem to look more to the Santa Fe than to the Pennsylvania, is that right?

A. I'd say yes, primarily because of its proximity. Actually there is a problem of location, of a connecting link between the two railroads, which would be advantageous certainly for shipping ease, Santa Fe going west.

Q. You think, then, that the Pennsylvania would be more interested in locating industry near Effner, let's say, than nearer your part of the line?

A. I would think so. I am no expert on it, but I would think so.

Q. The thing that I wonder about is this, is how this identification with these owners squares with the idea of an independent railroad. Could you give me your ideas on that?

[fol. 957] A. I have spent several years in industry, and in the big city, I might say, and I have found that management in the big city the same ~~as in~~ the small town, they are not any smarter and they are influenced, and particularly in the big city, the big name influences management. Now, this is just a general statement. If you go to Chicago or if you go to Toledo or Cleveland or someplace else, what is the T. P. & W.? We take pride in our area and the T. P. & W. because we know twenty or twenty-five years ago what a wreck it was. Today it is something to be proud of. But how many people in the rest of the country know that? If they know that they have what amounts in practice to a direct line starting at the east or any place on the Pennsylvania and riding on through the Santa Fe, missing Chicago, from the people I have known in industry, that would be a very good argument. I personally have talked to people in Chicago, people in industry, talking to them about coming to Canton, and the big problem that always comes up, well, what about transportation, and I get arguments for a few minutes, and in about 15 minutes I stop the arguments. They don't maybe agree but they don't disagree. When they find out what we have, the possibilities. I had one representative of one firm, met him at the convention in Chicago, who told me, he said, "If you had told us about Canton three or four years ago, we might have been interested, but we just got through building a

plant." But he was surprised when I told him the possibilities in transportation.

[fol. 958] Q. You indicated earlier in response to a question from the Rock Island attorney that the Nickel Plate, let's say, might be willing to invest $4,000,000, not because of interest in Canton but for possibly some other selfish reason, is that right?

A. That is right.

Q. And wouldn't that be true of the applicants equally?

A. Sure.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions?

Mr. Wheeler: Yes, sir.

Exam. Albus: Mr. Wheeler.

Further cross examination.

By Mr. Wheeler:

Q. Don't you think an industry would prefer a location on the Santa Fe's main line to a location on the Santa Fe's secondary line?

A. I would say yes, very definitely. May I make a comment there?

Q. Certainly.

A. We feel that this line has a possibility, and I might say this, Mr. McNear was not the only one to dream.

Q. I don't want you to dream on the record, please.

A. All right.

Q. If you have something concrete, I'd like you to state it.

A. Yes, I have. Will you let me finish, please?

Q. Sure.

[fol. 959] A. If the T. P. & W. becomes an integral part, separate management, but in practice a part of the Santa Fe and the Pennsylvania and a by-pass of a bottleneck, doesn't that amount pretty close to being on the main line? Maybe it doesn't, but I think I could sell it to some people who are interested in an industrial site. Now, again it is a matter of opinion. It isn't as good maybe but I think in this particular situation we have some possibilities with this kind of a setup.

Q. If you had a 50 per cent interest of a business, in one business, and a hundred per cent interest in another, to which business would you devote your most effort?

A. That's the thing I am worried about.

Q. The answer is—

A. (Interrupting) The answer is the one with the hundred percent.

Q. Now let me ask you this, have you counted the number of towns on the main line of the Santa Fe to which that railroad owes its industrial efforts?

A. No, I haven't.

Q. Have you looked at a map of the Santa Fe to get an approximation of how many towns that would be?

A. I have looked at a map. I never stopped to count the towns. Do you want me to?

Q. No, sir. Have you looked at a map of the Pennsylvania?

A. Yes, sir.

[fol. 960] Q. Have you noticed the number of towns on their main line to which the Pennsylvania owes its industrial development efforts?

A. Are you asking me if—

Q. (Interrupting) Can't you just answer that yes or no?

A. No, I can't because I am not too sure I get the question, the thought behind it.

Q. I asked you have you looked at the main map showing the towns on the main lines of the Pennsylvania to ascertain at least in general how many towns the Pennsylvania, towns located on its main lines, the Pennsylvania now owes its efforts toward industrial development?

A. I have made no study in that regard.

Q. You didn't think that was pertinent to your determinations in this case?

A. I answered that question to save time because I don't know what your thought is behind it, so I said I made no study of that problem. I say this on the Pennsylvania—

Q. (Interrupting) Now, wait a minute, can you answer my question, didn't you think that the ascertainment of those facts was important to your determinations with respect to the applications here?

A. Didn't I think that?

Q. Yes.
A. In the past?
Q. Yes.
[fol. 961] A. No, I don't think that.
Q. Do you not think that might have a bearing?
A. It might have a bearing but not an all persuasive bearing.

Mr. Wheeler: I have no further questions.
Exam. Albus: Are there any further questions?
Mr. Cassell: No, sir.
Exam. Albus: You are excused. Thank you, Judge, so much.

(Witness excused.)

Mr Bagge: Mr. Examiner, this concludes the testimony of the applicant railroads as to the eastern and unless I have missed one or two.
Mr. Lucas, is that correct?
Mr. Lucas: No, we had a lot of witnesses, but they are not available. We are willing to let the eastern end of the line be closed.
Mr. Lucas: I wonder if I might clear up something on the record. Mr. Cassell has referred several times to a figure of $4,000,000 as to the potential consideration of the Rock Island and now Mr. Broker has picked up that $4,000,000, which would see to be a third interest. Their petition of intervention certainly indicates rather clearly that they are willing to take an equal part with the applicants or with such other railroads as may be authorized to participate. I would like to ask if they are willing to state on the record whether they are changing their position in the petition of intervention?
[fol. 962] Mr. Broker: That is the maximum amount that we would have to pay, one third of the purchase price.
Mr. Lucas: This is the Rock Island, Mr. Broker, "be included in such purchase on an equal basis with two applicant carriers and such other railroad companies or their subsidiaries as may be authorized to participate in such acquisition."
Mr. Cassell: I think it is perfectly clear.

Mr. Lucas: Twelve million dollars is what is paid for the stock.

Mr. Cassell: Our maximum liability in this case is $4,000,000. That is what we are willing to put up here and that is our stand in this case.

Mr. Lucas: Let's leave it without a dollar tag. Are you seeking a third or a fourth? If the Commission sees fit to include the Nickel Plate along with the Rock Island?

Mr. Cassell: If it sees fit to include the Nickel Plate, we get a fourth.

Mr. Lucas: Is that true of you, Mr. Broker?

Mr. Broker: That is right, a proportionate share with all of those that are included who gain control.

Mr. Lucas: Well, if you include the Wabash and the C. B. & Q., would you cut down to a sixth?

Mr. Cassell: We said equal participation with whoever are in.

Exam. Albus: All right, that clears that up.

[fol. 963] Exam. Albus: Mr. Wheeler.

Mr. Wheeler: I would like to call Mr. Russell Coulter.

J. R. Coulter was sworn and testified as follows:

Direct examination.

By Mr. Wheeler:

Mr. Wheeler: Mr. Examiner—

Q. Would you please state your name and address for the record.

A. J. R. Coulter, Peoria, Illinois.

Q. And your occupation?

A. I am president of the TP&W railroad.

Mr. Wheeler: Mr. Examiner, I am calling Mr. Coulter to the stand as an adverse witness. Mr. Coulter, as he has stated, is president of the Toledo, Peoria and Western, an intervenor in this case in support of the applications of the Pennsylvania and the Santa Fe, and therefor necessarily in opposition of our application insofar as the grant

of the Santa Fe-Pennsylvania would exclude a grant of our application.

I am going to ask Mr. Coulter a very narrow line of questions. I am not offering him as a direct part of our case, obviously as I have stated, he is an adverse witness. I think, however, that the cross-examination of Mr. Coulter should be limited to the examination that he is asked by me. And if anyone else want to call him as a witness in support of their case they are free to do so.

[fol. 964] Exam. Albus: Very well.

Mr. Broker: I would just like to correct or inquire, you indicated that possibly the TP&W was a parity, you mean that Mr. Coulter is a parity individually, don't you?

Mr. Wheeler: No, sir, the TP&W I am referring to.

Mr. Thomas: That isn't correct just to keep the record straight. The trustees have intervened. The TP&W is not a parity in this case.

Exam. Albus: Does that change the situation any?

Mr. Wheeler: I don't believe it does, sir, since the trustee hold the majority of stock in the railroad.

Exam. Albus: Mr. Cassell.

Mr. Cassell: I have a statement which I think should be made before the M&StL starts its case. I think it would appropriately come at the conclusion of the applicants Santa Fe and Pennsylvania, which relates to our own presentation and I would like to ask a question of them now, if I may, I think it would be more appropriate now.

Exam. Albus: Very well.

Mr. Cassell: We have some testimony prepared on passenger operations. However, we have the statements of record of the Santa Fe and Pennsylvania witnesses that no passenger operation is contemplated. If we may have a stipulation that no passenger operation will be conducted over the TP&W, either by the TP&W or through the Santa Fe or Pennsylvania or any other acquiring party, without [fol. 965] a subsequent application to the Interstate Commerce Commission for approval of the institution of that service, we, of course, would have no need for putting on that testimony.

Mr. Broker: What is your suggestion, imposition of a condition to present passenger service?

Mr. Cassell: That is correct and without going to the Commission for approval of the institution of a new service.

Their present position is that none is contemplated.

Exam. Albus: That is right.

How do you feel about that, Mr. Thomas?

Mr. Thomas: I don't feel I could make a stipulation on that until I talk with my executives.

Exam. Albus: Very well. May I suggest that you two get together afterwards. I am sure we are going to be here for a couple more days.

Mr. Cassell: M&StL operation goes either jointly or separately over the TP&W.

Mr. Wheeler: We haven't any contemplation of any at the present time.

Mr. Lucas: For the Pennsylvania I am not prepared to stipulate that in any event. There is some passenger service there now. I don't believe it would be necessary to go to the Commission. I am not sure but if there is independent management, certainly as far as the Pennsylvania is concerned [fol. 966] we are not going to interrupt whatever they may be doing in respect to existing passenger tariffs.

Mr. Cassell: Will you please describe the present—

Mr. Lucas: No, I will not.

Mr. Cassell: You said there was and I am informed that there is not. Is it a fact that there is, am I misinformed?

Mr. Lucas: There are passenger tariffs outstanding, there are passengers that occasionally use the TP&W, that is my understanding.

Mr Cassell: On mixed trains?

Exam. Albus: Let's stop arguing. If you can get together I will accept the stipulation but I can't force anybody to make the stipulation.

Mr. Thomas: Mr. Examiner, I want to say one more thing.

Exam. Albus: Yes, Mr. Thomas.

Mr. Thomas: I don't feel it is appropriate to prevent my cross-examining a witness that this gentleman here calls just by his labeling him as an adverse witness, I don't see why that should restrict me.

Exam. Albus: Well, he just wanted you to be apprised of the fact to keep the cross-examination to the direct, and that is the law of evidence. Of course I will admit we don't follow it.

Mr. Lucas: Mr. Examiner, I want to join Mr. Thomas, if Mr. Coulter is being called now he is a witness of the M&StL.

[fol. 967] Exam. Albus: For a specific purpose.

Mr. Wheeler: An adverse witness.

Mr. Lucas: No, sir, he is not an adverse witness, not in our opinion. He is being called now by subpoena or otherwise, I don't know which, by the M&StL, and we will reserve the right to cross-examine him as a witness of your company.

Exam. Albus: All right, you will have that right. Let's get started so you can find out what he is.

By Mr. Wheeler:

Q. Will you please give a brief statement of your railroad experience, Mr. Coulter?

A. Well, I started with the main Central back in 1925, went to St. Louis, and was employed as a clerk with the St. Louis-San Francisco Company. I stayed there for a little over 20 years. I was chief traffic officer when I left in 1947, vice-president of the Frisco Company Transportation Company, and truck line, vice-president of the Frisco Lines of Texas, and came over as president of the TP&W May 1, 1947.

Q. Mr. Coulter, you have been in the later years in your experience in railroading been concerned to a large extent with traffic matters and traffic solicitation?

A. Yes.

Q. And you have been so concerned as president of the TP&W, have you not?

A. What with building up a railroad and rebuilding one, yes.

Q. You are thoroughly familiar with the TP&W's growth [fol. 968] and history of its traffic?

A. Yes.

Q. Mr. Coulter, of the five railroads, principal railroads involved in this proceeding, that is to say, Santa Fe, Penn-

sylvania, M&StL, Nickel Plate, and the Rock Island, taking into account all competing gateways and other considerations which affect your determinings, which railroad is most competitive with the TP&W?

A. Mr. Wheeler, that is a very difficult chore. I have some ideas and I will explore them.

Q. If you will.

A. If I may go in some detail about these junctions, gateways, and so forth.

I also would like to say that two or three years ago I did say to Mr. Heineman that I catalogued these connections with a degree of competition, and I will stick to that and explain it.

Q. Mr. Coulter, I wonder if you could state, list, the competition in the order that you find it and then make your explanation so that it will be clearer on the record?

A. Well, it seems to me that the Nickel Plate and Rock Island are probably our stiffest competition of the railroads involved in this case, and then I would take the Pennsylvania Railroad, and then to a limited degree the Santa Fe and M&StL.

Q. All right, Mr. Coulter, now, if you will make your explanation.

[fol. 969] A. The Nickel Plate, or rather the Rock Island, are in competition with us because they have a line through St. Louis, to St. Louis from Kansas City, they are in competition with us at Peoria as against our line from Keokuk to Peoria, and they are also getting into the Chicago gateway.

The Nickel Plate has a line from the East into St. Louis in competition with this gateway, and they have a line in Chicago, and they have a very competitive line of the TP&W as affecting the eastern part of our railroad.

The Pennsylvania has a line to St. Louis, has line into Chicago, and it has been testified here they are seeking their long haul to St. Louis, and have up to the application, I think, preferred Chicago to Effner.

The Santa Fe, and by the way the Santa Fe which I think has been the most helpful to the TP&W throughout the years of any railroad, has given us just passive resistance

to the Lomax gateway, but they do have a line into Chicago and they have actively solicited their long haul into Chicago. The M&StL is in competition with the TP&W through Nemo and the Santa Fe as against our connection at Lomax, and they are also in competition with us on some business which we have been handling with the Burlington through Kookuk as against their line into Peoria, of which we would not share at all.

That about explains it.

Q. Has not your competition or the competition of the [fol. 970] M&StL via the Nemo gateway decreased in recent years?

A. Well, I don't want to say that we have done so much better than the M&StL through Lomax than they have through Nemo, although I am aware that they are not guaranteeing perishable schedules, and I think I know that our interchange with the Santa Fe at Lomax is considerably greater than there is at Nemo.

Q. So that of the five railroads that you have mentioned, the M&StL would be the least competitive with the TP&W, is that not correct?

A. Well, it would be pretty close to the Santa Fe. It is a very hard thing to say.

Q. Mr. Coulter, did you have one or more, did you not have one or more discussions with Mr. Symes, the president of the Pennsylvania, about the M&StL acquiring the TP&W, and I am limiting the time now to the fall of, summer or fall of 1954?

A. Yes, I did.

Q. Approximately when was that, when were those conversations?

A. I don't recall, Mr. Wheeler. I remember the year. I think there were probably several running conversations going on throughout that year with Mr. Symes.

Q. Will you state what Mr. Symes said to you with respect to that application, or that proposition?

A. In connection with the M&StL and TP&W?

Q. Yes, sir.

[fol. 971] A. Well, Mr. Symes, as I recall, was always, at that time, favorable in the line a merger or acquisition

of the TP&W by the M&StL or vice versa. He said at that time that he had held that view for a good many years.

Mr. Wheeler: I have no further questions.
Exam. Albus: Cross examination, please.
Mr. Thomas.

[fol. 972] Cross examination.

By Mr. Thomas:

Q. You indicated in answer to a question just now, Mr. Coulter, your discussions with Mr. Symes about the relationship of the T. P. & W. and the M. & St. L. How do you feel about that now?

Mr. Wheeler: Mr. Examiner, I submit this is beyond the scope of the direct examination.

Exam. Albus: If the witness desires to answer, he may do so.

Do you have any reason for not answering that, Mr. Coulter?

The Witness: No, I have no reason for not answering anything.

Exam. Albus: Proceed.

A. In 1954 I shared that view but I do not share it now.

By Mr. Thomas:

Q. Why?

A. From the application of the Santa Fe and the Pennsylvania that home would be a better home for the T. P. & W. than any place I know.

Q. How would it help the T. P. & W.?

Mr. Wheeler: Mr. Examiner, I certainly object to this. This is way beyond the scope of the direct examination, and I think if he is going out into this area, that he should call Mr. Coulter as his own witness.

Mr. Thomas: It seems to me Mr. Wheeler wants to bring this issue into the record. I have a right to develop it.

[fol. 973] Exam. Albus: My only concern is how much leeway you are going to get on these two points that Mr.

Wheeler brought up on direct examination, namely, competition and this deal of the M. & St. L. to take over the T. P. & W. That is the limit of the scope of the direct.

Mr. Wheeler: It was even more limited than that, if I may refresh your recollection, sir. The testimony with respect to the acquisition of the T. P. & W. by the M. & St. L. was limited to Mr. Symes' statement.

Exam. Albus: That is correct. I do remember that now. But I am going to permit him to answer this one more question.

You may proceed, Mr. Coulter.

A. What is the question?

(Question read.)

A. The acquisition by the Santa Fe and the Pennsylvania of the T. P. & W. would give to the T. P. & W. a reservoir of traffic which it hasn't today, and because of the testimony of Mr. Gurley and Mr. Duffy of the Santa Fe that Lomax would be put on the same basis as Chicago, and that the testimony of Mr. Symes and Mr. Carpi that Chicago and Effner would be put on the same basis, a parity of junction points.

By Mr. Thomas:

Q. Would that help the T. P. & W. in competition with the St. Louis Gateway?

A. Very much so.

[fol. 974] Q. What effect do you think it would have on other railroads?

Mr. Wheeler: Mr. Examiner, really—

Exam. Albus: I sustain the objection there.

Do you mean other than the ones in this case?

Mr. Thomas: I will limit it to the ones in this case.

Mr. Cassell: I will object to that, too.

Mr. Wheeler: Mr. Examiner, I still submit this goes way beyond the scope of the direct.

Exam. Albus: All right, objection sustained, with the understanding that he can call Mr. Coulter as his own witness.

Mr. Wheeler: Yes, sir.

By Mr. Thomas:

Q. Mr. Coulter, you were asked to rate these various railroads from the standpoint of their competition with the T. P. & W., and you mentioned particularly their geographical locations. Are there other measures that affect your opinion as to what road is more competitive than another road?

A. Yes. I think that the availability of traffic to a road such as the T. P. & W. is a very important factor and will be a very important factor to the future success or even the maintenance of the T. P. & W.

Q. Is there—I am speaking generally now—anything between the relations of one road and another that give you an indication as to their competitive relationship or their lack of competition, so to speak?

Mr. Wheeler: May I have that question read?

[fol. 975] (Question read.)

Mr. Thomas: Let me rephrase that, will you, please?

Exam. Albus: Restate it, please.

By Mr. Thomas:

Q. In determining whether or not one road is competitive with another or the extent of that competition, is the relationship between the managements of the two roads and their cooperation a factor to be taken into consideration?

A. Yes.

Q. Would you discuss that factor with respect to the Nickel Plate and the T. P. & W., for example? Have they worked with you in coordinating schedules?

A. The Nickel Plate has worked with us in coordinating schedules.

Q. Have they cooperated with you in all other ways? Have there been exceptions?

A. Yes, there was an exception on our industrial property in east Peoria. We approached the Nickel Plate in 1952 to join with us in joint service to land owned by the T. P. & W. in east Peoria, and they turned us down, I think, three times. And we went out and bought a right-of-way to get to this property, at a considerable amount of money,

and then we developed a contact with an industry which we hoped to locate over there, and the name which should be confidential for the time being, but the Nickel Plate knows who they are, and then they agreed to come in on the basis that we suggested in 1952. Well, having kindness in our souls or something like that we said we'd stick by [fol. 976] our 1952 arrangement and they are coming in.

Q. How about the Rock Island, have they cooperated with you in the arrangement of schedules to improve service?

A. Our files show that since 1930 we have been trying to get a daily morning service into and out of Keokuk, and through the thirties there was some indefinite arrangements made along that line and very spasmodic and not appealing to the shippers.

And then in 1948 we were, "we", the T. P. & W., were able to attract some packinghouse products through Keokuk from Missouri River cities and interior Iowa points, and those packinghouse products, traffic rather, demanded a morning service into and out of Keokuk, and the arrangement was for us and the Rock Island to get that traffic once every six weeks, and since that time the Rock Island has a service in and out of Keokuk, in every morning, once every six weeks. Meanwhile our representatives in the west coast have been writing us and we have been trying to convince the Rock Island that they should have a daily morning service into and out of Keokuk for their own benefit and ours. We would like to see them have more competition through Keokuk as against the Santa Fe at Lomax.

Q. How is the Rock Island in working out schedules with you connecting at Peoria as compared to Keokuk?

A. Well, I don't think there is any question but what they prefer Peoria on their traffic and they have worked with us on some schedules out of south St. Paul.

[fol. 977] Q. Via Peoria?

A. Via Peoria.

Q. When traffic comes on the Rock Island and the bill of lading—

Mr. Cassell: Mr. Examiner, I think that we are getting into a very difficult place here. It is apparent that the Santa Fe is making its case in chief and has been for the

several last minutes past. Now, this thing is either going to have to be all thrown open. It is certainly apparent that we are going to have to respond to the questions that are being asked and it looks like to me this is just Santa Fe in chief and has been for some time. I think it has gone way beyond the bounds of propriety, and I certainly object to it going any further.

Mr. Wheeler: Mr. Examiner, we certainly join in that objection. This is going way beyond the scope of the questions that we asked Mr. Coulter.

Mr. Thomas: Mr. Examiner, the question of competition and the relative competitive characteristics of different roads involves all factors that could be considered as bearing on competition. Mr. Wheeler opened it up by asking questions, and I am simply developing some of the factors that are involved in such an opinion.

Exam. Albus: All right, ask your question.

Mr. Thomas: That question was interrupted.

Exam. Albus: I know it. That is what I am waiting for.

By Mr. Thomas:

Q. When traffic is routed over the Rock Island with the [fol. 978] T. P. & W. as the next connecting line, well, for an example, Rock Island, T. P. & W., Pennsylvania, and the junctions are not named in the bill of lading, where does the Rock Island deliver the traffic to the T. P. & W.—

Mr. Cassell: Mr. Examiner—

By Mr. Thomas (continuing):

Q. —at Keokuk or Peoria?

Exam. Albus: Your objection is sustained.

By Mr. Thomas:

Q. Going back to the questions relating to cooperation between railroads in working out schedules, what kind of cooperation have you had from the Santa Fe?

Mr. Cassell: I object to this whole line of questioning. It is nothing more than the case in chief. If the Santa Fe wishes to call the man as its witness, that's its privilege.

Exam. Albus: I am going to permit him to answer that one. He has answered as to Rock Island and Nickel Plate.

Mr. Cassell: I wasn't very happy about it either.

Exam. Albus: I know, I wasn't either, I want it distinctly understood—

Mr. Thomas (interrupting): Mr. Examiner, if there is any feeling about this, I will be glad to withdraw the question.

Exam. Albus: No, there is no feeling. Let the witness answer.

Mr. Coulter.

A. We have had very good coopefation from the Santa Fe on schedules.

[fol. 979] By Mr. Thomas:

Q. Is that true of the Pennsylvania?

A. Yes, sir.

Q. Have you ever been approached by any railroad of its own volition to work out the improvement of schedules? I mean where you haven't had to make the first approach.

A. You mean the railroads represented here?

Q. Yes, that is what we are talking about.

A. I think the reference of meat of packinghouse products from St. Paul was a joint Rock Island-T. P. & W. through Peoria.

Exam. Albus: Did these matters enter into your arrangement with competition of the T. P. & W. as you stated here today?

The Witness: I don't get that, Mr. Examiner.

Exam. Albus: I say these matters you are discussing now.

The Witness: Yes.

Exam. Albus: That entered into determining competition as you solicited it?

The Witness: Yes.

Mr. Broker: I just want to make it clear that there are other railroads involved in this case such as the Burlington and Wabash, you haven't classified them, but I will come to that.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Let the record show that at this time we will take an [fol. 980] adjournment until tomorrow morning at 9 o'clock.

(Whereupon, at 5 p.m., an adjournment was taken until 9 o'clock a.m., Wednesday, February 8, 1956.)

[fol. 980-A]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Finance Docket No. 19086

[Title omitted]

Main Ballroom,
Pere Marquette Hotel,
Peoria, Illinois.

TRANSCRIPT OF HEARING—February 8, 1956

Met, pursuant to adjournment, at 9:00 a.m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 982] PROCEEDINGS

Exam. Albus: The hearing will please come to order.

At the adjournment of this case yesterday afternoon controversy arose concerning the status of Mr. Coulter as a witness. Mr. Wheeler contended that Mr. Coulter was being presented as an adverse party and that he, Mr. Wheeler, was calling him in that capacity. Mr. Thomas and Mr. Broker challenged the position taken by Mr. Wheeler. Mr. Lucas joined with Mr. Thomas and Mr. Broker in the controversy of Mr. Coulter's status as a witness.

Mr. Coulter on direct examination by Mr. Wheeler testified with respect to two specific matters: First, concerning the competitive situation existing between the TP&W, on

the one hand, and the five principal railroads herein involved, namely, the Santa Fe, the Pennsylvania, the M&StL, the Nickel Plate, and Rock Island, on the other; and secondly, concerning conversations had sometime ago between Mr. Symes and Mr. Coulter in which Mr. Symes expressed the opinion held for a good number of years that the TP&W should be merged or acquired by the Minneapolis and St. Louis or vice versa.

The Examiner being concerned over this controversy accorded the matter considerable thought last night and again this morning. I have had the benefit of inspecting the dockets and a copy of yesterday's transcript. It is the considered opinion of the Examiner and the ruling of the [fol. 983] Examiner at that time that Mr. Coulter presently is on the stand as a witness for the M&StL, that the cross-examination must be confined to the two topics specifically covered on direct, and that thereafter Mr. Coulter will be excused and may be called as a witness for and on behalf of any party to these proceedings.

Counsel individually and collectively have an exception to this ruling.

Are there any questions?

(No response.)

Exam. Albus: We will continue with the cross-examination of Mr. Coulter.

Mr. Thomas.

Mr. Thomas: I have no further questions.

Exam. Albus: Mr. Lucas.

J. C. COULTER resumed the stand and testified further as follows:

Cross examination:

By Mr. Lucas:

Q. Mr. Coulter, it was stated yesterday on the record by Mr. Thomas that the TP&W had not intervened in this proceeding. Can you confirm that as president of the company?

A. Yes.

Q. Did you as an individual file any kind of a petition of intervention?

A. No, sir.

Q. Were you subpoenaed by the M&StL?

[fol. 984] A. No, sir.

Q. When did you first get the request?

A. About three or four days ago.

Q. At that time were you advised that you were being called as an adverse witness?

A. Yes.

Mr. Lucas: That is all.

[fol. 985] Exam. Albus: Mr. Cassell.

Cross examination.

By Mr. Cassell:

Q. Mr. Coulter, isn't it customary among the railroads that the receiving lines set the cutoff time for deliveries?

A. I think that would be true.

Q. And it is true in interchange between the Rock Island and the TP&W—

Exam. Albus (interrupting): Are these questions addressed on a competitive angle of the direct testimony?

Mr. Cassell: Yes, sir.

The Witness: Will you repeat that question, please.

(The last question was read.)

By Mr. Cassell:

Q. Who sets the cutoff time between the Rock Island and the TP&W on the delivering or the receiving carrier?

A. The receiving carrier.

Q. Who sets the cutoff time at Lomax?

A. The Santa Fe.

Q. On both deliveries and receipts?

A. Yes.

Q. You spoke about the Rock Island service into Keokuk and the meat train; that meat train runs once every six weeks, doesn't it?

A. Yes.

Q. That is a special train, isn't it, on behalf of the Rock [fol. 986] Island?

A. I don't know.

Q. You don't know?

A. No.

Q. It is a special train on behalf of the TP&W, isn't it?

A. No.

Q. Isn't it an extra?

A. No, sir.

Q. Not a regular-scheduled train?

A. Regular-scheduled train.

Q. On only those days?

A. We have a train out of there every day, every morning.

Q. Isn't the meat train only once every six weeks?

A. Yes.

Q. Isn't that the only time that train runs?

A. Your train, yes.

Q. How about your train that picks up from the meat train?

A. Every day twice a day.

Q. Then you do know that the train on the Rock Island is run only once every six weeks when we have the meat?

A. That is right.

Q. Do you know how many cars are in that train?

A. Well, the train would run every day and, of course, on Thursdays and Fridays the length of the train or the number of cars in the train would be much heavier than on [fol. 987] Monday and Tuesday.

Q. I am speaking about the train that runs once every six weeks.

A. Your train?

Q. Yes, sir.

A. I know nothing about that.

Q. Do you know how many cars are in the normal train?

A. No, sir.

Q. Do you know whether or not the Santa Fé runs any extras to connect with you at Lomax?

A. They do.

Q. How many?

A. I don't know. Depending upon the flow of traffic. They return a turnaround occasionally from Shopton, down from Fort Madison down to Lomax and back.

Q. How often?

A. I couldn't tell you how often accurately at this time.

Q. Hasn't the Rock Island indicated to you that that train which runs once every six weeks would be put on a regular basis if there were sufficient volume to justify it?

A. Yes.

Q. Then, you don't mean to say it was a straight refusal, then, to consider another train, do you?

A. Well, Mr. Cassell, may I elaborate on that a little bit?

Q. Yes.

A. With transportation people on railroads, when you [fol. 988] want to put on a new service, transportation people say, "Get the business and we will put the train on." Those of us who are on the selling end, who try to get business, say, we have a backlog here or a certain amount of traffic that can go on that train and then we will build it up from there, and I think that is where the difference of opinion is between the Rock Island and the TP&W, there is a backlog to move.

Q. How many cars?

A. We made a study of it. I haven't that here with me, but they convinced us that it would be a paying proposition.

Q. It was a difference of opinion, then, as to how many cars might be available?

A. Yes.

Q. If the Rock Island gives you freight at Keokuk, you get your longest haul and greatest division either to or from the East, isn't that right?

A. That is correct.

Q. From what territories is the Rock Island competitive with the TP&W?

A. Well, I think from all of the territory you tap your competitor with the TP&W.

Q. Twin Cities, Pacific Northwest?

A. Yes.

Q. Chicago?

A. Yes.

[fol. 989] Q. How are we competitive with you on Chicago traffic?

A. We have a line that circumvents Chicago, useless for your long haul for Chicago.

Q. I am not speaking now about the gateways, Mr. Coulter, I am talking about where traffic originates rather than gateways. Certainly we are not competitive with you on traffic originating in Chicago, are we?

A. Yes.

Q. How would you originate traffic in Chicago?

A. We wouldn't originate with you, we would originate with another line which would be competitive with you.

Q. I see. Where would that other line turn it over to you?

A. Well, the Wabash would turn it over to us at Forest, the C N&I would turn it over to us at Watseka. The Illinois Central could turn it over to us at Gilman and you could turn it over to us at Peoria.

[fol. 990] Q. Are all of those other lines in competition with you, too, then?

A. Yes.

Q. Any line that touches Chicago and brings freight to you somewhere along your line east and west through Illinois is in competition with you, then, isn't it?

A. Pretty nearly.

Q. Just the same as the Rock Island, isn't it?

A. There is a variance there between, I would say, the C. N. N. & I. and the Rock Island.

Q. As a matter of fact, Mr. Coulter, don't you have in mind as points of origin that are competitive with you or that the Rock Island might have of the traffic to the southwest, California points?

A. Would you restate that, please, I didn't get it.

Q. Isn't it a matter of fact that the traffic that the Rock Island might get in which it would be competitive with you would be the California and southwestern points?

A. Yes.

Q. Because it might take its long haul to Chicago rather than turning it over to the T. P. & W.?

A. Or St. Louis.

Q. Or St. Louis?

A. Or Peoria.

Q. Or peoria. But if it turned it over to you at Lomax, [fol. 991] would that be competitive?

A. You mean Keokuk, don't you?

Q. I beg your pardon, yes. Keokuk.

A. It wouldn't be competitive with us then. By that I mean we'd get our long haul, yes.

Q. That is right, it would give you the greatest revenue and the longest haul possible on your railroad?

A. That is correct, coming eastbound.

Q. That is right, or traffic off your railroad westbound similarly, isn't that so?

A. That is true.

Q. Would also give you your long east haul and greatest revenue?

A. Yes.

Q. Greater than that town of Lomax, is that right?

A. I would say by and large the revenue through Keokuk was higher or more to us than through Lomax.

Mr. Lucas: May I ask, Mr. Examiner, or is that gross—

A. (Interrupting) I meant divisions.

By Mr. Cassell:

Q. You also have a nice bridge arrangement, too, don't you, Mr. Coulter?

A. We have an arrangement like all railroads have with bridges.

[fol. 992] Q. How many schedules does the Santa Fe have through Lomax westbound, one, with interchanges with you?

A. I wouldn't begin to tell you—I wouldn't know. I think several. They are going through there all hours of the day and night and stopping up our traffic.

Q. Well, don't you know, Mr. Coulter, that they now only have one train which effects connection with you on a regular basis?

A. They have that one train—we call that our connection, but they have this turnaround coming down from Shopton to Lomax that may make several turns a day.

Q. Didn't they formerly have two prior to five years ago?

A. Two trains?

Q. Yes, sir.

A. So scheduled, yes.

Q. And weren't they the ones that broke that connection?

A. Broke the connection?

Q. Yes, sir.

A. With the TP&W?

Q. Yes, sir.

A. Not to my knowledge.

Q. Didn't they take off the train?

A. Not to my knowledge.

Q. We've only got one scheduled connection today, and you said you formerly had two?

[fol. 993] A. I say we have more than two now. We have several connections which are not listed in the time card.

Q. Those are their main line trains that are just going through there, aren't they, anyway?

A. No, they have this turnaround I am talking about coming down from Shopton to Lomax, which comes down, I think, several times.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Cross examination.

Mr. Broker: I would just like to correct one thing, Mr. Examiner. In making a ruling I believe you meant to refer to Mr. Cassell, but the record will speak for itself.

Exam. Albus: Very well. It is possible. That has happened before.

Mr. Broker: Does your ruling preclude me from asking questions about the Wabash? It is a party in this case.

Exam. Albus: The ruling precludes you from asking about anything that was not in that schedule of competitive situations, and the Wabash is not in there, you cannot ask about the Wabash. That is beyond the scope of the direct. That's the ruling.

Mr. Broker: I will take an exception to that, if I may.

Exam. Albus: Yes, sir, absolutely. Everybody has exceptions to these rulings. I tried to make that clear.

[fol. 994] By Mr. Broker:

Q. Now, in your gradation of the five lines, each of the five lines in that gradation are to some extent competitive with you, aren't they?

A. Correct.

Q. And to the extent that you work with one, let's say the Nickel Plate, you compete against the other, don't you, let's say the Pennsylvania?

A. Yes.

Q. And you have through routes with each, don't you?

A. Yes.

Q. A complete line of through routes?

A. Yes.

Q And those routes are not only competitive on paper but they are competitive as service routes, aren't they?

A. Yes.

Q. Now, have you regarded the Pennsylvania as a strong competitor via Chicago?

A. Yes.

Q. And via St. Louis?

A. Yes.

Q. And you heard the Pennsylvania testify it would still favor St. Louis?

A. Yes.

[fol. 995] Q. So that it will still remain a strong competition via St. Louis?

A. Just via St. Louis.

Q. Don't you feel that this so-called placing of Effner on an equality with Chicago would still keep Chicago as a competitive route?

A. I wouldn't regard—let's see now. I wouldn't regard it so. I think we will take our chances on getting the business. If they put Effner on the same basis with Chicago, we will be very happy.

Q. In other words, if a connection puts its gateways on a parity, then those other gateways are no longer competitive?

A. No, they would be less competitive, Mr. Broker, because the soliciting people would note that the policy of that particular railroad was that they wouldn't interfere.

Q. They would be competitive, though, to some extent, wouldn't they?

A. Very little.

Q. Yesterday you said that the reason why the Nickel Plate was competitive was because it served Chicago and St. Louis as well as Peoria, didn't you?

A. Yes.

Q. And has the Nickel Plate always observed neutrality among its gateways?

A. I don't know.

[fol. 996] Q. Well, if you don't know, how, then, can you say that we are highly competitive by reason of that fact?

A. I suspect that you are highly competitive because you have a line into St. Louis, and it has been the policy of every railroad I know of to solicit for their long haul where they have a service out and you have a service route out of St. Louis.

Q. And we have a service route out of Chicago?

A. Yes.

Q. And out of Peoria, don't we?

A. Yes.

Q. And they are all on a parity? Do you or don't you know that?

A. I don't know that.

Q. But assuming they are on a parity in so far as Nickel Plate solicitation and service is concerned, would you then say that they are only partially, partially competitive with you?

A. I would say they are partially competitive, if you make the statement that all of the Nickel Plate Gateways announced here are on a parity, I would say they would be less competitive to the T. P. & W. than if you said that the St. Louis Gateway, that you are soliciting preferably for the St. Louis Gateway.

Q. We would then not be in any different position, would we, assuming that fact, than the Pennsylvania is in respect to both Chicago and Peoria, assuming it is successful in this case?

A. You would be more competitive than the Pennsylvania.

[fol. 997] Q. Why?

A. Because you have a line into Peoria which is competitive with the T. P. & W., the Pennsylvania-Effner route. You have a line into Chicago that is competitive and you have a line into St. Louis that is competitive while the Pennsylvania would just have two routes, they would have their route with us into Peoria, which would be on a parity with Chicago and St. Louis.

Q. You don't consider the Pennsylvania line into Peoria properly competitive with you?

A. No, sir.

Q. Even though they handled more local traffic out of Peoria over that line than they do via Effner?

A. I am not aware of that.

Q. Let's assume that they handle approximately the same amount of local traffic out of Peoria via their own line than via Effner, would you then say they are competitive?

A. To that degree, yes.

Q. Now, was your evaluation of the competitive relationships based on the volume of traffic which each railroad handled via the competing gateway?

Mr. Wheeler: May I have that question read?

(Question read.)

A. That was part of it.

By Mr. Broker:

Q. Do you know whether or not the Pennsylvania Railroad handles more traffic via Chicago and St. Louis than [fol. 998] via the T. P. & W.-Effner?

A. I would think they would.

Q. More than any other carrier, do you know?

A. No, I wouldn't know that.

Q. More than the Nickel Plate?

A. I wouldn't know that.

Q. Let's get back to this Pennsylvania direct line into Peoria. Is the primary reason why you say that is not competitive because of the physical disabilities of that line?

A. Yes, and the absence of through service. I think, Mr. Broker, if you will pardon me, as we know, our relationship with your line and our relationship with the Pennsylvania that the bulk of the traffic would be overhead traffic, not local at Peoria but through Peoria.

Q. I am aware of that, yes, sir.

A. Thank you.

Q. I think we can agree on that. But never the less competition may arise in the handling of local traffic, may it not?

A. It may, but when the president of the Pennsylvania testifies that we are 300 miles farther east than that line is of theirs for the same traffic, I don't know why a shipper would use that line into a place like, say, New York City.

Q. Time, is that the only element in competition?

A. I think it is a very important thing.

Q. I agree that it is important.

[fol. 999] A. You know that from your own railroad.

Q. Yes, sir. Do you know whether or not most of that disability isn't due to the Pennsylvania's only policies in respect of maintenance of that line?

A. No, I don't. I haven't been over the line, but my limited knowledge tells me that it is not a very good railroad.

[fol. 1000] Q. Now, in discussing this let's just limit ourselves to the five railroads that you referred to, to the extent each one of them, let's say, each western line—

Mr. Broker: I am afraid that question will go beyond the scope of your ruling, so I will withdraw it.

Exam. Albus: Don't ask it, then, please.

By Mr. Broker:

Q. Now, when you listed the Pennsylvania in that gradation, were you thinking of it as an individual or as a system?

A. I don't know what you mean, Mr. Broker. What is the difference?

Q. Were you thinking of the Pennsylvania as an individual corporation or as a family of corporations?

A. I see what you mean. As an individual railroad.

Q. You then did not take into consideration any lines in which it had any ownership?

A. No.

Q. Now, going into the question of alleged competition between the Nickel Plate and the TP&W, as to which you testified, hasn't the Nickel Plate always treated you with strict neutrality on the question of service and coordinated schedules?

A. I would say generally speaking, yes, Mr. Broker, except that I found out that you made a special deal with the M&StL last December and you didn't tell us about it.

Q. So to the extent that the M&StL and the Nickel Plate [fol. 1001] work together, they compete with the TP&W, do you feel?

A. Yes, yes.

Q. But nevertheless, haven't we always been neutral in giving you the same schedules as any other connection?

A. Yes, generally, yes, we have very good relationship.

Q. That we do, and I hope it continues. Do you know whether the Nickel Plate has treated every other western connection, let's say at Peoria, in the same way?

A. I don't know positively, but I suspect they would.

Q. I am limiting myself now to the five that we referred to.

A. Yes, I think you are neutral.

Q. Now, coming to the competitive relationships with the Santa Fe and the Pennsylvania, you indicated that they cooperated to a measure, but has it been a hundred percent, in view of their favoring Chicago or St. Louis, as the case may be?

A. No, I wouldn't say that it was one hundred per cent.

Q. In its competitive relationships with you, hasn't the Pennsylvania always favored its long haul over its own railroad, as opposed to your participation in the movement?

A. Yes, as is true with every other railroad that I know of.

Mr. Broker: Coming back to your ruling, Mr. Examiner, there was some testimony yesterday on industrial development. Is that excluded from the scope of this questioning? If it is, we will bring it out on our own direct case.

Exam. Albus: I would rather you would do it that way, [fol. 1002] Mr. Broker, if you will, please.

Mr. Broker: That is all. Thank you.

Exam. Albus: Are there any further questions?

Mr. Wheeler?

Redirect examination.

By Mr. Wheeler:

Q. Mr. Coulter, didn't you hold the view that the M&StL acquisition of the TP&W was the most preferable, at least up until May 26, 1955?

A. Can I answer it and then elaborate a little bit?

Q. Yes, sir.

A. The answer is yes. But the discussions you must refer to are academic up to that point, because the TP&W was not for sale, and also that there wasn't anybody else who seemed to be interested.

Q. Mr. Coulter, aren't you aware or weren't you aware that the trustees of the estate had approached Mr. Gurley and Mr. Symes and had had discussions with Mr. Heineman regarding the sale of the stock of the—

Exam. Albus (interrupting): That is beyond the scope of the direct. You can ask anything about what Mr. Symes and he talked about, but I am not going to have the trustees or anybody else dragged in here.

Mr. Wheeler: May we go off the record for just a minute?

Exam. Albus: Yes. Off the record, please.

(Discussion off the record.)

[fol. 1003] Exam. Albus: On the record.

Are there any further questions?

Mr. Wheeler: No, I have no further questions. I may want to recall him again on this point. We will try to develop it on another point.

Mr. Thomas: Mr. Examiner, I won't prolong this too much, but I did ask a question yesterday which was overruled, but which I think has demonstrated that it is pertinent by the cross-examination of the Rock Island. The Rock Island brought out or implied in their cross-examina-

tion that there was not enough traffic to support this train through Keokuk that was mentioned.

Exam. Albus: Yes.

Mr. Thomas: They also brought out that the TP&W received its largest divisions on hauls through Keokuk where the whole line is used.

Exam. Albus: All right.

Mr. Thomas: It seems to me it is appropriate for me to ask whether the Rock Island, when junctions aren't specified, delivers to the TP&W at Peoria or Keokuk, because that bears on that issue.

Exam. Albus: All right, you may ask that question.

Recross examination.

By Mr. Thomas:

Q. Mr. Coulter, when traffic is routed over the Rock Island with the TP&W as the next connecting line, well, [fol. 1004] for example, Rock Island, TP&W and Pennsylvania, and the junctions are not named in the bill of lading, where does the Rock Island deliver the traffic to the TP&W, at Keokuk or Peoria?

A. Peoria.

Mr. Thomas: That is all.

Exam. Albus: Are there any further questions?

Mr. Cassell: Yes, sir.

Recross examination.

By Mr. Cassell:

Q. How do you know that?

A. Experience.

Q. How often have you experienced it?

A. Every day of our lives.

Q. Do you say that there is a substantial volume of traffic that is routed via Peoria from the southwest?

A. I wouldn't say substantial, Mr. Cassell, compared to your traffic probably coming down from the northwest. I don't know. I could hardly answer that. I would suspect

that it would be less from the southwest, Rock Island, Peoria, TP&W.

Q. Do you think there is a material amount of traffic? Do you think it is more than comes through Keokuk?

A. I haven't the figures on that.

Q. Do you know just roughly?

A. About the same, I'd say.

Q. You would say they are roughly the same through Peoria as they are through Keokuk?

[fol. 1005] Q. Now, you say you experience the insertion of the Peoria instead of the Keokuk as the junction. How does that come to your attention?

A. We are a small railroad and we examine, we get down to brass tacks, we watch our waybills very closely, subject to a longer haul consistent with service, we observe those things.

Q. Do you know what the service route is for traffic from the Pacific Southwest on the Rock Island?

A. I know what it is through Keokuk.

Q. Do you know whether the service route of the Rock Island is through Keokuk or through Peoria on that traffic?

A. I think once every six weeks it would be better through Keokuk.

Q. Do you know what the difference in service, if any, is through Peoria and Keokuk every day? Not just once every six weeks.

A. I think it would be better through Keokuk.

Q. Do you know how much?

A. No. I know that you are 22 miles longer from Eldon, Iowa, to Peoria, than you are through Keokuk and the TP&W.

Q. How many miles?

A. I think it is 22.

Q. Could you be in error about that?

A. I don't think so. I get 22 miles out of that. Your arithmetic and mine do not agree.

[fol. 1006] Exam. Albus: You can straighten him out when you are putting in your direct case.

The Witness: Maybe I can straighten him out.

Exam. Albus: I hope somebody can straighten somebody out.

By Mr. Cassell:

Q. You said you didn't consider the route of the Pennsylvania into Peoria direct as a competitive route, didn't you?

A. Correct.

Q. What is the difference in the Rock Island route in mileage and time versus that of the Pennsylvania? Let's take the route direct through Keokuk or the route around through Eldon into Peoria, on the one hand, and the route through Effner to Peoria, and the route direct of the Pennsylvania. How does that, how do those, compare?

A. That is a pretty long question. I will try to answer it. I would say that the route over the Pennsylvania's own line, just, and the Rock Island would be much longer than the Pennsylvania—I am talking about service and time—it would be much longer than the Pennsylvania, Effner, TP&W, Rock Island.

[fol. 1007] Q. I guess we don't understand one another. You have said that the route of the Pennsylvania directly to Peoria is not competitive, haven't you?

A. We feel it is not competitive.

Q. Although it comes directly to Peoria?

A. Directly?

Q. Yes, it has its own line into Peoria?

A. They their own rails into Peoria. I wouldn't say they come directly to Peoria.

Q. You have said on the other hand that the Rock Island route where it has its own rails into Peoria is competitive?

A. Competitive with what?

Q. The TP&W.

A. Yes, against our line from Keokuk.

Q. But the Pennsylvania is not competitive as against your line into Effner?

A. That is correct.

Q. Now, is that because of, the Pennsylvania is not competitive because of time-in-transit is greater over their direct line versus the Effner route?

A. Yes.

Q. That is the only reason, isn't it?

A. I would think so. It is not a service route.

Q. What if there was the same difference in time of the Rock Island of the Eldon, Silvis, Bureau, Peoria route [fol. 1008] versus the Keokuk route, would that change your opinion any?

A. If the Eldon route, you mean through Peoria was not in competition with Keokuk?

Q. If the Eldon, Silvis, Bureau, Peoria route had the same difference in time in transit as against the Keokuk route as the Pennsylvania's route does versus the Effner route, would that change your opinion any?

A. This is very complicated, Mr. Cassell. If you could, please, confine your question to the west end and then we will take up the east end. I get confused when you switch over to the Pennsylvania branch line.

Q. I get confused by a lot of things here, too, like the Rock Island being competitive with you from Chicago to Peoria.

You have said that the reason why the Pennsylvania is not competitive with you in your route to Effner is because of time in transit.

A. Right.

Q. Now, if the Rock Island had the same disability on its route, Eldon, Silvis, Bureau, Peoria, which is its direct line into Peoria, as the Pennsylvania has on its direct line versus its Effner connection, and we had that same disability versus our Keokuk connection, would that change your opinion any?

Exam. Albus: If this situation was the same, of course, it would, the answer would have to be yes.

Mr. Cassell: Not necessarily. I think the witness should [fol. 1009] Exam. Albus: Of course, the way you propounded the question demonstrates that. If the same condition exists—

Mr. Cassell: I would like to have that answer from the witness.

Exam. Albus: All right.

A. Yes.

Mr. Cassell: That is all.

Exam. Albus: All right. Are there any other questions?

(No response.)

Exam. Albus: You are excused. Thank you very much.

(Witness excused.)

Mr. Thomas: I want to make a statement regarding the suggestion of the Rock Island yesterday that we accept a stipulation preventing the establishment of service on the TP&W if we should be successful in our application. Our proposal doesn't involve the establishment of any passenger service on the TP&W. We have never represented to anyone in the area served by the TP&W that we had such a plan in mind but we don't feel that we ought to accept a condition which would prevent the passenger service on the TP&W. Under our proposal the TP&W is to be operated as a separate and independent road in its own best interest, and we believe that if we should accept such a condition running on into the indefinite future it wouldn't be consistent with that interest.

Exam. Albus: Very well, thank you.

[fol. 1010] Mr. Lucas.

Mr. Lucas: Mr. Examiner, I stand on what I stated yesterday on page 965 to 966 in the record with respect to passenger service.

Exam. Albus: What about your statement with respect to Mr. Wheeler's letter? I'd like to get that cleared up before we start with the testimony.

Mr. Lucas: Off the record.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Mr. Lucas: Mr. Examiner, at several points throughout the past transcripts, particularly when Mr. Symes and Mr. Carpi were on the witness stand, Mr. Wheeler addressed requests for certain information, and at that time I suggested it would be better in the interest of clarity if he could put it in written form so that we could be sure just what was being asked for and that our response could be pertinent. He has very kindly done that, and the document that I have just handed up to you and distributed to counsel is his letter addressed to me of February 7, 1956.

In view of the fact that there are those earlier passages in the transcript could this be put in the record at this point as being what Mr. Wheeler is asking the Pennsylvania to supply?

[fol. 1011] Exam. Albus: Is there any objection to that?

(No response.)

Exam. Albus: It may be placed in the record.

"(1) The deposits of the Pennsylvania Railroad Company and or affiliates or subsidiaries with the Wilmington Trust Company, providing the names of the companies and the amounts of such deposits as of January 1, 1955 and January 1, 1956.

"(2) The par value of the Wabash Railroad Company stock; the Pennsylvania Railroad Company's investment in both preferred and common stock of the Wabash Railroad Company; and the present book value of Pennsylvania's investment.

"(3) State whether Mr. Lammont duPont Copeland, shown in the application of the Santa Fe-Pennsylvania to be a director of the Pennsylvania Railroad Company, is also a director of the Wilmington Trust Company, and the length of time that he has been a director of such companies.

"(4) The name or names of any persons who are officers or directors of the Pennsylvania Railroad Company and or its affiliates or subsidiaries and are also officers or directors of the Wilmington Trust Company.

"(5) The names of directors of the Wilmington Trust Company who are also directors of the E. I. DuPont De Nemours & Company.

"(6) The total number of revenue cars handled for, and the gross freight revenues derived from traffic handled for [fol. 1012] the E. I. Dupont De Nemours & Company for 1954 and 1955.

"(7) The amount of bonds of the Wabash owned by the Pennsylvania Railroad Company and or its affiliates or subsidiaries as of January 1, 1955 and January 1, 1956.

"(8) The number and location of traffic solicitation offices of the Pennsylvania Railroad Company and the number of employees in each office who spend all or a part of their time on freight solicitation.

"(9) The number of revenue cars received and delivered by the Pennsylvania Railroad Company at Chicago, Effner, and St. Louis during each of the past five years."

Mr. Lucas: Mr. Examiner, I wonder if I might, that having been incorporated in the record, I wonder if I might ask Mr. Wheeler for an offer of proof or a statement of purpose as to these two items with the exceptions of number 9, I think number 9 has relevancy in view of the testimony but as to the first eight I wonder if he would give us the benefit of a statement of position on those.

Exam. Albus: Mr. Wheeler, could you do that, very briefly, now.

Mr. Wheeler: I think most of them are self-explanatory. Mr. Lucas, is there one or two in particular? I hate to go through each one of these.

Exam. Albus: Yes, I would rather avoid that myself.

Mr. Lucas: Mr. Examiner, my inquiry goes to the first [fol. 1013] eight topics. I don't know how Mr. Wheeler wishes to handle them, if he wishes to put them collectively it is all right with me or if he wishes to say he can't do it in itemized form, whatever he wants to respond to my request will be all right.

Mr. Wheeler: Mr. Examiner, I can, but it seems to me it is unnecessary.

Exam. Albus: I don't want to prolong this record any longer than it is. I don't want a lot of explanation if—you are willing to furnish the information, aren't you?

Mr. Lucas: As to certain items, not as to one or two of them.

Mr. Wheeler: Can we boil it down to the one or two?

Mr. Lucas: You do not care to give me a statement of purpose as to the first eight items?

Mr. Wheeler: Purely for not prolonging the record.

Mr. Lucas: That is all right, with the possible exception of number 9 the position of the Pennsylvania Railroad is that they have no relevancy or any materiality as to any

issue involved in this proceeding. Subject to that reservation as to all of the information requested in the first item, the first eight items, we are prepared to co-operate with Mr. Wheeler in connection with items 1, 2, 3, 4, 7, 8, and 9.

We are not prepared to co-operate with items 5 and 6. I don't know whether the Examiner wishes to have me make [fol. 1014] any statement with respect to those, but we certainly would want a specific offer of proof on those, and if any such information is to be furnished, it not only violates particularly item 6, our legal obligations as we see them but our policy as we will to report information that might make a disclosure to competitors.

Exam. Albus: Right.

Mr. Wheeler: With respect to item 6 let me make this statement. This calls for the directors of the Wilmington Trust, and 5 calls for the directors of the DuPont Company. This is designed, of course, to show the interlocking relationship between the Pennsylvania and Wilmington Trust, the trustee here, and the Dupont Company. Now, this, of course, is information which can be obtained from the directory of directors, and I had intended to call as a witness, as the Examiner knows, Mr. Bancroft of the Wilmington Trust Company. We had concluded that if we could get this information which is public information on the record here through stipulation that it would make it unnecessary for us to bring Mr. Bancroft all the way from Wilmington. That is the reason I asked for that information, and if Mr. Lucas does not want to furnish it under that situation, why, it may be necessary for us to call Mr. Bancroft.

With respect to the Dupont Company and the total number of revenue cars handled for them, the same situation prevails there. We are endeavoring to show the relation [fol. 1015] ship between the Pennsylvania Railroad and these trustees, namely, the Wilmington Trust, and we believe that this is a significant factor. It is a matter of record already, I believe. I believe Mr. Symes indicated that he knew that one of his directors is a director of the Wilmington Trust Company, and that being Lammont duPont Copeland, obviously another member of the Dupont family of Delaware. It is to show these relationships to have a full disclosure on the record of those relationships that we

ask for this information, and we believe that the Pennsylvania should supply that information.

Exam. Albus: I am not going to require them to supply anything they will not submit voluntarily. So as far as the request goes 5 and 6 are out. Is that understood?

Mr. Wheeler: I will have to recall Mr. Carpi, then, with respect to item 6. I just wanted to let Mr. Lucas know so he wouldn't be surprised.

Mr. Lucas: Mr. Examiner, may I take an exception? Of course, if he wants Mr. Carpi back, Mr. Carpi will be back here when it is appropriate and convenient for the Examiner, Mr. Wheeler, and Mr. Carpi. I can't see any relevancy whatsoever as to the TP&W as to item 6 involving any apparent, assumed, or content co-operation between the attorney and the DuPont Company. If this record ever got into the Attorney General and I was remiss in objecting to it I think I would lose my job.

[fol. 1016] Exam. Albus: Very well, I think I have heard enough argument, let's proceed with the case. That is the ruling.

Mr. Lucas: It is perfectly satisfactory to the Pennsylvania Railroad, Mr. Examiner.

Exam. Albus: To which you may have an exception.

[fol. 1017] Mr. Wheeler: I want to call Mr. Ben W. Heineman.

Ben W. Heineman was sworn and testified as follows:

Direct examination.

Mr. Wheeler: Mr. Examiner, as a preliminary matter may we have these exhibits marked for identification?

Exam. Albus: Very well.

Let the record show that the pro forma

Mr. Wheeler: I think the maps should come in first.

Exam. Albus: All right.

Mr. Wheeler: I think perhaps that the map of the United States of which I show the routes, the lines, of the Pennsylvania, the Wabash, the Santa Fe, the T. P. & W., and the M. & St. L.—

Exam. Albus: That is the large one?

Mr. Wheeler: The large one.

Exam. Albus: It may be marked for identification as Exhibit H-19.

(Applicant's Exhibit No. H-19, Witness Heineman, was marked for identification.)

Mr. Wheeler: I should like to have marked Exhibit H-20 a smaller map, which is a blown up reproduction of the midcontinent section of the larger map H-19.

Exam. Albus: It may be marked H-20 for identification.

(Applicant's Exhibit No. H-20, witness Heineman, was marked for identification.)

[fol. 1018] Mr. Wheeler: I should like to have marked as Exhibit H-21 a map showing the lines of the Rock Island, the M. & St. L., and the T. P. & W.

Exam. Albus: That map may be marked for identification H-21.

(Applicant's Exhibit No. H-21, Witness Heineman, was marked for identification.)

Mr. Wheeler: I would like to have marked for identification as Exhibit H-22 a similar map showing the Nickel Plate-T. P. & W.-M. & St. L. lines.

Exam. Albus: That may be marked for identification as Exhibit H-22.

(Applicant's Exhibit No. H-22, Witness Heineman, was marked for identification.)

Mr. Wheeler: I should like to have marked for identification as Exhibit H-23 the booklet headed "Minneapolis & St. Louis Railway Company and Toledo, Peoria & Western Railroad Company Combined and Pro Forma Financial Data".

Exam. Albus: Very well, that may be marked for identification as Exhibit H-23.

(Applicant's Exhibit No. H-23, Witness Heineman, was marked for identification.)

Mr. Wheeler: Mr. Examiner, all of these exhibits with the exception of H-19, which has previously been off dis-

play in this hearing room, were distributed to counsel last evening.

Exam. Albus: Thank you very much.

[fol. 1019] By Mr. Wheeler:

Q. Mr. Heineman, will you please state your name and address?

A. My name is Ben W. Heineman, my address is 135 South La Salle Street, Chicago, Illinois.

Q. Mr. Heineman, have you prepared a statement for presentation to the Commission in this case?

A. I have, sir.

Q. Will you proceed to give that statement?

A. I will, sir, and if I may at one or two points I may elaborate on the written statement, if the Examiner has no objection.

Exam. Albus: Yes, that may be understood.

A. I am a member of the Board of Directors and Chairman of the Executive Committee of the Minneapolis & St. Louis Railway Company.

The M. & St. L.'s main line extends south from Minneapolis to Oskaloosa and then east and southeast from Oskaloosa to Peoria, this can easily be seen on Exhibit 19. The M. & St. L. is predominantly an east-west railroad, providing a by-pass of the Chicago area through the Peoria gateway. It does not enter any of the major east-west gateways such as Chicago, St. Louis or Kansas City.

The M. & St. L. has a direct interchange with the T. P. & W. and during the last four years interchanged with the T. P. & W. at Peoria an average of 12,995 revenue loads. This constituted an average of 5.9 per cent of the M. & St. [fol. 1020] L.'s total revenue loads and accounted for 8.1 per cent of its total freight revenues.

The interchange of the M. & St. L. with the T. P. & W. is proportionately of much greater importance to the M. & St. L., both in terms of revenue loads and revenue dollars, than is the interchange with the T. P. & W. of any other carrier interested in acquiring the T. P. & W.

The M. & St. L. is essentially a freight hauler in that 96 per cent of its total operating revenues consists of freight operating revenues, with 2.5 per cent being passenger revenues and 1.5 per cent being miscellaneous railway revenues. The M. & St. L. is in excellent financial and physical condition both from the standpoint of its roadway and from the standpoint of its equipment. The M. & St. L. is perhaps the only Class I railway in the United States with no preferred stock and no bonds (other than a small first mortgage upon its general office building). By any formula, the M. & St. L. is a heavy ownership property, owning 3,644 cars as of December 31, 1955, and operating under a long-term lease approximately 250 refrigerator cars and an additional 20 so-called air slide cars.

By Mr. Thomas:

Q. How many did you say air slide cars.

A. Approximately 20. Eighteen, I believe, is the exact figure.

As of December 31, 1955—I am sorry, the average age of the entire fleet is only 10 years.

As of December 31, 1955, 2.1 per cent of the ownership of [fol. 1021] the M. & St. L. was bad order, as against an average of 4.2 per cent for the entire industry, and I might say that the 2.1 per cent is a high figure than has regularly prevailed on the M. & St. L. or has prevailed earlier this year and is due to the fact that we slowed down our rehabilitation or maintenance program on our cars in order to build some specialized work equipment. Ordinarily the bad order on the M. & St. L. is somewhere between one-half per cent and one per cent and in my opinion it will return to that within the next six months.

The heavy car ownership of the M. & St. L. is shown by the fact that for the year ended December 31, 1955, it was a per diem credit road of $318,440. This was true even though the M. & St. L. is a bridge road to the extent of 40 per cent of its total revenue loads. Other witnesses will testify in greater detail with respect to the physical condition of its roadway and of its equipment.

During the last five years, the M. & St. L. has brought down into net income approximately 8.6 per cent of its operating revenues.

As will be seen by reference to the railroad maps, the M. & St. L. operates in a highly competitive territory. It competes with such roads as the Rock Island, Burlington, Great Northern, North Western and Milwaukee, with barges on the Mississippi River and a multitude of trucking companies, and with pipe lines. Its eastern terminus, the Peoria Gateway, is in direct competition with the Chicago, [fol. 1022] St. Louis and Kansas City Gateways.

The M. & St. L. does not possess large volumes of so-called captive traffic.

It is apparent that in the face of this competition and in the light of the prior history of the M. & St. L. which is familiar to the Commission, and with respect to which other witnesses will testify, the M. & St. L. must be alert to maintain and constantly improve its financial condition if it is to survive and render efficient service to the public.

Intensified solicitation of off line traffic, accompanied by improved service, and the intensified development and location of new plants on the line, will all make important contributions. But all of these will be materially aided, and can only be accomplished in full, through the acquisition of the T. P. & W. To the contrary, the acquisition of the T. P. & W. by the Santa Fe-Pennsylvania, or indeed by any of the other interested carriers, would seriously hurt the M. & St. L., without adding any perceptible strength to these roads.

The acquisition of the T. P. & W. by the M. & St. L. is demonstrably of far greater importance to the M. & St. L. than the acquisition of the T. P. & W. would be to any of the other interested railroads.

[fol. 1022-A] In our view, the TP&W is a natural complement to the M&StL, dovetailing almost perfectly into it. The two are both complementary and so closely similar that unification of their operations could easily be done at great saving to the unified roads.

The utility of the TP&W, like the M&StL, is essentially that of a transportation route by-passing the congested areas of Chicago. It also provides an alternate route to

the St. Louis gateway. It is indeed a simple geographical extension of the M&StL.

The M&StL, for more than forty years, has solicited traffic under the insignia of 'The Peoria Gateway.' It has advertised The Peoria Gateway throughout the nation as synonymous with its own identity. Its acquisition of the TP&W would make this identification meaningful and complete.

Like the M&StL, the TP&W is essentially a freight hauler having no passenger revenues. Like the M&StL, its financial condition and physical condition are both excellent. Like the M&StL, it has no preferred stock and only a small bond issue maturing in 1967. It has considerable greater density per mile of road operated than the M&StL, with almost no branch line or secondary line track.

The M&StL is not seeking to acquire the TP&W in order to keep any other road from getting it. It is seeking it for affirmative reasons to strengthen the M&StL and TP&W jointly. The roads are limited exclusively to the Peoria [fol. 1022-B] gateway and would not be in competition with themselves by virtue of competing facilities and competing gateways such as Chicago, St. Louis and Kansas City.

I would like to comment briefly on this element of competition. The Santa Fe offered in evidence maps of the systems of the various interested roads, intending to show thereby that the M&StL was competitive with the western half of the TP&W; that the Rock Island was competitive with the western half, and that the Nickel Plate was competitive with the eastern half of the TP&W. We have prepared a number of maps which I would like to have identified showing the systems of these other roads in relation to the TP&W.

[fol. 1023] Now, the first map to which I would like to refer is Exhibit H-20, which is an inset or blown up cross-section of the large map which has been identified as H-19. Now, the important competition of the TP&W is not the incidental competition of any road with a portion of the TP&W, although even as to that—as will appear—the M&StL is less competitive with the TP&W than the Nickel Plate or Rock Island. The real competition with the TP&W is the competition of other major east-west rate-

ways with the Peoria gateway. Of all the interested carriers, only the M&StL does not enter any major east-west gateway other than Peoria. Let us consider this question of gateways for the moment. The Santa Fe enters the Chicago gateway. The Santa Fe, through the Chicago gateway, is competitive with the TP&W in its entirety. The Santa Fe solicits for its long haul to Chicago.

Plainly, any eastbound traffic, or westbound traffic, delivered or received by the Santa Fe at Chicago, by-passes the TP&W in its entirety. Hence, the Santa Fe's competition through the Chicago gateway is competition to the TP&W in its entirety. Now, plainly no one thinks, and no one from the Santa Fe has testified, that it is going to abandon or materially change its huge facilities at Chicago for the delivery and receipt of east-west traffic.

The Pennsylvania enters both the Chicago gateway and the St. Louis gateway. Plainly, east-west traffic through [fol. 1024] those gateways by-passes the TP&W in its entirety. The Pennsylvania solicits east-west traffic through the St. Louis gateway first, through the Chicago gateway second, and then if it can't get it any other way, it would take it for Effner. This is genuine competition with the entire TP&W system.

In addition, the Pennsylvania's owned and controlled subsidiary, the Wabash, has a high-speed main line directly across the State of Illinois to Kansas City via the Hannibal Bridge, making a connection with the Santa Fe and other roads there, and in direct competition with the TP&W in its entirety.

Turning now to the map of the Rock Island system, identified as Exhibit H-21, it is apparent that the Rock Island enters both the Chicago and St. Louis gateways. The Chicago gateway, of course, in general constitutes the Rock Island's long haul, but both gateways are directly competitive with the TP&W in its entirety, in addition to which the Rock Island enters Peoria on two lines, which the exhibit shows.

Turning now to the map of the Nickel Plate, identified as Exhibit H-22, it appears that the Nickel Plate serves both the Chicago and St. Louis gateways. Each of those lines of the Nickel Plate is competitive with the TP&W in its entirety.

This competition by these four important carriers, plus the Wabash, through east-west gateways other than Peoria, is the genuine competition with the TP&W as a trancontinental route.

The M&StL is the only one of the interested carriers [fol. 1025] having access to no other east-west gateway but Peoria, is the only interested carrier that would have no interest, and no possible incentive, except to maximize the traffic through the Peoria gateway and over the TP&W.

Mr. Thomas: May I interrupt a minute there.

Mr. Examiner, in this kind of testimony, we naturally expect opinion and I haven't objected to it, but I think the next sentence here is going a little bit far in arguing the case. I want to object to it.

Exam. Albus: The objection is overruled.

You may continue, sir.

Mr. Broker: Is that the sentence starting "Conversely"?

Exam. Albus: Yes.

Mr. Thomas: May I have an exception on that?

Exam. Albus: Yes, indeed.

Mr. Thomas: To save time, there are other similar statements which will be understood I object to, which are in the nature of argument.

Exam. Albus: Yes, sir.

Mr. Thomas: Thank you.

Mr. Broker: I will object to that, insofar as it relates to the Nickel Plate.

Mr. Cassell: And I as to the Rock Island.

Exam. Albus: That will be understood.

Mr Lucas: Mr. Examiner, your exceptions run to all [fol. 1026] counsel, do they not?

Exam. Albus: That is right. Under the rules, everybody has an exception.

A. (Continuing) Conversely, these other carriers, in my opinion, are seeking to dominate—

Exam. Albus: Strike the exceptions.

A. (Continuing) —are seeking to dominate the Peoria gateway, in addition to their access to the Chicago, St. Louis and Kansas City gateway, and in my opinion, are

seeking to stifle the one opportunity of the M&StL to compete even more effectively through its only eastern terminus, the Peoria gateway.

The M&StL is no newcomer or latecomer to efforts to acquire the TP&W. This possibility has been under discussion at the M&StL for at least ten years. Actual meetings were held between Lucian Sprague, George McNear and others. It is perhaps due to personality conflicts that nothing further developed at the time. Be that as it may, I feel certain it was the M&StL's negotiations and efforts to acquire the TP&W in 1954 and 1955 that both led the trustees of the McNear Estate into selling the property and resulted in the Pennsylvania-Santa Fe's determination to acquire the property. Moreover, in my opinion, both the Pennsylvania and the Santa Fe, as will appear from my testimony, made their determination to buy the TP&W, not fundamentally for affirmative reasons to benefit the Pennsylvania and the Santa Fe, but for essentially negative [fol. 1027] reasons; that is, to prevent the M&StL from acquiring it.

The efforts of the M&StL and the story of the negotiations to acquire the TP&W are as follows:

Immediately after my election as a member of the Board of Directors and Chairman of the Executive Committee of the M&StL, I met with Mr. Guy A. Gladson, co-trustee of the Estate of George P. McNear, Jr., which estate was the owner of 82 per cent of the capital stock of the TP&W. I met him at his office. I told him that the M&StL was interested in acquiring the shares of the TP&W owned by the trustees and asked whether he would care to name a price.

He stated that there was no particular desire on the part of the trustees or the beneficiaries to sell the stock, and that while he wouldn't say the property was not for sale at a price, he doubted that there was any real interest on the part of the trustees. I offered to buy the stock of the trustees on the basis of $6,260,000 for 100 per cent, so that the trust interest, of course, would be 82 per cent of that figure. Mr. Gladson said that he would let me know.

Under date of June 14, 1954, Mr. Gladson sent me a letter rejecting this offer.

By telephone conversation and letter of June 23, 1954, I retained Judge Hugh M. Morris of Wilmington, Delaware, to represent the M&StL and to conduct such negotiations as might be necessary with the Wilmington Trust Company, [fol. 1028] a co-trustee of the Estate of George P. McNear, Jr. Under date of June 28, 1954, Judge Morris reported to me by letter that he had seen Mr. J. Sellers Bancroft of the Wilmington Trust (a Director of the TP&W), and that Mr. Bancroft told him that he would not say that the property would not be sold if an adequate price were offered.

On July 9, 1954, I met with Mr. Guy Gladson and urged him to state a price or range of prices which would be interesting to the trustees. He consistently refused to do this, although he did say that the property was for sale and that the trustees would give careful consideration to any additional offer that we would care to make. In response to my statement that we would try to work out a purchase which would be best from the standpoint of the trust's tax problems, he said that the trustees would be interested in all cash in a lump sum.

In accordance with my instructions, Judge Morris called on Joseph Chinn, Vice-President of the Wilmington Trust Company, on July 19, 1954, in an effort to find out something about the selling price. Mr. Chinn told Judge Morris that another deal was pending in which the TP&W was involved; that this did not involve the sale of the TP&W, and that the trustees felt that the negotiations for the sale of the TP&W should not be commenced before the consummation of that other deal. I was subsequently informed that the "other deal" to which Mr. Chinn referred was the effort by the TP&W to acquire the Illinois Termi- [fol. 1029] nal.

On or about September 15, 1954, Judge Morris had a further meeting with Joseph Chinn and informed me that if we were to increase our prior bid substantially, they would enter into negotiations with us. Accordingly, on September 23rd, I wrote a letter offering to buy their 82 per cent on the basis of $7,250,000 for 100 per cent of the capital stock.

On October 4, 1954, when in New York, I went in to see Mr. Henry Kelley, an attorney for the Hanover Bank—the bank was an owner of 15 per cent of the capital stock—I informed him of the offer that we had made on September 23rd to the trustees, and I informed him further that if we were successful in negotiating with the trustees, we would buy the Hanover Bank stock at the same price. On October 5, 1954, I confirmed this conversation in writing. I should add that Mr. Kelley was also a Director of the TP&W.

Under date of October 11, 1954, the trustees informed that our offer of September 23rd had been rejected.

Under date of November 12, 1954, I wrote to Harrison Leppo, representing the California heirs and beneficiaries of the Estate of George P. McNear, who owned 25 per cent of the Trust, seeking a meeting to overcome what seemed to be a deadlock in negotiations. Under date of November 15, 1954, he wrote me that I should take the matter up with Mr. Gladson.

Throughout this period, in several telephone conversa- [fol. 1030] tions with Mr. Bancroft, I had been pressing him for a meeting with the trustees to attempt to negotiate a price. Up to this point, all that had happened had been that I had made two bids, the last one being made on the basis of a statement by Mr. Chinn to Judge Morris that if we materially increased our bid, the trustees would probably sit down to discuss the matter. In late November, I had another such conversation with Mr. Bancroft. In that conversation, he advised me that the question of whether or not they would sit down would be decided promptly. He then wrote me a letter dated December 3, 1954, confirming this.

I received the above letter on December 7, 1954, and called Mr. Bancroft. In the conversation I again urged him to sit down and discuss with me the question of price. I pointed out that since cash was involved, the only question was whether we could agree on price, and that this was a matter which we could settle very quickly. He agreed and said again that the next move was theirs.

In December there was a tragedy in the McNear family. On December 27, 1954, Mr. Bancroft advised me that due

to that fact there would be an "indefinite delay" in establishing a meeting.

Thereupon, on December 28th, I wrote Mr. Bancroft a lengthy letter summarizing the negotiations to date and stating that "for a limited period of time we are prepared to buy for cash at a price higher than our last offer all of [fol. 1031] the capital stock of the TP&W" held by the trustees. The same letter was delivered to Guy A. Gladson in Chicago on December 29th.

Under date of January 7, 1955, Mr. Bancroft acknowledged receipt of my letter of December 28th and stated that [fol. 1032] he intended to let me know one way or the other by February 1st as to the meeting with the trustees which I had requested.

Under date of January 26, 1955, Mr. Bancroft wrote me that he had learned that there were others interested in acquiring the T. P. & W. stock.

Now, in my view this letter and the timing of it was of great significance, because on January 20, 1955, six days prior to the mailing to me of the letter from Mr. Bancroft, which is referred to, I, together with friends, had acquired a substantial block of Class A stock voting trust certificates of the Monon Railroad. This had become publicly known almost immediately. I think the same day.

During the fall and early winter of 1954-1955, I had been reliably informed that the Pennsylvania had no interest in acquiring the T. P. & W., and that Mr. Symes had stated that the Pennsylvania had no objections to the acquisition of the T. P. & W. by the M. & St. L. This was confirmed to me in a conversation with Mr. Symes, to which I will testify in a moment.

In February, or perhaps early March, Mr. Coulter called me and said that he had been instructed to arrange a meeting between the trustees of the estate of George P. McNear, Henry Kelley, representing the Hanover Bank, and myself. Tuesday, March 15th, was set as the date of the meeting. Mr. Coulter told me that the purpose of the meeting was to attempt to negotiate a price. On March 15th, Messrs. Kelley [fol. 1033] and Bancroft came to my office. They informed me that Mr. Gladson had taken ill in the morning and was unable to attend, and that they were not there to discuss

price but simply to talk generally. They told me that they were going to see another railroad that day. I told them that we were very much interested in acquiring the T. P. & W. and that we were satisfied that we were prepared to pay the highest price. I discussed times earnings ratios and possible ranges for discussion and gave each of them a sheet of paper showing various capitalizations of the earnings of the T. P. & W.

At the conclusion of the meeting, I was informed that I would hear from them within thirty days.

On April 18, 1955, Judge Morris called my secretary, I being out of town, and informed her that he had been told by Messrs. Chinn and Bancroft of the Wilmington Trust that "we have completed satisfactory negotiations for the sale of the T. P. & W. to another." They did not tell Judge Morris who the purchaser or purchasers were, nor did they give him any other information.

I immediately called Judge Morris and authorized him by memorandum dictated over the telephone, to inform the trustees that the M. & St. L. was then, and at all times had been, prepared to bid competitively for the common stock of the T. P. & W. held by the trustees of the McNear Estate, and that, in my opinion, the M. & St. L. was prepared to pay more than any other person.

[fol. 1034] In this connection, it is important to note that although I had repeatedly told the Wilmington Trust by letter and conversations that we were prepared to pay a substantially higher price than any we had offered, we were not given an opportunity to bid Also, at this particular point, I did not know either the terms of the proposed sale by the trustees, or actually with whom they were negotiating, except that I had begun to believe that the Pennsylvania was at least one of the purchasers.

The next morning, April 19, 1955, I called Judge Morris and dictated an additional offer over the telephone to his secretary which he then delivered in person at 1:25 p.m. on April 19th. Since I was not aware of the price that they had negotiated at that time, my offer was, first of all, to increase the purchase price they had received by 5 per cent, and, second, I authorized the trustees to show my offer to the persons with whom they were negotiating and

if they were prepared to meet or better it—my offer continued—we would be prepared to enter into competitive bidding, either privately under the auspices of the Wilmington Trust, or publicly under the supervision of any court having jurisdiction over the Trust. The same offer stated that we were prepared to offer to all other stockholders of the T. P. & W. the opportunity to sell us their stock at the same price and on the same terms and conditions as we would be agreed upon with the trustees.

Mr. Thomas: Mr. Examiner, I understand there is an [fol. 1035] exception taken but there is a somewhat different objection as to what is coming next. We are going into legal questions about the duties of trustees and Mr. Heineman's opinions as to what those duties are and I object to that as not being related to the issue before the Commission.

Exam. Albus: Very well. The objection is overruled.

Mr. Broker: Mr. Examiner, so it is clear, we haven't entered into any running objection to this on behalf—

Mr. Cassell (interrupting): Nor have we. There was an objection to the one statement made previously but there was no subsequent objection.

Exam. Albus: Very well, that will be shown on the record.

Mr. Lucas: As to the matter of negotiations I think there are several Commission reports on that regarding all the negotiations.

Mr. Broker: Could I ask a question regarding clarification? When you say we made the offer, do you mean the M. & St. L.?

The Witness: Yes, all discussions were by me for the M. & St. L. and all discussions were by the M. & St. L. through me as its agent.

Mr. Broker: Thank you.

Exam. Albus: The objection is overruled.

You may continue, Mr. Heineman.

A. At this time, I felt that the trustees were behaving in a manner wholly unfamiliar to me in the sense that they [fol. 1036] were plainly favoring others, even though this was costing their trust estate money. Accordingly, I sent copies of my offer of April 19th to all the stockholders of

the T. P. & W. and to all the beneficiaries of the estate of George P. McNear, Jr. who were known to me. My thought was that if—as it seemed to me—the trustees were being guilty of a breach of trust, the beneficiaries should perhaps assert themselves.

On April 21, 1955, I was in Washington and asked Judge Morris to arrange a meeting for me in Wilmington with Mr. Edmonds, President of the Wilmington Trust, and representatives of the trust department. Judge Morris called me back and said that Mr. Edmonds had told me that "it would not be worth his carfare", but that if I wished to come he would see me as a matter of courtesy.

I went to Wilmington on April 22, 1955, and met with Judge Morris, his partner S. S. Arsht, George Edmonds, President of the Wilmington Trust, and J. Sellers Bancroft, Vice President in the trust department. I stated to them that I felt that we had been very badly treated, and that as a matter of fact they had not even remotely obtained the maximum amount that was to be obtained for the trust. I said that, although I was not yet informed of the price, I had heard rumors that the Santa Fe and the Pennsylvania were the purchasers of 26 per cent each. I pointed out to them that this left the Trust Estate locked in with a minority interest that by any standards had a substantially [fol. 1037] lower value than the majority interest which they had sold.

I said that I had been informed that the price at which they had sold the 52 per cent was around $100 a share, and that, if that was true, they had sold at a ridiculously low price, while at the same time materially reducing the value of the 30 per cent which they retained. I said that the reason this had happened to the trust was because the trustees had followed unbusinesslike methods and procedures for reasons that I could not understand; that in my experience with corporate trust departments, they had always attempted to find out the maximum price for which they could sell the property.

I showed them a map on which I had drawn the lines of the M. & St. L., T. P. & W. and the Monon, and stated that it was fairly common knowledge that persons friendly to the M. & St. L. had taken a position in the Monon; that I

believed this had also come to the attention of the trustees, and that, in any event, it had certainly come to the attention of the Pennsylvania. I also stated that unless the trustees were interested in helping the Pennsylvania to the detriment of the beneficiaries, they would have realized that they should have tried to find out from us what we would have paid for the property.

I thereupon said that I was prepared to recommend to our Board of Directors that we buy their full 82 per cent of the capital stock of the T. P. & W. on the basis of [fol. 1038] $12,000,000 for 100 per cent. I said that if my understanding was correct, this was an increase of more than $5,000,000 in cash for the estate and an increase of approximately $33 a share, or one-third.

Mr. Edmonds said simply that they had exercised their best judgment and that the matter was closed.

On Monday, May 2, 1955, Mr. Coulter called me and said that Guy Gladson, one of the trustees, had called him that morning from Florida and that he had said he had heard of my 5 per cent offer of April 19th and wanted to know if it was true.

Mr. Thomas: May I interrupt again, Mr. Examiner?

Exam. Albus: Yes.

Mr. Thomas: I have a different objection here in order to make the record clear. This is not hearsay that is coming it is double hearsay. It is what Mr. Heineman said someone told him that someone else said. I object to that.

Exam. Albus: Very well. The objection is overruled.

A. Mr. Coulter told me that he had also informed Mr. Gladson of the offer that I had made on April 22nd of $133.33 a share, and that Mr. Gladson had said that he was shocked to hear about both of these offers because the Wilmington Trust had not informed him of either. Mr. Coulter said that Mr. Gladson had told him that if he should be speaking to me during the day, that is, if Mr. Coulter should be speaking to me during the day, he should tell me that Mr. Gladson was going to call me.

[fol. 1039] Later in the day, Guy Gladson called me from Florida and asked me to confirm the fact that I had offered to buy the 82 per cent on the basis of $12,000,000 for 100

per cent, or $133.33 per share, and again I want to make clear that when my testimony said that I had offered, that is I on behalf of the M. & St. L. I did so, and went over with him the essential details. He said that he was shocked that the Wilmington Trust had not informed him of this, and that he was asking Grier Patterson to participate as his lawyer, and asked whether I minded confirming all this by letter with a copy to Mr. Patterson. I said that I would be glad to do so, and did so under date of May 2nd.

In the meantime, because of information that had come to me and to which I have already testified—that the Pennsylvania's determination to purchase the T. P. & W. arose from the acquisition in hands friendly to the M. & St. L. of a substantial block of voting trust certificates of the Monon, John Devins, President of the M. & St. L., and I determined that we would go to Philadelphia and meet with Mr. Symes, if he would be good enough to do so.

On May 3, 1955, Mr. Devins and I met with Mr. J. M. Symes, President of the Pennsylvania Railroad, at his offices in Philadelphia. I made a contemporaneous memorandum of that conversation. Its substance was as follows

First, I told Mr. Symes that I understood that he and the [fol. 1040] Santa Fe had a deal to purchase control of the T. P. & W. His answer to that was, "Yes", he "thought" so. I said that I had always understood that the Pennsylvania had no objection to the acquisition of the T. P. & W. by the M. & St. L., and that he had said so as recently as last summer and fall. He answered that that was correct and that he had had no objection. He said that he had always regarded the M. & St. L. and the T. P. & W. merger as a natural and that on a number of occasions he had told George McNear and Lucian Sprague that they should get together with their two roads.

Second, I then asked him what accounted for the change in attitude. Mr. Symes said that in January stories of "grandiose" plans to merge the M. & St. L., T. P. & W., Monon and others, had come to his attention, and that the Pennsylvania Railroad had decided that they had better take steps to stop this "nonsense."

Third, I then asked him whether it would be possible to change this attitude on the part of the Pennsylvania if persons associated with the M. & St. L. gave up whatever interest they had in the Monon and abandoned any thoughts of merger of the three roads. I said to Mr. Symes that the M. & St. L. needed the T. P. & W. regardless of the Monon, and that, as a matter of fact, the desire to acquire the T. P. & W. was formulated long before we had ever given any thought whatsoever to the Monon. Mr. Symes said that the best permanent protection for the Pennsyl- [fol. 1041] vania Railroad was ownership of the T. P. & W.

Fourth, I then said to Mr. Symes that I understood from others that the Pennsylvania had never solicited traffic for the T. P. & W. route, and asked whether this was true. Mr. Symes said that it was true.

Exam. Albus: We will take a 10-minute recess.

[fol. 1042] Exam. Albus: The hearing will please come to order.

We will continue with the direct examination of Mr. Heineman.

Mr. Heineman, please.

The Witness: Thank you.

A. Now, if I may digress for a moment, I would like to explain precisely what has happened to our Monon investment. As I said to Mr. Symes, and as I have testified here, the TP&W is of paramount importance to the M&StL. I believed then, and I believe now, that it would have been of great value to the TP&W, to the M&StL, to Peoria, to all communities on the TP&W, and to the shipping public as well, if we had been able eventually to put the M&StL, TP&W and Monon under common ownership and to create and outer-outer belt line to the Chicago area.

Moreover, I felt then and feel now that the properties of such an ultimate consolidation could have been thoroughly threshed out in a subsequent hearing before the Commission, which would of course have been necessary before any such consolidation could have taken place. Nevertheless, because, as I say, of the paramount importance of the TP&W to the M&StL, for reasons wholly independent of the Monon, on or about December 7, 1955, I and all per-

sons associated with the M&StL management sold all of our holdings in the Monon. In order to make the record crystal clear, I would like to state that we sold those holdings for cash, at arm's length, to strangers, and that we [fol. 1043] have no direct or indirect financial interest in or control over the shares that we sold, or any shares of any kind in the Monon.

I would now like to return to negotiations with reference to the acquisition of the TP&W.

On May 5, 1955, I called Harrison Leppo, representing about 25 per cent of the beneficial interest in the McNear Trust. I told him of my offer of April 22 of $133 a share. We talked for about an hour and he expressed great interest in the offer. He said that if, however, a firm deal had been made with the Pennsylvania and the Santa Fe on April 15 by the trustees, probably nothing could be done about it. I told him that my understanding was that there was no firm deal. Quite the contrary. He said that he would see what he could do.

Thereupon, on May 5, 1955, I sent a formal written offer to the trustees, offering to buy their stock on the $12,000,000-basis for 100 per cent and offering to make that offer available to all other shareholders. I sent copies of that offer to all other stockholders of the TP&W and all the beneficiaries of the McNear Trust known to me.

On May 6, 1955, I notified the trustees by telegram and by confirming letter that I was prepared to submit the offer of May 5 to our directors and stockholders at a meeting to be held on Tuesday, May 10, upon advice from the trustees that, if approved, the offer would be accepted, [fol. 1044] otherwise I would adjourn the stockholders' meeting until Friday, May 13. The offer of May 5 by its terms would have expired on May 12.

On Saturday, May 7, 1955, Guy Gladson called me at my home to tell me that he was very much disturbed at the position the Wilmington Trust was taking; that he and the Wilmington Trust were not seeing eye to eye; that he felt we were entitled to the property in view of the contributions we were making to the estate, and he asked me to write him a letter setting out the various offers and steps that I had taken. I sent him a lengthy, detailed letter dated May 7, with a copy to Mr. Grier Patterson.

On Monday, May 9, 1955, I met with Edwin C. Austin, attorney for Mrs. McNear, informed him in detail of all that had transpired, and he expressed himself as being concerned that the opportunity to sell the stock on the much more favorable basis that I had provided would be lost to the estate, and said that he would follow it up.

On May 10, 1955, I telegraphed the trustees that the board of directors of the M&StL had approved the offer of May 5, and authorized that it be submitted to shareholders at an adjourned meeting to be held on Friday, May 13.

On Thursday, May 12, I talked to Mr. Grier Patterson from Peoria. This was the day on which my offer of May 5 of $133.33 per share would expire. He said that he was shocked to learn that there had been no acknowledgment [fol. 1045] of the offer by either trustee, and that he was preparing a written acknowledgment which he was having delivered to my office; and a request for additional time. He then requested that I renew the offer. I told him at that time that this would make the M&StL an uncompensated underwriter; that we had been very badly treated, and that so far as I could see, the only purpose of requesting the additional time would be to carry out additional negotiations with the Pennsylvania and Santa Fe. He said that this was not true; that the trustees were not seeing eye to eye and that a meeting had to be arranged between them. I said that I did not feel that I could extend the offer, and the matter was left on that basis.

When I arrived at my office on the morning of May 13, I found their request for an extension.

I went to Mr. Patterson's office on May 13. He told me again that we had been badly treated, and he said that if I would extend the offer for an adequate period of time to permit the trustees to meet, that he would give me his word that he would do everything in his power as a lawyer to see that the M&StL would have the opportunity to meet anyone else's price. He went on to say that although he could speak only for Guy Gladson, that this would be Guy Gladson's position as well.

Thereupon, I returned to my office and by letter dated May 13, 1955, extended the offer of May 5 to and including May 26. Thereafter, Mr. Patterson called me on several

[fol. 1046] occasions. He told me that the trustees and their counsel were having a meeting in Chicago on Wednesday, May 25; that this was the first time they could all get together. He said that Guy Gladson would undoubtedly be in touch with me. He stated that he, Guy Gladson and Ed Austin were all satisfied that the letter of April 15 with the Santa Fe and the Pennsylvania was not a binding agreement. He repeated to me that he would do everything possible to see that the M&StL had the opportunity to meet any other offer that was made. Also, Guy Gladson telephoned me on two occasions to tell me, as he put it each time, not to be concerned, that he "would not run out on me."

On May 25, 1955, the trustees met in Chicago with counsel. On May 26, Mr. Patterson came over to my office about 11 o'clock in the morning. He told me that the trustees and their counsel had agreed that the agreement of April 15 was not binding by virtue of the terms of the McNear Trust. He said that the trustees were meeting with Mr. Symes and Mr. Gurley in Washington on Friday, May 27.

He handed me a written request dated May 25, signed by both trustees, requesting an extension of the offer of May 5 to June 11. He said again that they felt that I had made a substantial contribution to the estate and that I should have the opportunity to meet any offer. I asked him why the meeting with the Pennsylvania and the Santa Fe was being held the following day. I said that it seemed to me [fol. 1047] that we were again being asked to act as an uncompensated underwriter protecting the estate, while they were negotiating to sell it to the Pennsylvania and the Santa Fe. He said that he didn't think that this was so, but that he didn't want to say anything to cause me to make any change in my course of action. After further discussion along the same lines, I told Mr. Patterson that my reaction was not to extend the offer, but that I would consider and call him at his office.

I called him at his office a half an hour or so later and told him that the offer would expire in accordance with its terms at 5 o'clock.

At a quarter to 5, Mr. Patterson called me and said that the trustees were letting the offer expire.

At about 10 o'clock in the evening, I was informed that the Pennsylvania-Santa Fe, at 4 p.m., had bought all of

the stock and that a contract was being drafted that night in Guy Gladson's law office in Chicago.

A day or two later, I am not clear which and my files do not disclose the date, I called Mr. Kelley of the Hanover Bank and said that the M&StL would be willing to buy, subject to immediate acceptance, the Hanover's 15 per cent at the same price as the Pennsylvania-Santa Fe were paying for the 82 per cent. Mr. Kelley expressed surprise that the M&StL had any interest in a joint participation as he said he understood our basic position was that the M&StL should acquire the TP&W alone. I said that this was true, [fol. 1048] but that we intended to oppose the acquisition before the Interstate Commerce Commission, and that it seemed to me desirable that we acquire the 15 per cent. I pointed out that since the 15 per cent did not constitute control, or anything like it, we should be able legally to close the transaction at once if he wished.

Mr. Broker: May I interrupt, please.

Exam. Albus: Yes.

Mr. Broker: I assume that sentence just read was a legal conclusion by this witness rather than an acclamation of fact.

Mr. Wheeler: I think it is an opinion, Mr. Examiner.

Exam. Albus: That is still an opinion.

Mr. Broker: Thank you.

A. He called me back and said that he talked either to the President or Chairman of the Hanover—I do not remember which—and that they had made an oral agreement with Mr. Gurley on or about May 26, and that he was sorry but there was nothing that he could do about it.

The M&StL's position with respect to the entire TP&W, including the west end, is very clear. First of all, it is our opinion that we need the TP&W and that if it falls into the hands of the Pennsylvania and Santa Fe, or indeed, into the hands of any combination of the interested roads, we would be materially and affirmatively injured. This will be discussed at length by other witnesses.

[fol. 1049] Second, we wish to acquire the TP&W, and I mean the entire TP&W, not merely to protect the M&StL against the serious harm which would follow were the

TP&W to fall into the hands of the Santa Fe and Pennsylvania, but also materially to benefit the unified roads. As Mr. Devins, president and Mr. Schroeder, president of operations and Mr. Provo, comptroller, will testify, the net value after taxes to the M&StL of the acquisition of the TP&W, including savings from unification, elimination of duplicate facilities and the like, and including the retention of vulnerable traffic, would be huge.

Now with specific reference to the west end, I would like to say that Mr. Devins had discussed with me from a purely train operations standpoint the possible advantages of abandoning the west end. Neither Mr. Devins nor I, nor, more important, the Board of Directors or Executive Committee of the M&StL, ever adopted the abandonment of the west end as the M&StL's policy were we to acquire the TP&W, nor is it our policy now. As a matter of fact, while the negotiations to acquire the TP&W were continuing, I asked Mr. Coulter whether the advantages from abandoning the west end of the TP&W would offset the disadvantages. He stated flatly that it would be very undesirable and his exposition was completely convincing so far as I was concerned.

I would now like to refer to a conversation with Mr. Gurley to which he referred incompletely on cross-exam- [fol. 1050] ination. This conversation took place at lunch with Mr. Gurley, the two of us alone, shortly after the May 26 contract.

It had never been clear in my mind as to why the Santa Fe was interested in acquiring the TP&W, as against the M&StL. The M&StL does not compete with the Santa Fe; we have always had, or thought we have had, a friendly relationship; our Nemo interchange is an important interchange to the M&StL, and we had always thought that it was a valued interchange so far as the Santa Fe was concerned. Accordingly, I asked Mr. Gurley if he would not tell me candidly why the Santa Fe had acquired the TP&W; that it didn't make sense to me since it was an obvious short haul of the Santa Fe; and since my understanding was that the Santa Fe had always solicited for Chicago and never for Lomax.

Mr. Gurley told me that the reason that the Santa Fe had stepped in was because he had been informed that if the M&StL acquired the property we proposed to abandon the west end and that—and I recall his words very clearly—he took a dim view of the Santa Fe having access to Peoria solely over the M&StL tracks from Nemo. I told him that I was distressed that we had not had this conversation earlier; that if that was the reason of the Santa Fe, I could have put his concern to rest by any assurances that he would have cared to have. I said that our operating people had considered this from a purely operating standpoint, and that I had discussed it with Mr. Coulter, who had [fol. 1051] advised me that the abandonment idea, sometimes considered by prior management, was not a good one.

I would like to state on the record what I have said often enough off the record; that if the M&StL obtains control of the TP&W, it has no intention or desire to abandon the west end of the property. We have already stated our agreement to appropriate conditions to insure this, and we are not convinced that in any event sound operation would dictate the continuation of, and effective solicitation for, the Lomax and Keokuk gateways.

The M&StL is interested in sole acquisition of the TP&W. There are a number of reasons for the M&StL's position in this regard. First, we believe that multiple ownership tends to be stagnant ownership, and that this is particularly the case of multiple ownership by competing interests. The particular case is an excellent example. If the M&StL were to acquire the TP&W alone, it would be able to advertise and solicit for its new and improved service; we would be able, in our opinion, to divert traffic westbound and eastbound from the Chicago and St. Louis gateways, mitigate further inroads by truck competition, and obtain revenues and traffic that we are not now obtaining. Moreover, we would have every incentive to do this for the reasons to which I have already testified.

I might say that the significance of this investment so [fol. 1052] far as the M&StL is perhaps shown by the fact that we are proposing to invest $12,000,000. Our capitalization at the present time consists of approximately 800,000 shares at $20 a share or $20,000,000, and I am speaking of

our stock capitalization, which perhaps reflects the significance and importance to us of the TP&W. I might say that our revenues are in the neighborhood of $20,000,000. The revenues of the TP&W are $8,000,000. So that the revenues of the combined road, as you can see, would be a very significant factor to the M&StL.

Moreover, if the TP&W were owned by the M&StL and others, which are either competitors with the M&StL or with each other, the TP&W would become neutralized, so-called, which is merely another word for stagnant. These offsetting and conflicting interests would prevent the type of aggressive traffic solicitation which the TP&W has engaged in as an independent operation and which would be continued under unified operation with the M&StL. As a matter of fact, M&StL ownership of the TP&W would be the closest possible thing to a continuation of the TP&W in its present form as an aggressive independent property.

I would like to comment also on the question of management of the TP&W. We believe that the management, from Russel Coulter on down, is excellent, but we do not believe that trade channels or routes should be permanently transferred and controlled on the basis of anything so temporary [fol. 1053] as existing present management. Russel Coulter is mortal like all of us, and, God forbid, could drop dead tomorrow. He could also be promoted by the Pennsylvania or Santa Fe to greater responsibilities elsewhere in their systems, or could ask for his release from his existing contract in order to accept greater responsibilities on another railroad.

If Russel Coulter, for any reason, were to leave the TP&W, who can believe that the Pennsylvania and Santa Fe would replace him with another $50,000 a year executive to run a property having $8,000,000 a year gross revenues? This would throw their entire executive pay roll completely out of line, and in their terms, would be wholly unwarranted.

The question that must be answered, not on a superficial but on a fundamental basis, is what are the conditions that have given rise to this type of management, and to the growth and success of the TP&W? If the underlying conditions are duplicated as nearly as possible, it may be as-

sumed that equal management will be provided on a continuing basis and that the growth and progress of the TP&W will be continued.

The primary condition is plainly the ownership of the TP&W by interests that do not compete through other gateways. This would lead these interests aggressively to solicit for the TP&W through the Peoria gateway with an eye single to the best interest of the TP&W. The TP&W would never have attained its present position had it been owned by two or more large railroads having competing [fol. 1054] gateways which they were bound to favor because of the overriding economic considerations. And let me give you a specific example. It is no accident that the Lomax gateway was never opened up by the Santa Fe when the TP&W was under the joint ownership of the Pennsylvania and the Burlington.

Mr. Lucas: Mr. Examiner, I object. If we are going into history 40 years back.

Exam. Albus: It doesn't make any difference, the objection is overruled. He may state what he has as an example.

A. Immediately after George McNear came into ownership of the TP&W, he went to the Santa Fe, the Santa Fe didn't go to him, he went to the Santa Fe and persuaded the Santa Fe to open the Lomax gateway. That was because his sole interest was in the Peoria gateway.

Exam. Albus: How did you learn those facts, Mr. Heineman?

The Witness: The way, I think, sir, the way most of us learn facts that transpired before our birth, by study, and statements by the TP&W and so forth.

Mr. Lucas: Mr. Examiner, I move to strike the statement that the witness has just made off of his prepared text as being remote, having no evidentiary value and as contrary to the facts of record in this case.

Mr. Wheeler: Mr. Examiner, I don't believe they are contrary to the facts of record in this case.

[fol. 1055] Mr. Lucas: Mr. Carpi testified he came to the Pennsylvania Railroad, too. I think the material is very remote, speculative.

Exam. Albus: The objection is overruled.
Mr. Lucas: Exception, please.
Exam. Albus: Yes, sir.

A. Exclusive ownership of the TP&W by the M&StL, for reasons which I have already stated and which will also appear in other testimony, would most closely compare with the TP&W under present conditions. For the M&StL unified with the TP&W would have no incentive other than to carry on and improve the same type of aggressive solicitation and service that has been provided by the TP&W. Indeed, the unification of the M&StL and TP&W would so strengthen both roads as to enable them both to compete more successfully and to improve their services.

Of equal importance to this question of non competing gateways is the considerable savings from unification which would result from single ownership by the M&StL could not result under multiple ownership. Under multiple ownership, the type of unification which we contemplate and desire would be impossible. This would mean not merely that the M&StL would not obtain the benefits and strengthening effects of this unification, but it would also mean that the transportation industry and shipping public would not obtain the benefits.

[fol. 1055a] I would like to describe the employee policies which the M&StL would follow in the event that it succeeds ~~in acquiring~~ the TP&W. As will appear from the testimony of other witnesses, the unification of the M&StL and TP&W would result in very considerable savings and elimination of duplication, we will observe the "Washington Agreement" of 1936, and we have no objection at all to this being imposed by the Commission as a condition of approval of our control. Moreover, I would like to say that, in any event, and without regard to the Washington Agreement, we would proceed with the most scrupulous care toward the employees of the M&StL and TP&W. To illustrate, on the M&StL at the present time we are making substantial economies due to the mechanization of accounting. When we commenced to do that mechanization job, we established as a policy effective throughout the company, that no employees were to be hired from the outside until any employees displaced by the mechanization program had been

offered employment as vacancies occurred through death, retirement, or normal attrition. Accordingly, I am proud to say that although we have eliminated a substantial number of positions as part of this accounting modernization program, every person who would have been displaced by this program is, in consequence of this policy, working in another position on the M&StL. In two or three instances only, such persons have assumed positions on other railroads.

[fol. 1056] Wholly apart from the Washington Agreement, and in addition to such conditions for the protection of employees as the Commission would impose, we would expect to carry out this policy for the protection of the employees of the M. & St. L. and T. P. & W. in the spirit and manner that I have described.

There is one other matter in connection with employee policy to which I would like to refer. The M. & St. L. has many supervisory non-contract employees in the upper age brackets. Ten are ever 65; four are 65; five are 64; four are 63; four are 62; four are 61 and four are 60. We are in the process of retiring these employees, upon proper pension provisions of course. The unification of the T. P. & W. with the M. & St. L. would provide a fine young management pool as normal attrition of our own supervisory personnel takes place.

In addition, we have among our contract employees in the operating department alone, 104 employees who on February 1st were 65 years of age or older. This again, provides a basis for my conviction that while unification of the M. & St. L. and T. P. & W. will provide great economies through the consolidation of existing positions, the adverse effect upon the individuals involved will be minimal by virtue of the extraordinary attrition to which I have referred, and by virtue of the policies which we propose to follow.

I now wish to discuss the contemplated financing by the M. & St. L. of the acquisition of control. As our applica-[fol. 1057] tion states, the M. & St. L., subject to Commission approval, is prepared to acquire the entire equity of the T. P. & W. at the same price as the Pennsylvania-Santa Fe combination. This a price of $12,150,000.

The M. & St. L. proposes to finance the acquisition in the following fashion: First, we would propose to pay the $150,000 out of our general funds. Second, we would propose to issue and sell competitively $12,000,000. of first mortgage collateral trust bonds of the M. & St. L. These bonds would have an interest rate competitively fixed, but we tentatively estimate that rate today as being approximately 4¼ per cent. The bonds would carry no sinking fund for the first five years of their life, and thereafter, the bonds would carry a sinking fund payable if earned of 4 per cent of the principal amount of the bonds annually. This would amount to twenty-five equal installments of $480,000 each, and would extinguish the bonds at their maturity. The bonds would be secured by a first mortgage upon the M. & St. L., and by the deposit of all of the capital stock of the T. P. & W.

In this connection, I would like to discuss Exhibit H-23, entitled "The Minneapolis and St. Louis Railway Company and Toledo, Peoria and Western Railroad Company Combined and Pro Forma Financial Data." Schedule 1, if I may refer to it, consists of two sheets and is the actual balance sheet as at December 31, 1955, of the M. & St. L. [fol. 1058] and T. P. & W. alone and combined, together with certain pro forma adjustments to reflect the changes in capital stock, long term debt, earned surplus and investment in road and equipment resulting from the sale and issuance of $12,000,000 principal amount of 4¼ per cent first mortgage bonds for a 100 per cent interest in the common stock of the T. P. & W. if it were acquired as of December 31, 1955. Sheet 1 is the asset side of the balance sheet and sheet 2 is the liability side.

The effect of any discount premium or expense with reference to the issuance of the bonds has not been given in the pro forma balance sheet.

Schedule 2 consists of actual statements of income and earned surplus for the M. & St. L. and T. P. & W. for the eight years ended December 31, 1955, alone and combined. The schedule has been prepared only for the eight years ended December 31, 1955, since operations of the T. P. & W. were suspended from October 1, 1945, to June 11, 1947. The schedule contains no pro forma adjustments for the acquisition of the T. P. & W.

Schedule 3 is, in our view, a significant schedule. It takes the combined income and earned surplus of the T. P. & W. and M. & St. L., before fixed charges and taxes on income from Schedule 2, for the eight years ended December 31, 1955, and recasts the fixed charges, the provision for income taxes, the income available for fixed charges, the net income and the earned surplus upon the assumption that $12,000,000 [fol. 1059] of principal amount of bonds bearing interest at the rate of 4¼ per cent had been outstanding since January 1, 1948. The Examiner will observe from column 4 that, if such bonds had been outstanding, the coverage of all fixed charges of the two properties for the eight-year period would have been an average of 6.5 times. I will discuss in greater detail the significance of that coverage later in my testimony. Mr. David Hill, an independent rail analyst and consultant, will also discuss it further.

Schedule 4 of the exhibit is a pro forma schedule of the excess of total depreciation over the long term debt and proposed bond sinking fund requirements. The first four columns, other than the date column, show the long term debt maturities of the M. & St. L. and its depreciation based on the provisions for the year 1955. The fifth column shows the excess of depreciation over the long term debt maturities. The next five numerical columns provide the same information with reference to the T. P. & W. The next three numerical columns combine the information for the two roads. The next to the last column shows the proposed bond sinking fund requirements as I have outlined them earlier. The final column shows the excess of total depreciation over all long term debt maturities and proposed bond sinking fund requirements of the M. & St. L. and T. P. & W. combined.

The Examiner will note that over the life of the bond the excess of total depreciation over long term debt maturi- [fol. 1060] ties and proposed bond sinking fund requirements is in excess of $23,000,000, and the Examiner will also note that this is without regard to the earnings of the M. & St. L.-T. P. & W. combined, which would of course materially increase that amount.

Conversely, however, the schedule does not show funds to be expended for new equipment or additions and better-

ments. Schedule 5 to the exhibit shows the combined statements of operating expenses and ratios for the M. & St. L.-T. P. & W. combined for the eight years ended December 31, 1955. I would like to say that these expenses and ratios are actual, that is to say, they do not reflect any of the economies from unification as to which there will be considerable testimony and with respect to which a separate exhibit has been constructed.

It is apparent that with an average transportation ratio for the eight years of 30.6 per cent and average operating ratios for the same eight years of 73.5 per cent, which reflected—as other witnesses will testify or have testified—adequate maintenance of both properties, the combined roads would be operating on an efficient basis. The benefits from unification will materially reduce both the transportation and operating ratios and make the unified property one of the most efficient in the United States. The details will be presented in exhibit form and by the testimony of subsequent witnesses.

Schedule 6 to the exhibit is a pro forma statement of the debt-stock ratio as at December 31, 1955, on the assumption [fol. 1061] that the two roads were combined and that the bonds of the M. & St. L. were issued in the amounts that I have heretofore stated.

Last May when we were negotiating for the T. P. & W., I discussed with representatives of Halsey, Stuart & Company and Smith, Barney & Co., well known underwriters, whether or not, in their opinion, $12,000,000 of bonds of the M. & St. L. of the kind that I have described could be sold competitively so as to finance the acquisition. In each case the representative of these underwriters said that in their opinion groups would be formed to bid competitively for such bonds, and we will, of course, adduce specific testimony on this subject.

I have recently discussed the question again with representatives of Halsey, Stuart and Smith, Barney. The representative of Halsey, Stuart informed me that in their opinion the bonds could be sold competitively, subject of course to market conditions affecting the coupon, and that Halsey, Stuart was prepared to form a group to bid on the bonds. The representative of Smith, Barney informed me

that while it was Smith Barney's practice not to bid competitively on issues of less than $25,000,000, he believed that these bonds were salable on a competitive basis, and that because of the relative smallness of the issue, there would be a number of competitive groups formed, regardless of whether Smith, Barney decided that it would participate. [fols. 1062-1063] Last May, on the assumption that we would succeed in our efforts to buy the T. P. & W. from the then owners, I took the added precaution of negotiating a standby agreement with five major banks agreed to enter into a standby commitment with the M. & St. L. so that if, by virtue of some disruption of the market or some other reason, we would be unable to sell our bonds temporarily, they would agree to advance $12,000,000 to the M. & St. L. to meet its anticipated commitment to purchase the T. P. & W. in the amount of $12,000,000. This standby agreement was never executed because of the Santa Fe-Pennsylvania purchase.

I have no question, but that should the Commission approve the M. & St. L.'s application, we would be able in a matter of a very few days to produce a standby agreement from the banks in the full amount to enable us to fulfill our commitment, regardless of any temporary changes in the bond market. It would be our intention to sell the bonds competitively, and we have every assurance that we would be able to do so upon reasonable and proper terms. The standby commitment would be merely insurance.

Mr. Wheeler: Does that conclude your direct testimony, Mr. Heineman?

The Witness: Yes, sir.

Exam. Albus: Cross-examination, please.

[fol. 1064] Cross examination.

By Mr. Thomas:

Q. Mr. Heineman, you gave some interchange figures on page 1 of your prepared statement.

A. Yes, sir.

Q. Will you tell me how many of the 12,995 cars listed there involved only a switch haul to the TP&W.

A. I don't know that figure, but I will be happy to provide it later in the day.

Q. Can you tell me what is the total interchange of the M&StL at Peoria during the last four years by years?

A. I cannot tell you by years. I can tell you in the neighborhood of seventy to seventy-five thousand cars, but I will get that figure for you by years, too.

Q. Can you supply it broken down between the roads with which the traffic is interchanged?

A. I am sure we can do that.

Q. Thank you, if you will. On page 4 of your statement you referred to a route by the TP&W to St. Louis.

A. Would you show me where that is, sir.

Q. You referred to the TP&W as providing an alternate route to the St. Louis gateway. Did you mean east and west or north and south?

A. I was speaking specifically, sir, of east and west.

Q. Oh, thank you. On page 9 of your statement you indicated that you made an offer for the stock owned by the [fol. 1065] trustees of the McNear estate, I think your first offer, on June 10, 1954, and that was rejected June 14.

A. Yes, sir.

Q. You quoted a gross figure. Could you express that figure in dollars per share?

A. Well, there were and are 90,000 shares of the TP&W outstanding, and I will be glad to divide six million two sixty by ninety. I think it comes out $69.50 a share or thereabouts.

Q. You didn't really expect to get the stock at that price, did you?

A. No, of course, I did not expect to get it at that price. I wasn't at all clear what price there was going to be fixed on it. I had heard that they were thinking in the neighborhood of seven and a half to eight million dollars, but you are quite right, I did not expect that my first offer would be the final offer.

Q. Then, was your next offer on September 23, you had a figure quoted there of $7,250,000?

A. Yes, sir.

Q. How much was that per share?

A. Very close to $86.

Q. In view of the price for which the stock finally sold, those offers were pretty low, weren't they?

A. Well, I don't know. As I made clear to the trustees, and as I have testified, I was trying to get them to sit [fol. 1066] down and negotiate. They sent me the message that if I would materially increase my first offer that they would sit down and negotiate. I increased it by one million dollars, which I thought was a very substantial increase. In terms of final price at which it finally went, yes, it was a little low, it was quite low, but in terms of the April 15 agreement with the Santa Fe and Pennsylvania at which the trustees had agreed to sell it for a hundred dollars a share, I wasn't too far off for opening bids without any negotiations by the trustees.

Q. After that first offer of $69 a share was turned down—

A. Yes, sir?

Q. (Continuing) —that was four days after the offer was made, wasn't it?

A. Yes, sir.

Q. Then, you retained Judge Morris about a week later?

A. Yes, sir.

Q. A little over a week later?

A. Yes, sir.

Q. Is he connected with the Wilmington Trust Company?

A. Well, as a matter of fact, he is, but my firm—yes, he is. He is a member of the board of directors and, I believe, a member of the trust investment committee, but Judge Morris has retained my firm back as far as 1950 as his lawyers in Chicago and we have retained Judge Morris on all Wilmington, Delaware, matters for over 15 years, and [fol. 1067] he is our only attorney in Wilmington and has been for 15 years.

Q. That takes care of Judge Morris.

A. Yes, sir, and the implication in the question.

Q. Now, Mr. Heineman—you don't need to refer to the page—in the latter part of your testimony you refer to the subject of the west end of the TP&W. Did I understand you to say that you had a talk with Mr. Coulter about that as well as Mr. Gurley?

A. Yes, sir, I remember it well.

Q. Let's go into another subject now. Has the M&StL Railroad been buying its own stock with company funds?

A. Well, the answer is yes, and I don't want to be humorous, but those are the only funds with which M&StL could buy its own stock.

Q. When did the company start buying its own stock?

A. It started buying its own stock in about late May or early June of 1955, at the time that we were discussing the retirement of certain of our senior executive officers and their replacement with younger officers, and the board concluded that we had to be in a position and should be in a position to offer these new officers stock options.

Q. Has the M&StL continued buying its stock since that time?

A. It has, yes, sir.

Q. Is it still buying its stock?

A. Yes, sir.

Q. How much stock has the company bought since this [fol. 1068] program was started.

A. I would say, and we have published the figures—I can't give you the precise figure, but I am sure that I will be quite close.

Q. A general figure would do.

A. The general figure would be, as of December 31, I think, 34,700 shares had been purchased, and since that date, and now I am estimating, I would say we had bought another thousand for company account, another thousand shares for the company account.

Q. How much has the company spent in the purchase of this stock?

Mr. Wheeler: Mr. Examiner, may I object to this line of questioning. I am not sure that I understand what relevance it has to any issue here.

Mr. Thomas: Mr. Examiner, I think it is of importance to the Commission to know from the standpoint of the public interest what dealings and what policies and what plans the people who control an applicant for authority to acquire another railroad have in their minds and in their business affairs.

The Witness: I have no objection to answering the question.

Exam. Albus: Very well, the objection is overruled.

A. Our average price is $22, and we are going to our shareholders at their annual meeting which takes place May [fol. 1069] 8, and also we have had communications with the Interstate Commerce Commission about this, with proposals to option 20,000 shares of that, as an initial option plan, to executives and officers and key employees of the M&StL, from the President-Elect down to, and not including any member of the board, including Ben Heineman.

By Mr. Thomas:

Q. There wasn't any such implication, Mr. Heineman, in my question.

A. I just wanted to make the record clear.

Exam. Albus: That is a complete question.

By Mr. Thomas:

Q. I got the figure per share as the number of shares in the figure.

A. Twenty thousand shares is our proposed option plan, as an initial plan.

Q. No, that wasn't related to my question. My question is how much has the company spent in the purchase of the stock.

Exam. Albus: The average price.

A. I am sorry, sir. I think I started to say and I didn't finish it. The average price per share is $22 or $22-1/8, but very close to $22.

By Mr. Thomas:

Q. How have the purchases been made? Have they been made through brokers on the market or have they been made directly from individuals?

A. They have been made through brokers on the open market, with full notice from the time we started to our [fol. 1070] shareholders that we were, so that all shareholders of the M&StL would be informed of that fact.

Q. Mr. Heineman, the Wall Street Journal of December 19, 1955, and also an item I saw in Business Week, quoted you as saying that the purpose or objective in purchasing

this stock was, (1) for this stock option plan to which you refer, and (2) cause price appreciation in the remaining outstanding shares, is that correct?

A. I don't know how they quoted me. There has been great reliance throughout this hearing on newspaper stories about me and my point of view. I would like to say to you that the reason which guided me, the reason which guided the executive committee, and the reason which guided the board of directors was our conviction that for a small railroad to get the kind of caliber employees that we wanted, we had to be in the position to give them more than just a salary, we had to give them an ownership interest in the property, and provide them with the opportunity to have such ownership interest, because on our board there owned and represented approximately one-third of our total outstanding stock. We felt that we were in a better position than many railroads to go out and buy stock for the purpose of attracting the kind of executives that we thought we ought to have to run the M&StL.

And my answer to you is this, the purpose was, first and foremost, and so far as I am concerned only, to provide a [fol. 1071] continual pool of stock to option, not only to our executives, but I am hopeful, to our employees, and I might say we are stating that in our letter and in our meeting to shareholders, and we are also advising them of the price at which we propose to option them and this is the subject upon which I feel very strongly and have made many speeches.

Q. Do I understand, then, you are denying the other factor?

A. I am denying both the story and any implication that the purpose of purchasing this stock was any kind of a market maneuver, and I would be very happy, if you would care to, to go into still further details on that.

Exam. Albus: I think that is enough.

By Mr. Thomas:

Q. Mr. Heineman, in the course of cross-examination of Mr. Gurley the first day of this hearing, and I am keeping this reference out of the newspaper, Mr. Wheeler referred to you and your associates, so I assume that that expression

has some definite meaning in your operations in connection with the M&StL. I would like to ask you some questions about who your associates are in connection with the M&StL.

Mr. Wheeler: May I inquire, are you speaking of in the operations of the property?

Mr. Thomas: No. Financial associates.

Mr. Wheeler: What contacts?

Mr. Thomas: Financial associates.

Mr. Wheeler: In the ownership?

[fol. 1072] Mr. Thomas: Yes.

By Mr. Thomas:

Q. Who is Mr. Franklin Lyons?

A. Mr. Franklin Lyons is an investor in the city of Chicago who has been a client and close personal friend and associate of mine for a great many years. He was a longstanding shareholder of the Minneapolis & St. Louis Railway. As a matter of fact, he first interested me in it a number of years ago. He is a man of considerable means.

Q. I don't recall, I don't have your application here, is he a director of the M&StL?

A. He is a director and a member of the executive committee and the second largest shareholder, owning some thirty-two thousand shares, as is publicly of record.

Q. He was one of the so-called investors group, of which you were the head, which acquired control of the M&StL as a result of proxy fight in 1954?

A. That is correct, sir.

Q. Did Mr. Lyons—

A. (Interrupting) I said 32,000 shares. It is between thirty and thirty-two thousand. I am not sure which it is.

Exam. Albus: It is in the application.

Mr. Thomas: He is not listed in the application as one of the ten principal shareholders.

By Mr. Thomas:

Q. Why isn't he listed as one of the 10 principal stockholders?

[fol. 1072a] A. His stock is held beneficially, as is the stock of many, many investors, that is to say, the report calls for the record shareholders, but in the proxy material filed annually with the Securities & Exchange Commission and also in all the solicitation materials which were sent out two years ago; that fact was clearly of record and will be of record again in about six weeks when we send out our next proxy material.

Exam. Albus: How about the annual report to the Commission?

The Witness: The reason it is not, sir, the Commission's report calls for the shareholders of record.

Exam. Albus: Very well.

The Witness: And his is a beneficial holding.

By Mr. Thomas:

Q. How does he hold his stock, through a broker?

A. You will have to ask him that.

Q. You don't have that information?

A. I don't know, I do not know.

Q. Did Mr. Lyons head a group which held control of the Alabama, Tennessee & Northern in 1946 and 1947?

A. If you ask me of my own knowledge, my answer is no. He has told me he did and I have heard something about it, yes.

Q. There was some material in your proxy solicitation material—

A. I can say I have no personal knowledge of it.

Q. I don't think we are restricting you to your personal [fol. 1073] knowledge today. Did he sell that stock to the St. Louis-San Francisco Railroad in 1948?

A. I believe so, but I want to say something, Mr. Thomas, that I had no contact with that transaction, I don't think I knew him at the time, although I may have known him, I was not representing him and I really have no personal knowledge of the transaction. Now, I am perfectly willing to answer any question.

Q. Aren't you familiar with the proxy material which bore your name in the proxy solicitation fight in 1954?

A. I was intimately familiar with it at the time, and if you would care to show me a copy I will be glad to identify

it for the record, but if you are asking me to remember the details of his holdings or what was said at that time, I cannot do it now. But I will certainly identify it and authenticate it for you, if you wish, and I was thoroughly familiar with it at the time.

Mr. Thomas: Mr. Examiner, I don't particularly care to offer this as an exhibit, but—

Exam. Albus: Show it to the witness. You cannot offer it as an exhibit unless you have copies for circulation, which I am pretty sure you don't have there.

A. This is certainly one of the solicitations that was sent out.

By Mr. Thomas:

Q. Will you hold it for a minute.

A. Surely.

[fol. 1074] Q. It shows, doesn't it, that he and his associates in that transaction made a substantial profit on the deal, doesn't it?

A. Not only he and his associates, but all of the shareholders of that particular property and bondholders.

Q. That is all I have to do with that.

Does Mr. Lyons own stock in any other railroad?

A. I know of one, and because he has always been interested in railroads, without knowing, I am certain that he owns it in others. I know of one other.

Q. What road is that?

A. Chicago-Northwestern Railroad.

Q. And you think he owns stock in other railroads?

A. I would certainly believe so, but of that I have no knowledge whatsoever, either from hearsay or personal knowledge.

Q. You don't know the extent of his holdings, then, in these other railroads?

A. I don't know the extent, no, sir.

Q. Is he a director or officer of any other railroad?

A. I am sure he is not.

[fol. 1075] Q. Who is John P. Wagner?

A. Mr. John P. Wagner is a very dear friend of mine and a client. He is a man about 63 years old. He lives in

Chicago, he was formerly of Milwaukee. He is a man of considerable means. He is the largest individual shareholder of the Minneapolis and St. Louis Railway, Railroad, and a very dear friend of mine.

Q. Well, I guess that explains what confused me. I gathered that he must hold, then, some of the stock in his own name and some in some other name?

A. Mr. Wagner has many affairs and I honestly do not know how he holds the stock, I can find out if it is germane and I will be glad to.

Q. You have shown him in your application as shown 14,384 shares—

A. (Interrupting) Which application?

Q. Page 6 of your application in this proceeding.

A. You mean as holding that of record?

Q. Yes.

A. Yes, but when I speak of holdings or ownerships, sir—I assumed you were not asking me for record holdings.

Q. That is right.

A. I assumed you were asking me for record and beneficial holdings and I was answering on that basis.

Q. And what was the figure you gave me?

[fol. 1076] A. I did not give you a figure.

Q. Do you know whether his holdings in the M&StL have increased or declined since May 1954?

A. They have increased.

Q. But you don't know their extent?

A. Well, no, you didn't ask me the question, Mr. Thomas.

Q. I asked you that before, I thought.

A. I will be glad to give it to you, to the best of my knowledge, sir—

Q. (Interrupting) All right, my understanding is that he directly and with members of his family own approximately 45,000 shares of the common stock of the Minneapolis and St. Louis Railway, and that is an approximating figure. I do not know the exact figure but it is in that neighborhood.

Q. How about Henry Demeester?

A. Henry Demeester is a man whom I met about three years ago. He was a longstanding shareholder of the M&StL and as a matter of fact had held the original bonds prior to the re-organization. We were brought together by

mutual friends. I know nothing about his business affairs and I know nothing except approximately his holdings in the M&StL which came to me as part of the annual material that we send out to shareholders and to the SEC.

Q. He was in the group, investors group—

A. Yes, sir.

[fol. 1077] Q. (Continuing) —that was involved in the investors group?

A. Yes, sir, he is a retired businessman and lives in Florida.

Q. What are his holdings?

A. Well, there are in the neighborhood of 3,800 shares, I think, but this can be—Mr. Muzenbrack tells me that Mr. Dennecster gave him the figure in preparation of the annual meeting of shareholders and that we will furnish it for the record.

Q. Mr. Arthur Bowes is one of your associates, isn't he?

A. Yes, sir.

Q. Is he a stockholder in the M&StL?

A. A substantial one, yes, sir.

Q. Do you know the amount of his holdings?

A. Yes, I do, I think. Well, it is in the neighborhood of 8,000 shares, I believe.

Q. Would you care to state what the total holdings of M&StL stock are for the amount held by you and your associates?

A. Well, now, the term—

Mr. Wheeler: The men that you have named?

Mr. Thomas: I was asking for a total figure. Perhaps I had better strike that question and ask a preliminary question.

By Mr. Thomas:

Q. Are there other associates—

A. (Interrupting) I was going to say earlier—when you speak of my associates, it may sound like a defined term to you, but as far as I am concerned it isn't a defined term, and I really don't know about whom you are speaking. I [fol. 1078] have many friends, I hope, and business associates, and to what extent they are or are not included in this question I honestly don't know.

By Mr. Thomas:

Q. Well, your counsel used the term. I thought perhaps he had something specific in mind.

A. Well, I can't help that either.

Q. Suppose I ask you what are the total holdings, of you, your associates and your friends?

A. If I were to make an estimate—

Q. (Interrupting) Let me add one more remark to make this clear to you, those that you could reasonably expect to follow your guidance.

A. I honestly cannot answer that question. These men are in no sense of the word controlled by Ben Heineman.

Q. Let's put it this way.

A. I would like to finish my answer.

Exam. Albus: Finish your answer.

A. These men are independent businessmen who have been very successful and many of them are from 10 to 15 to 20 years older than I am, and to speak of them following my guidance in a sense of a failure to exercise an independent judgment on their part is a complete misunderstanding of our relationships.

Q. I am sorry if I implied that in the question, Mr. Heineman, I didn't intend to. The point I was trying to make was a matter of definition. Let's say those for whom you are a spokesman. You certainly do speak for a group of people.

[fol. 1079] Mr. Wheeler: Spokesman in what matters?

By Mr. Thomas:

Q. Well, Mr. Heineman, don't you issue press releases from time to time?

A. I do not.

Q. Didn't you in the proxy fight involving the M&StL?

A. I would like to clarify something, Mr. Thomas. The proxy fight was a proxy fight. It was well publicized. At that time we issued press releases. We were then elected to the board of the M&StL. Old directors who had been on the board were retained on the board, the management was retained. We have functioned as a unified board. I

am no spokesman for a particular group of shareholders. I am chairman of the executive committee of the M&StL and a member of the board of directors, and to the extent that I or any other member of the board speaks for the company we speak for the shareholders.

Q. You do hold press conferences, don't you?

A. I do not.

Q. Didn't you hold a press conference or call the press the day that Mr. Patterson advised you that the trustee stock had been sold, May 26, I believe, didn't you tell him that you were going to call one?

A. Well, now, what questions are you asking me, you said did I and you say didn't I tell—

Q. (Interrupting) The first question.

A. Did I hold one?

[fol. 1080] Q. Yes.

A. I am certain I did not, and I am certain I issued no statement about it, although you can't always remember what you do in the heat of distress, but at least I am morally certain sitting here that I did not.

Q. Well, will you tell me, I guess that broad question I asked, I can't seem to get a successful definition of what you and your associates mean in this connection. You have told me the holdings of each of the individuals I named, I will be satisfied with that.

A. I will try to answer it because I do know what you are talking about, I think. At the time of the proxy fight friends, associates, and I had approximately 205,000 shares out of the 600,000 shares. It is my belief, but I must say that it on incomplete information, I have made no effort to take a census, it is my belief that that same group today holds as much or more stock, but I want to make clear that although that is a belief held in good faith it could be a mistaken belief but five or ten per cent one way or the other.

Q. You know, when you use that broad term did you include some other individuals besides the one I mentioned?

A. Surely, I included my law partner, I included his children for whom he has trusts, I included all kinds. I thought that was what you were asking for.

[fol. 1081] Q. I was. Now, in your prepared statement you made some comments about a substantial interest in the Monon.

A. Yes, sir.

Q. And I wasn't entirely clear, perhaps there is some ambiguity in your testimony, you used the term "we" in one instance and there is an implication, I thought, somewhere else that you were referring to the M&StL?

A. The M&StL as a corporation had no interest in the Monon.

Q. Were those who had the interest in the Monon and were, may I say associates of yours?

A. You may say, sir, anything you wish.

Q. Were they the same persons who were interested in the M&StL that we have been discussing?

A. I would say that they were the basic people that you first described, yes. There may have been one or two small additional people. Well, that is not entirely accurate. I would say that it included persons who are or have been associated with me and the M&StL, yes.

[fol. 1082] Q. You said no stock was held in the name of the M&StL?

A. No.

Q. Were any M&StL funds used?

A. No, sir, they were not.

Q. What was the amount of the holdings of you and your associates in the Monon?

A. We owned—we purchased approximately ninety thousand Class A voting stock certificates—I beg your pardon, voting trust certificates.

Q. I think you told on your direct when the purchase was made.

A. Yes, I think I said. In any event, it was early in January of 1955.

Q. Did all of this group sell their stock when the reports appeared in the papers?

A. Yes, sir.

Q. Every one of them?

A. Every one to my knowledge, yes, sir. Well, as a matter of fact, yes, sir, I certainly think so.

Exam. Albus: The answer is yes.

A. (Continuing) I know of none who didn't, I will put it that way, and it was one transaction and I think I would have known.

By Mr. Thomas:

Q. Do you know who Homer Livingston of the First National Bank of Chicago is? Do you know him?

A. Yes, sir.

Q. Is he or was he connected with the Monon?

[fol. 1083] A. Homer Livingston until January 10, 1956, was one of three voting stock trustees of the Monon.

Q. Did you have discussions with Mr. Livingston last year about selecting a new slate of directors for the Monon to be presented to the stockholders meeting in March of this year after the voting trust expired?

A. At his instance, yes. Now, may I explain it?

Exam. Albus: Yes, certainly.

A. (Continuing) Mr. Homer Livingston, President of the First National Bank of Chicago, Mr. Arthur Leonard, President of the City National Bank, and John Barringer were voting trustees of the Monon. The voting trust was to expire on January 10, 1956. When we acquired our stock, or I should say our voting trust certificates, because we had no power to vote at all, and never did when I owned any stock, Mr. Livingston asked me to come over and see him. We have known each other for a good many years. He said to me that he was delighted we were in the picture because the situation would probably stabilize after the voting trust expired. We had a meeting at which Mr. Livingston, Mr. Leonard, Mr. Barringer, Mr. Harold Smith of then Winston, Strong, Black & Towner, Mr. Howard Greer, Vice-President and Comptroller, I believe, of the Monon, and I and Homer Livingston, of course, were present. He asked me if I would like to go on the Board of the Monon. I said no, that I was on the board of the M&StL and wished to stay there. He asked me if we would [fol. 1084] propose a nominee to go on the board. This was about March of 1955. I said no, sir, that as far as we were concerned we were satisfied with the management of the Monon and I neither wished to go on the board nor propose a nominee. He asked me if it would be all right with me if they left the vacancy open. They had an annual meeting coming up, with the thought that I might change my mind, and I said that was perfectly satisfactory to me. On sev-

identify it. That is all I have with him about it. I have some copies here, not a great many, but I think enough to go around.

[fol. 1106] Mr. Thomas: Mr. Examiner, may these documents be identified so that I can refer to them by number when I ask Mr. Heineman about them.

Exam. Albus: The press release of Sunday, May 9, 1954, is marked for identification Exhibit H-24, and the other one H-25 for identification.

(Applicant's Exhibits H-24 and H-25, Witness Heineman were respectively marked for identification.)

The Witness: I might say, in connection with my conversation with Lynn White, we did not place that as to time and place. So that there could be no misconception as to the conversation to which I have been testifying, that conversation took place at my request in the offices of the Nickel Plate in Cleveland sometime in the early summer of 1955, and both Mr. Hales, President of the Company, and Mr. White were present and I was alone.

By Mr. Thomas:

Q. I asked you earlier if it wasn't on or about July 8.

A. No, you asked me if Mr. Devines and I had had a meeting with them about that time. My answer then was no and still is no.

Q. Mr. Devines was not present?

A. No, sir. I was alone.

Q. Will you examine Exhibit H-24, Mr. Heineman, and tell me if that wasn't a press release that was issued by [fol. 1107] your group during the proxy fight for control of the M&StL.

A. I am sure it was.

Q. Will you take a look at Exhibit H-25 and tell me whether that was not a proxy solicitation letter in connection with that M&StL proxy fight.

A. The only thing I am not clear about, sir, the way it is presented here, and I would have to compare it, and if you tell me, I will accept it, is whether this could be a galley proof; this letter went through a number of preliminary drafts.

eral occasions I was asked whether or not I would participate in discussions with respect to certain policy, this is in the summer of '55, and I said I would not. I was invited to proceed over the road on an inspection trip with the directors and I refused. That was in July of '55.

In the fall of '55 Mr. Livingston asked me to meet with him. I believe Mr. Arthur Leonard was there. We had two meetings, at least. We discussed the problem of the expiration of the voting trust. He expressed concern that a vacuum would exist. He said that he, his board of directors, wished him to get off the board of directors of the Monon, and he said there were a number of persons on the board of the Monon who were on there solely because of him, and that when he got off—and he said he had to get off—I urged him to stay as chairman—I believe he was either chairman of the executive committee, and Arthur Leonard is the other—I urged him to stay. He said his board required him to get off. He asked me if I would sit [fol. 1085] down and work out a slate with him because he was fearful that there would be a vacuum and that if we did not participate, and he expressed some concern, because up to that point I had not been willing to participate, that there would be a vacuum which could be harmful to the Monon. I said I would think about it, and I did think about it. We had one or two other meetings, and to the best of my knowledge I never proposed a director. I did ask him, and he and I discussed whether there was any—and he discussed with counsel—whether there would be any possibility of my going on both boards, and we concluded with very little difficulty that the Commission would not agree to that, and accordingly that was the only conversation, and to the best of my knowledge I never proposed a nominee although requested to, or really discussed the board.

Q. Do you know a Mr. Shaskan of New York?

A. No, sir.

Q. Didn't you tell Mr. Livingston that you would work with Mr. Shaskan in helping pick out a slate of directors for the Monon?

A. No, sir.

Q. To whom was the Monon stock held, that is, who is the beneficial owner today, as far as you know?

Q. This was obtained from the files of the SEC in Chicago.

A. If you tell me that, this is certainly a copy of it.

OFFERS IN EVIDENCE

Mr. Thomas: May I offer Exhibits H-24 and H-25.

Mr. Wheeler: Mr. Examiner, we object to them as being irrelevant to any issue in this proceeding.

Exam. Albus: The objection is overruled.

The record will show that the exhibits marked for identification H-24 and H-25 are received.

(Applicant's Exhibits Nos. H-24 and H-25, Witness Heineman, were received in evidence.)

Mr. Thomas: That completes my cross-examination.

Exam. Albus: Mr. Lucas.

Cross examination.

By Mr. Lucas:

Q. Mr. Heineman, will you turn to page 27 of your prepared statement, please.

A. Yes, sir.

[fol. 1108] Q. I wish to direct your attention to your conversation with Mr. Kelley of the Hanover Bank.

A. Wait just one second, please. Did you say 25, sir?

Exam. Albus: 27.

Mr. Lucas: Yes.

By Mr. Lucas:

Q. 27.

Exam. Albus: The second paragraph.

A. Yes, sir.

By Mr. Lucas:

Q. I notice that you stated that your offer was subject to immediate acceptance, is that correct?

A. I don't have the faintest idea. As I testified, they were sold to strangers. I can tell you who the purchasers were with whom I dealt, and I will be happy to tell you any conversations I had about it, but as to the beneficial owner-
[fol. 1086] ships, I haven't the faintest idea.

Q. Did you see a story in the Chicago Tribune on December 2nd which stated the buying group was headed by Shaskan & Co.?

A. I saw that story and I also saw that it quoted me. The story was inaccurate and the quotation was inaccurate. It was not bought by Shaskan & Company and a public denial was put over Dow Jones wires within a very few minutes after it came out.

Q. Is Mr. Florsheimer the beneficial owner of that stock now?

A. I don't know. Mr. Florsheimer is a brother of Sutro Bros., a New York exchange house. Sutro Bros. was the purchaser of most of that stock. Mr. Walter Florsheimer called me. I never met the man, wouldn't know him if he walked in the room, after the stock was purchased and said that Sutro had bought it for their own account. That is absolutely the extent of my information. I haven't the faintest idea at all whether it was true except that I don't have any reason to doubt the man's word. I don't know what he has done with it since.

Q. Do I understand that in buying and selling this Monon stock you and your associates have acted collectively, that is, as a group?

A. Yes, sir.

Q. Did you write a letter to someone connected with the Monon demanding that the staggered system of electing directors be abolished?

[fol. 1087] A. I would have to check the letter. I remember the letter and I remember what you are directing yourself to and I will be glad to give you my best recollection subject to correction after looking at the letter.

Q. Go ahead.

Exam. Albus: That might save time.

Mr. Wheeler: Do you have the letter with you?

Mr. Thomas: No, I don't have it.

The Witness: I am afraid it is in Chicago, but I can have it mailed down here. The problem of the expiration of the voting trust is a very substantial one. We owned "A" stock. There was a very large group of "B" stockholders who were in no sense connected with me.

Mr. Wheeler: Mr. Heineman, you said you owned "A" stock.

The Witness: I mean voting stock trust certificates. We had no stock at any time. They came out to see me and were incensed over the fact that very recently the voting trustees, without notice to the voting trust certificate holders, had amended the articles of incorporation to provide a staggered system. It was a small board, and under the articles the "B" stock could only elect—there were eleven—the "B" stock could only elect three and the "A" stock eight, and the "B" stockholders felt that with a staggered board, and it was staggered for four years, that is—let me see, three for three years and two to make up the eleven in a fourth year, and they felt that this was a deliberate [fol. 1088] effort to keep them from getting any representation on the board and they felt furthermore that it was a real breach of the voting trust agreement as approved by the Commission and the court, because it was provided there that it should expire at the end of 10 years and be returned to the shareholders, and they felt that for the existing voting trustees to stretch it out for another four years was, if not a breach as a matter of law, it was a breach of the spirit of the voting trustees. I communicated that point of view, and I did not communicate it, now that you mentioned the matter—well, I don't remember whether I wrote it to Warren Brown, President, or whether I wrote it to Homer Livingston. I have forgotten—but I communicated that point of view and said I thought there was a great deal in it, the voting trustees then, Mr. Leonard, Mr. Livingston, Mr. Barringer, eliminated the articles to eliminate the staggered board.

Exam. Albus: Does that complete the answer?

The Witness: Yes, sir.

Exam. Albus: We will take a recess until 2 o'clock.

(Whereupon, at 12:35 o'clock, p.m., February 8, 1956, the hearing was recessed until 2 o'clock, p.m. of the same day.)

[fol. 1089] AFTERNOON SESSION 2:00 p.m.

Exam. Albus: The hearing will please come to order.

Before we continue with the cross-examination of Mr. Heineman I understand he has a correction to make in his testimony.

The Witness: Thank you, sir.

Exam. Albus: Yes, sir.

The Witness: Mr. Thomas asked me if at the time of the expiration of our order of May 5, which offer expired on May 26, had I called a press conference, or had issued a press release. I stated that I had not called a press conference and that I had issued no release. My answer as to the first portion of the question stands, I called no press conference.

I have examined my original files over the lunch hour and found that I issued a release as follows: "For release at 5 o'clock p.m. Thursday, May 26, 1955, Mr. Ben W. Heineman, Chairman of the Executive Committee of the Minneapolis & St. Louis Railway Company today announced that on May 5, 1955, on behalf of the M. & St. L. he offered to buy the 82 per cent of the capital stock of the Toledo, Peoria Railroad Company held by the trustees of the estate of George P. McNear, Jr. for a purchase price of $9,840,000. The offer also stated that upon acceptance by the trustees the M. & St. L. was prepared to purchase the remaining 18 per cent of the capital stock upon the same basis. This would have resulted in an aggregate purchase price of $12,000,000 for 100 per cent of the capital stock of the [fol. 1090] T. P. & W. The offer of May 5 was extended to expire at the close of business today. The trustees of the estate of George P. McNear, Jr. have not accepted the offer and accordingly it has expired by its terms. No negotiations are now pending."

That is the end of the release. Thank you, sir.

Exam. Albus: You are very welcome.

The Witness: Also Mr. Thomas asked for Henry DeMeester's stockholdings. Mr. DeMeester has informed the M. & St. L. in connection with the proposed proxy.

regular routine proxy solicitation for its annual meeting that he holds 3,400 shares of the capital stock.

The other material, Mr Thomas, that you asked for is being prepared.

Cross examination (continued).

By Mr. Thomas:

Q. Do you also want the change your statement that you told Grier Patterson that you were going to hold a press conference or hold—

A. (Interrupting) You withdrew that question? I asked you which question you were asking me and you withdrew that question, sir, so I never answered it.

Q. Would you answer it now?

A. Yes. I did tell Mr. Grier Patterson that we were going to prepare alternative press releases. I have a copy of the alternative here also. And that we would either at 5 o'clock [fol. 1091] issue a release that we had entered into a contract or we would issue a release that we had not.

Q. Thank you.

A. And the alternative is also here.

Q. Is Mr. George E. Barnes associated with you in the M. & St. L.?

A. No, sir.

Q. Is he a partner of Wayne Hummer & Co.?

A. Mr. George E. Barnes is a partner in Wayne Hummer & Co. and a chairman of the Midwest Stock Exchange. He is a member of the board of the 4-Wheel Autodrive Co. of which I have the honor to be the chairman.

Q. He wasn't associated with you in the Monon deal?

A. I thought you said M. & St. L.

Q. I am just asking.

A. The answer is no in either event.

Q. Thank you. Do you know Harold Smith?

A. Yes, sir.

Q. Is he a director of the Monon?

A. Yes, sir.

Q. Was he a director of the Monon last year?

A. Yes, sir.

Q. Does he hold another position with the Monon? Isn't he general counsel?

A. I think that Mr. Smith, that Harold Smith, is execu- [fol. 1092] tive vice-president of the Monon, and I believe that his office, and presumably he, are general counsel. I think his official title is executive vice-president, and I think he is a member of their executive committee and a member of the Board of Directors.

Q. Wasn't he counsel for the Monon? Didn't he hold a position as counsel for the Monon during the past year, up until you—

A. (Interrupting) Are you distinguishing between him and his firm?

Q. No. Perhaps I should say this, does he or do he and members of his firm hold positions as counsel for the Monon?

A. I am sure they do, yes, sir.

Q. Did you tell Mr. Harold Smith last year that he was discharged as counsel for the Monon and removed from the board?

A. Well, I'd have to answer that question, no, but if you will like, I will tell you the story which in general conforms to what you want to know, I think. I told Mr. Harold Smith when he called me and asked me to participate in policy matters with respect to the Monon that his partner, Grier Patterson, who had the office next door to him, had broken his pledged word to me in connection with the M. & St. L., and I said that I did a great deal of business on the spoken word and that I expected to keep my word and that I was at a disadvantage if I dealt with people who didn't keep theirs, and that as far as I was concerned I would not engage as attorneys at any time attorneys in whose integrity and word I did not have confidence, and that following the M. & St. L. [fol. 1093] transaction I had no further confidence in the word or integrity of that office, and that I proposed, assuming that we did come into control, which we did not then have, to engage other counsel in Chicago in whose word I had confidence, yes, sir.

Q. And you told him that you would see to it that if you should come into control he would go off the board?

A. I have stated my exact recollection of the conversation.

Q. Did you talk about that with Homer Livingston?

A. I did, indeed, and to precisely the same effect that I have stated here, except perhaps in greater detail.

Q. Did you and Mr. Devines meet with Mr. Lynnwhite and Mr. Hales of the Nickel-Plate on or about June 8, 1955?

A. I don't recall the date. I remember that it was in the early summer—no, wait a minute. No, sir.

Q. You did not meet with him?

A. No, sir, not if I apprehend your question.

Would you read that again?

(Question read)

A. No, sir.

By Mr. Thomas:

Q. Did you meet with Mr. Lynnwhite at any time to discuss the M. & St. L. situation?

A. By you you mean whom?

Q. Pardon?

A. By you you mean who, me?

[fol. 1094] Q. Yes.

A. Yes, sir.

Q. Did you tell Mr. Lynnwhite that you thought your group could elect at least four directors of the Monon after the voting trust expired?

A. I find that inconceivable because it was always my notion that after the voting trust expired we could elect eight directors, and I would never have had any occasion to say that we could elect four.

Q. Did you head a group which obtained an option to buy 90,000 shares or about 43 per cent interest in the Wisconsin Central last August?

A. No, sir.

Q. Were you associated with such a group?

A. No, sir.

Q. Did you make any statements at any time about such a group?

A. No, sir.

Q. Did you know that there was such an option?

A. Yes, sir. Mr. Thomas, I don't want to stand on technicalities of your question; if you want me, I would much

rather just not hold you to your questions. Your questions don't call for the answer you are seeking. I will be glad to tell you about it, if you wish me to.

Q. Let me ask you this question: did you discuss the Wisconsin Central option in your speech before the New York Society for Security Analysts on September 9, last year?

A. There and elsewhere.

[fol. 1095] Q. Was that option taken out in the name of the M. & St. L.?

A. It was taken in my name with a view of having it examined by the M. & St. L. officials to determine whether or not it would be in the interest of the M. & St. L. to acquire it. The M. & St. L. examined it. We concluded that it was highly competitive in certain areas with the M. & St. L. and accordingly let it lapse. I have consideration to acquiring the option personally with friends, and concluded against it, as I advised the board of the M. & St. L. because of my conviction that if we did acquire it and it turned out very well, some shareholder of the M. & St. L. in the future might complain and say that we should have taken it for the benefit of the M. & St. L., and that if we took it and it didn't turn out well, the loss would be ours, and rather than put myself in any such kind of a position, after officials of the M. & St. L. examined the situation to determine whether or not it was to the advantage of the M. & St. L. to buy it, I permitted the option to lapse.

Q. Has the M. & St. L. entered into an agreement to purchase the outstanding capital stock of the Minnesota Western Railway?

A. It has, sir, subject to the approval of the Commission, of course.

Q. What is the price to be paid for the stock?

A. Well, the price is calculated on two bases which comes out to the same thing. I would say that the price is net [fol. 1096] $306,000 net to the M. & St. L. plus to be adjusted by either earnings or losses subsequent to October 31, 1955.

Q. Is that purchase to be accomplished with cash?

A. That purchase is to be accomplished with cash.

Q. By the M. & St. L.?

A. By the M. & St. L., subject to the approval of the Interstate Commerce Commission.

[fol. 1097] Q. We have to go to the newspapers again, Mr. Heineman.

A. I think you can find a better source of information

Q. Let's see if there is any of this information that is correct.

A. All right.

Q. Are you associated with a group of people who are interested in the Northwestern Railroad?

A. Yes, sir.

Q. Do you own any stock in it?

A. I own some stock.

Q. How much?

A. Approximately 5,500 shares of common stock.

Q. Are any of the group, investors group, with which you were associated in the proxy fight involving M&StL. associated with you in this transaction?

A. One man.

Q. Mr. Lyons?

A. Yes, Frank Lyons.

Q. How many shares of the North Western stock does he hold?

A. He has informed me—I have no personal knowledge of this, except to say that I believe him—he has informed me that he owns or controls, and I am not clear whether that is through his immediate family or elsewhere, some 60,000 shares, of which 54,000 shares are common, he informed me, and 5,000 preferred. I guess it was 59,000.

[fol. 1098] Q. How much stock of the North Western is held by the group of which you were a spokesman in that transaction or in that situation?

A. As of 10:30 this morning approximately 485,000 shares.

Q. Who are the other persons or companies that are involved in that group with you?

A. I will tell you with one exception. Other than to say that with the exception of Mr. Lyons, none of them, so far as I know, have any interest in the Minneapolis and St. Louis Railway. I'd like to make that point.

Now, Mayer Stewarts & Company, an investment banking house and brokers in New York have acquired for its

partnership account for the account of its partners and for two or three customers, I am informed, 133,000 shares of common and preferred. I am not certain of the proportions.

Incorporated Investors of Boston, a large investment trust, has purchased 50,000 shares, and certain other persons whom I would prefer not to name unless it is regarded as germane to this proceeding, and not for any reasons having to do with this transaction, that is, a TP&W transaction, acquired another 50,000 shares.

Q. Is this other person connected with any other railroads, own any stock in any other railroads?

A. One of them has a certain amount—you didn't understand me to say that one person had acquired 50,000 shares, did you?

[fol 1099] Q. I misunderstood you.

A. No. The one person who has other interests in railroads has acquired 10,000 shares of this 50,000 shares.

Q. Are you negotiating for the purchase of additional stock in the Northwestern?

A. We are seeking to buy additional stock, yes, sir.

Q. When you spoke before the Security and Allies in New York last September did you state that the M&StL directors had discussed buying stock control of the Northwestern?

A. No, sir. That was a misquote which went out over the A.P. wire and which was widely circulated. I did not say that. I said that persons associated with me had considered it. They construed that to mean the M&StL and the directors and sent that out. It was all over the country and there was no point in even attempting to correct it. I was going to explain why the reporter made a mistake, why it caused them to make the mistake but I am not sure that is important, although I think perhaps I had better.

What I did say was that one of the reasons that we had, and I had refused to enter into it at that time was because I felt that it would take away too much time from my personal efforts at the M&StL.

Q. That was where they misinterpreted it?

A. He got off on that.

Q. Going back to the sale of that Monon stock, did the [fol. 1100] group that you referred to in that transaction make a profit on the sale?

A. Yes, sir.

Q. Have you communicated with officers or directors of the Northwestern recently?

A. Yes, sir.

Q. Did you talk with Mr. Wells?

A. I met with Mr. Wells and Mr. Goodman. Mr. Wells is chairman of the Finance Committee of the Chicago and Northwestern Railroad. Mr. Goodman is the executive vice-president and the acting chief executive officer.

Q. Have you written a letter recently to the members of the Northwestern Board?

A. I wrote a letter dated January 30 to Mr. Wells and sent copies to members of the board of directors.

Q. Did you ask in that letter that you would like to reach some understanding about a slate of directors for the Northwestern?

A. I did, indeed.

Q. Did you make any reference to the staggered system of electing directors?

A. I did indeed.

Q. Did you suggest that that be changed?

A. I did, indeed.

Q. Did you indicate that you thought your group would [fol. 1101] be able to elect a majority of the directors at the next meeting of the stockholders?

A. I didn't say that, sir, what I did say was that I felt that the people whom I represented in that connection would have a majority of the shareholders attending the meeting—well, I think it is certainly a fair implication from the letter that I also meant or said—that I meant what you asked me, yes, sir.

Q. Did you or anyone on the Northwestern have anything to say about a possible proxy fight for control of the Northwestern?

A. I said we didn't want one.

Q. Did you indicate that there would be one if you weren't satisfied with your discussions?

A. It takes two to make a fight, sir. What I did say to them was that if we could not reach an agreement I proposed to make certain recommendations to the Board of Directors—

Q. I beg—I am terribly sorry.

A. (Continuing) —that I proposed to make certain recommendations to the shareholders. Whether or not that would produce a proxy fight would be a matter that I have no information on.

Q. Did you suggest that if the Northwestern directors spent money for a proxy fight you might hold them personally responsible?

A. I said what I believe, which is that where there has been no examination of the matters of principle to determine whether there is any difference in principle between [fol. 1102] the management and large shareholders that I regarded it as legally and morally indefensible for a majority, I mean for a board of directors to precipitate a proxy fight against their larger shareholders in order to perpetuate themselves on a board of directors, and I added particularly when they had no investment of any particular kind in the company. That is what I said and it is what I believe.

Q. Are you meeting with Mr. Wells and some of the other directors tomorrow?

A. I do not know if Mr. Wells will be present. Mr. Wells was in Florida. I am—because of the exigencies of this proceeding, which I might add are far more important to me and the M&StL than that matter, I am going to remain there, and I do go there it would be in the evening to return the very first thing on Friday morning, and I don't know who the board will designate to meet with them.

Q. Mr. Heineman, let's refer to your direct testimony. You stated that by any formula the M&StL is a heavy ownership property, owning 3,644 cars as of December 31, 1955.

A. Well, I interpolated in there, in the testimony that I gave by any formula known to me. I wasn't trying to cut it down by the formula with which I was familiar and upon which I was basing my belief was that there is gen-

eral agreement that if a railroad owns and operates more cars than are ever on its line on any one day in an operating year that it is fulfilling its obligations as a car [fol. 1103] rier. Now, that was the formula. My written prepared statement was too broad and in putting it in the record I altered it by amending to say any formula known to me. I am sure there are many formulas I don't know anything about.

Q. Are you familiar with the recommendations of the A.A.R. about car ownership?

A. I have discussed them with Mr. Devins of the M&StL. who will testify and he has assured me that we meet those. I am not personally, intimately familiar with them. He will testify, however, immediately following me.

Q. Has the M&StL. purchased any cars since you acquired, your group acquired, control other than the 50 covered hoppers that have been referred to in the paper?

A. We regard those 50 covered hoppers as quite important. We have shippers of cement industry in Mason City who have been asking us to buy covered hoppers for them. There is a covered hopper shortage. The answer is in addition to that, yes—I am not quite clear which way, there was one block of 40 covered hoppers that we bought last May and announced to the shippers in Mason City at a directors meeting that we held in Mason City so that we could all get to know the shippers there. In addition to that we have bought an additional 50 covered hoppers partly for our Mason City shippers and partly for the Des Moines car pool, covered hopper pool, on which [fol. 1104] we expect to get delivery, we have been promised delivery, I believe, on April in time for the cement shipping season, so that my answer to you is yes, 90 covered hoppers, and I might say yes all the recommendations that the operating management have made have been carried out.

Q. Are those purchases financed by equipment obligations?

A. Yes, sir.

Q. When you talked with Mr. White of the Nickel Plate last year did you discuss your plans for the TP&W if you were able to buy it?

A. I do not believe so, sir.

Q Did you tell him that you would move the head quarters from Peoria to Minneapolis?

A. I don't believe I did because that was not the subject of our conversation, but I might say that I will testify on that and there is extensive testimony prepared in any event, as to what our plans are.

Q. I am asking you about the conversation.

A. I don't recall it. It may have taken place.

Q. Would you say that you propose to take up part of the west end of the TP&W—

A. (Interrupting) No, sir.

Q. I haven't finished my question.

A. The answer is no, sir, as far as you have gone.

Exam. Albus: Let's finish the question.

By Mr. Thomas:

Q. (Continuing) —and to effect various economies which [fol. 1105] by this and other means would cut expenses by about $200,000 a year?

A. That is a double question, Mr. Thomas, so you will have to break it up for me to answer it intelligently.

I haven't told him nor did I tell anyone at any time that we propose to take up the west end of the property. We have never proposed to take it up and we think it would be contrary to our best interests.

With respect to the second part of the question, with reference to economies I have no independent recollection of having told Mr. Linnwhite anything at all about the economies we propose. That is not to say that I may not have done so because I have discussed this with a great many people, and I might say that your statement of the economies is a gross understatement of the economies that we believe would result from unification.

Q. That wasn't my statement, Mr. Heineman. I asked you.

A. I don't think it was mine.

Mr. Thomas: I have some material here I want to have marked as an exhibit and I want to have Mr. Heineman

A. Yes, sir, that is my recollection of it.

Q. And a little further down on the page you say that you pointed out that since the 15 per cent did not constitute control or anything like it, you would be able legally to close the transaction at once if he wished to do so, is that correct?

A. I am sure that is what I said to him.

Q. What did you consider to be control of a railroad corporation?

A. Control, sir, cannot be determined by any particular number of shares or percentage. In this particular case rather than enter into any philosophy, I would like to confine myself to the case about which I testified—

Q. That is right.

A. There was an outstanding block of 82 per cent in one hand, in addition to which two large carriers had agreed to buy 52 per cent, or more than a majority. It was then [fol. 1109] my opinion, and I have had no occasion to change it, that under the circumstances of that case 15 per cent could not possibly constitute control.

Q. What if the stock of a railroad corporation were widely scattered, then what would you say as to what constitutes control?

A. That was not the circumstance with which I was faced, and I had no occasion to consider it.

Q. Would you care to answer my question?

A. I have, sir.

Mr. Wheeler: Mr. Examiner, I think this is getting pretty remote to any issue.

Exam. Albus: I do, too. I think he has answered the question, he hasn't considered the matter.

The Witness: I had not at that time.

Mr. Lucas: Mr. Examiner, he is trying to hold his answer down to this particular transaction, this distribution of stock. I am asking him where stock may be otherwise distributed than the percentages here what he considers to be control.

Exam. Albus: What is your opinion on that, Mr. Heineman?

The Witness: Very well, sir.

A. I think the only answer that I can make to you, sir, is that no one can tell that answer until such time as the matter is put to test in a contest. I think plainly that if stock is widely scattered, that so that one may appeal to wide numbers of shareholders on the basis of principles [fol. 1110] which one might should be attractive to them, that then with support from them and others a lesser block than 51 per cent might have a controlling effect. If there are opposing large blocks or if your principles do not appeal to shareholders and what you propose to do is not appealing, then a very substantial block may not be controlling, and there have been very, very good evideaces of that in recent years. The question really is, as a practical matter in each particular case, when the matter is put to a test.

Exam. Albus: And I want to state on the record there is a question for the Commission to determine as to what constitutes control.

Mr. Lucas: I entirely agree with you, Mr. Examiner. I don't disagree with the answer of the witness.

Exam. Albus: All right. Let's have the next question.

By Mr. Lucas:

Q. Mr. Thomas, what I am not clear on is this, and mayb you can state very briefly how many shares of stock you hold in the M&StL.

A. I personally, no, he did not ask me. Ninety-two hun dred shares.

Q. Do you hold any stock additional to that in which you have a beneficial interest?

A. No, I have always answered all questions about ownership in terms of both—I have answered all questions asked me in terms of the beneficial interest regardless of the record holding.

[fol. 1111] Q. So that 9,200 shares of the M&StL is the total stock in which you have an interest direct or indirect?

A. That is correct, sir.

Q. Is that the maximum amount that you have held of that stock at any one time?

A. Yes, sir.

Q. Will you turn to your applicat on, please, the application of the M&StL.

A. Yes, sir.

Q. And look at the directors who are named there. Will you identify the ones that were your group of directors that were elected as a result of your proxy fight in the M&StL.

A. They were all elected as a result of our vote.

Q. All right. Now—

A. (Interrupting) No, I am not quibbling with you, sir. I want to make a real point.

Q. All right.

A. There were 11 vacancies to be filled. We ran a slate of 7 and I will identify those for you.

Q. That is what I want.

A. However, in casting the final ballot, we also cast it for the four directors on our opponents' slate whom we wished to continue in office, and the cumulative effect of their proxy plus ours also elected them.

Q. I understand that from your direct testimony. Now, [fol. 1112] will you give me the answer to my question—

A. Yes, sir.

Q. (Continuing) —the slate that you were prepared to present in the proxy fight.

A. Arthur Bowes, Henry DeMeester, William E. Fay although I should say with reference to Mr. Devins who was then president, that we had announced that, if elected, we intended to continue Mr. Devins, and under Minnesota law the president is required to be a director, so that Mr. Devins could truly have been said to be a member of both slates—William Fay, Ben Heineman, Franklin Lyons, Joseph Nye, Jouett Shouse.

Q. Now, of those seven you referred to, being chairman of the board of the Four-Wheel Drive Auto Company—

A. Yes, sir?

Q. (Continuing) —of those seven, how many are connected with you in that company?

A. Arthur Bowes is a member of the board of directors. I take it, your question is also directed to Mr. Lyons, although it wouldn't quite cover it. Mr. Lyons is not on

the board, not on the executive committee, but he is a large shareholder.

Q. A larger shareholder?

A. Yes, sir.

Q. Is he a director?

A. No, sir.

[fol. 1113] Q. You identified Mr. Wagner in response to some questions of Mr. Thomas as a participant in the Four-Wheel Drive Auto Company.

A. Well, I don't remember whether I did, but he is.

Q. Where is the headquarters of that company, please?

A. Clintonville, Wisconsin.

Q. What was the maximum number of shares that you and your friends or associates had at any one time in the Monon?

A. Approximately ninety thousand shares—well, approximately 90,000 voting trust certificates.

Q. At any time did you get the Commission's approval to hold collectively that number of shares of the Monon stock?

A. You didn't apprehend my answer, sir. I said voting trust certificates. We acquired the stock in January of 1955.

Mr. Wheeler: Just a moment, please. You used the word "stock" again.

The Witness: Well, the voting trust certificates.

Exam. Albus: I think we all understand what is involved in Monon.

The Witness: The voting trust expired January 10.

By Mr. Lucas:

Q. Whatever the number of shares were, did you get at any time Commission approval?

A. No, sir.

Mr. Wheeler: Mr. Examiner, I would like to ask counsel, in view of these questions, and I'd like to have the questions [fol. 1114] withdrawn unless he is prepared to show on the record by subsequent testimony that Commission approval is required to hold the voting trust certificates of

the Monon or any other railroad which is operating under a voting trust.

Exam. Albus: The record may stand the way it is.

By Mr. Lucas:

Q. Mr. Heineman, were you ever interviewed by a Miss Nancy Ford in connection with an article that appeared in the Modern Railroad, September 1955, entitled "The M&StL and Ben W. Heineman"?

A. I was, sir.

Q. Now, I don't want to get into a question of whether you said something or not, but in this article I am going to read something to you and I quote from it, "and it meets" —speaking of, it means the M&StL—wait a minute—I am going to have to go back further. "The TP&W"—"buy it" is the predicate of that—"meets M&StL at Peoria. By building a short line between TP&W's eastern terminus, Effner, Indiana, and Reynolds, Indiana, or some other point on the Monon, Mr. Heineman would have had a vast northwest-southeast route through the Peoria and Louisville gateways"—that closes the quotations from her article. She does not include any within quotes, but did she discuss that concept or that thought with you in connection with that article?

A. She discussed with me my views with reference to the M&StL, TP&W, and Monon, and that happens to be an in-[fol. 1115] complete, but so far as it goes, accurate part of my views. But I want to emphasize "incomplete".

Q. At page 16 of your prepared statement—I don't know whether you wish to refer to it or not.

A. Page 16?

Q. Yes. The first full sentence, the first full paragraph, the last sentence reads: "My thought was that if—as it seemed to me—the trustees were being guilty of a breach of trust, the beneficiaries should perhaps assert themselves." That is the end of the quotation from your prepared text.

A. Yes, sir.

Q. Upon the law of what state were you basing that thought?

A. I was basing my thought on the common law of the law of trusts and I still adhere to it.

Q. What?

A. Common law of the law of trusts. In other words, those principles of fiduciary duties, that so far as I know, are in effect in every state.

Q. Were you as interested in protecting their interest as you were trying to get them to help you with your interest in the matter?

A. Plainly, I regarded it as a case of mutual self-interest.

Q. At page 9 of your prepared statement there is a reference to an offer of June 10, 1954, in the aggregate amount of $6,260,000. That would work out, on the basis of the [fol. 1116] outstanding stock, at about $69.9 per share, would it not?

A. I thought it was 69.5, but my figures may have been wrong.

Q. Maybe your figures may have been wrong?

A. About that. Between fifty-nine and 60 dollars.

Q. On the next page, page 10, September 15, 1954, the offer was an aggregate consideration of $7,250,000. Would that be about $80 per share?

A. Yes, sir.

Q. Were your offers, those two offers, made on a basis of all the stock outstanding?

A. I think I understand you, and the answer—well, let me try to clarify it. These prices were based on 100 per cent, so that to determine what the estate would get, you would have to take these prices and multiply them by 82 per cent, representing their ownership, but if you mean was my offer conditioned on getting the full 100 per cent, the answer is no. I stated that I would make the offer available to all shareholders, but I was perfectly content to have them sell the M&StL the 82 per cent.

Q. In connection with those two particular offers, will you point out where in your testimony you said you would buy any other stock? May I just tell you what I have in mind, so that on each instance you are careful to say, you are careful to use that term 100 per cent. Am I right about that?

A. I made the offer—if there is any misapprehension, [fol. 1117] let me testify that the offers were made on the basis of the trustees' stock because I thought that they

would have an interest in making certain that they didn't sell their stock and leave certain of their beneficiaries who also held shares in the situation. I in each case told them that we would make the same offer to all shareholders so that those beneficiaries of the trust who held stock independently of the trust would have the opportunity to sell if they desired.

Exam. Albus: At the same price?

The Witness: At the same price, on the same terms and conditions. That was my uniform position and in every written offer I made I expressly so stated and in my instructions to my agent, Judge Morris, of which I have the originals here, I also so stated.

By Mr. Lucas:

Q. All right. Now, Mr. Heineman, I come back to page 9, and in the last line of the first full paragraph, doesn't that state on the basis of $6,260,000 for 100 per cent?

A. I was expressing—

Q. (Interrupting) Can't you answer that is what you testified?

A. If that is what is here, I don't have to testify.

Exam. Albus: That is what is there, Mr. Lucas.

Mr. Lucas: I understand, Mr. Examiner.

By Mr. Lucas:

Q. On page 11, at the end of the full paragraph at the top, did you get an acceptance from Mr. Kelley of your offer to buy the 15 per cent of the Hanover Bank stock?

[fol. 1118] A. Yes. I will tell you precisely what he said. He said that he was very grateful that I had come in to see him, that he had heard of my offer to the trustees, that he did not know whether it included him or the Hanover Bank, he said that he would let me know what the views of his executive officers were. I confirmed it in writing on whatever date I said, October 5, and within a matter of several days Mr. Kelley called me back and said that if the trustees sold their stock to me, or rather to the M&StL, that he would be pleased to sell the Hanover Bank

stock at the same price and on the same terms and conditions.

Q. Did you get a firm acceptance of your proposal from Mr. Kelley, I mean other than the way you expressed it just now?

A. Mr. Lucas, I made a conditional offer, conditioned on acceptance of my offer by the trustees. He accepted it in precisely the way I made it, yes, "If the trustees sell, we will sell", that was the only offer he had from me, and I got a firm acceptance from him of the offer that I made, yes, sir.

Q. Did you get a firm acceptance, however, by the Hanover Bank that they would sell you, regardless of any contingencies, the stock that they held of the TP&W?

A. Mr. Lucas, I made—

Mr. Lucas (interrupting): Mr. Examiner, I think that can be answered yes or no.

A. I made no such offer. He couldn't accept an offer [fol. 1119] regardless of any contingencies.

By Mr. Lucas:

Q. You didn't get a firm legal acceptance? You are a lawyer, you know what I mean?

A. I also know there can be no acceptance unless there is an offer.

Exam. Albus: All right, let's keep it quiet.

Mr. Lucas: I beg your pardon.

Exam. Albus: I mean, let's continue.

A. The answer is, I got a firm acceptance of the offer I made, yes, sir.

By Mr. Lucas:

Q. And the same way, that yours was a firm offer?

A. Precisely.

Exam. Albus: Now, gentlemen, you understand each other.

Mr. Lucas: That is all I have, Mr. Examiner.

[fol. 1120] Exam. Albus: Are there any further questions on cross?

Mr. Hoag: I have a few questions.

Exam. Albus: Mr. Hoag, please.

Cross examination.

By Mr. Hoag:

Q. Mr. Heineman, referring to page 34 of your prepared testimony—

A. Yes, sir?

Q. (Continuing) —in regard to the matter of employees.

A. Yes, sir?

Q. You can appreciate the fact that I am vitally concerned as far as employees are concerned?

A. I can, and so are we, sir.

Q. I likewise appreciate the fact that apparently someone else is going to testify after you.

A. About particular jobs and in great detail, sir.

Q. Yes. I would like to have from you now your general thoughts or ideas as to what the M. & St. L. would do, were they to be successful in their application, as far as the elimination of duplicate facilities and things of that nature.

A. And consistent with these policies on employees that I have already testified to?

Q. Yes, sir.

A. Because I want to make clear that anything that we testify on unification must be taken in the light of these policies with reference to employees which are top execu-

[fol. 1121] tive policies made the M. & St. L.

Q. Yes, sir.

A. In general, I would say, sir, that we propose to unify the operations of the T. P. & W. with the M. & St. L. in much the same manner as the operations of the Louisiana and Arkansas are unified with the Kansas City Southern, in terms of a pattern, particularly, and I want to emphasize, as I am sure everybody knows, I am not an operating man, but Mr. Schroeder and Mr. Devins will testify in detail on this, particularly we would expect to unify the two operations, so as to integrate the T. P. & W. into the M. & St. L. operations.

Q. Could you go a little more into detail, and let's say for example your general offices on the T. P. & W.?

A. Yes, Mr. Provo will testify to that, still within the framework of these policies. We have modernized and mechanized the office procedures of the M. & St. L. We believe that the absorbative capacities of the M. & St. L. are very substantial without an increase in cost or any substantial increase in cost. Accordingly it would be our hope that we would unify the accounting and general office operations of the T. P. & W. into the accounting and general office operations of the M. & St. L. In the interest, I might say, of greater efficiency and we believe much greater service to shippers, and so on.

Q. Would that likewise pertain to shop work?

A. Well, for example, the M. & St. L. has a yard in [fol. 1122] Peoria. The T. P. & W. has a yard in east Peoria. We would hope to consolidate those particular yards, probably in east Peoria, and abandon the M. & St. L.'s yard in Peoria proper. I am not sure that that's an answer quite, but I am trying to indicate what we would hope to do in broad principles with the notion that Mr. Schroeder who has a background by jobs could fill in the particular gaps that I am leaving.

Q. That is all I am asking for.

A. Yes, I am trying to outline the principles.

Q. Likewise would there be a change in operations?

A. Yes, sir.

Q. What would be the general nature of those?

A. Running power through, changing timetables for improved and better service, use of gangs northward of the T. P. & W. as the weather improved during the summer mechanization of maintenance both on the T. P. & W. and M. & St. L., floating gangs, trunk gangs, but I would say in general that consistent with the policies which I have stated and which are paramount policies, not paying lip service to those, that those are paramount policies that we would do everything possible to make the M. & St. L. and the T. P. & W. a very efficient road from a unified standpoint.

Q. Should your application be granted, there would likewise be upon your employees as well as those of the T. P. & W.?

A. We believe, and you will recall, sir, that I testified [fol. 1123] with reference to the attrition, and by attrition I mean not only the normal attrition as death and ages below 65 but I am also speaking with reference to the very substantial number of men of age over 65 on the M. & St. L. I have a conviction, based on our experience at the present time, and the speed, or rather the lack of speed, the manner in which we would put this into effect that the absorbative capacity of the two properties, taking into account the attrition that is described here, the number of employees of over age 65 and the like would be such as to have a minimal, plus the Washington Agreement, but I hope we would go beyond the Washington Agreement, to be honest with you, would have a minimal effect on the M. & St. L.

Mr. Wheeler: On the employees.

A. I mean on the employees of the M. & St. L., or the T. P. & W., because once it were acquired, if the Commission were to give us leave to acquire it, we would regard the employees of both properties as being the responsibility of the M. & St. L. as a unified group. In other words, there wouldn't be any discrimination between the employees.

Q. One last question, Mr. Heineman. In the financial sheet that you submitted this morning—

A. Yes, sir?

Q. (Continuing) —is there any cost reflected in there for the Washington Job Protection?

A. No, sir. Well, in the first place, sir, the financials that [fol. 1124] I submitted—

Q. (Interrupting) Yes?

A. (Continuing) —are actual figures adjusted only for the effects on those accounts that would be affected by the issuance of bonds. Another exhibit is being constructed or has been constructed which will deal pro forma or on a projected basis with the effect of the unification. Now, as to that the Washington Agreement, as such, and Mr. Provo can correct me, has not been included in the calculations, not because we were not aware of it, not because we don't intend to live up to every word of it, but because it becomes extraordinarily difficult to make those computations at this particular time. They depend on the speed with which you

do the unification and a great many other matters, including among other things, the attrition that happens on your own property, which makes the application of the Washington Agreement unnecessary to particular employees that you absorb by virtue of attrition. So that although fully conscious of it that exhibit will be qualified by testimony to the reference that it does not include the Washington Agreement allowance because at this moment we simply don't know quite how to calculate it and frankly we would think that the normal attrition would absorb so many of the employees as to make it relatively small, but it is not, it does not include the Washington Agreement for the reason I say.

Mr. Hoag: That is all I have. Thank you.

[fol. 1125] Exam. Albus: Mr. Cassell?

Mr. Cassell: No questions.

Exam. Albus: Mr. Broker, please.

Mr. Broker: I have a few questions.

[fol. 1126] Cross examination.

By Mr. Broker:

Q. On page 4 of your prepared testimony, Mr. Heineman, you talk about the competition or lack of it between the TP&W and the M&StL.

A. Yes, sir.

Q. Aren't you, in fact, competitive with the TP&W west of Peoria?

A. It is, of course, true that we have important bridge traffic so far as the M&StL is concerned between Peoria and Nemo, which could move Peoria-Lomax and vice versa, of course. There is no question, I take it, as to that traffic, which is vulnerable competitive traffic, that we could lose it if the Santa Fe-Pennsylvania acquired this property, and there will be testimony about that, or that we could solicit traffic from the Lomax-Peoria gateway, from the Lomax-Peoria route in order to take it or try to take it over Nemo-Peoria, so my answer to your question is certainly yes, sir. You happen to think that that is minimal. There are many operating reasons why Lomax is desirable to the M&StL.

including such matters of grade, curvature and other matters, which Mr. Schroder can testify to, and we firmly believe that the Lomax gateway would be very important to the unified operation.

Q. Now, on page 29 of your prepared statement—

A. (Interrupting) 29, sir?

Q. Yes. At approximately the middle of the page, you [fol. 1127] say the M&StL does not compete with the Santa Fe. Don't you, in fact, compete with the Santa to the same extent that the TP&W does?

A. Yes, I think so, although the Santa Fe—let me be sure I understand you. By that you mean that our Nemo gateway or Nemo interchange is short of Chicago?

Q. That is right.

A. And to that extent the Santa Fe short hauls, is that right?

Q. That is precisely it, plus one more thing.

A. Yes?

Q. And this supplements that, bringing in this idea of gateway competition that you have stressed throughout your testimony.

A. Yes. Well, in the case, of course, of the Santa Fe that is really saying the same thing because their gateway we are talking about is Chicago. I would say that the answer is yes, that this perhaps goes too far and that my thought was, at any rate, that when I said we did not compete with the Santa Fe I certainly, what I meant really was, was to the same extent or degree as certain of the other carriers involved here. I meant it was a relatively small competition.

Q. What do you consider as being in the Pennsylvania system, which roads?

A. Well, I think of the Wabash, among their controlled subsidiaries. I think of the Long Island. I think of the various subsidiaries which are shown here and included, [fol. 1128] for example, the Ann Arbor. I mean those are the types of things. I don't think I could pretend to name their subsidiaries.

Q. Would you include the DT&I?

A. Yes, sir, I would.

Exam. Albus: Healy Valley?

The Witness: You are beyond my competence, sir, I don't know.

Exam. Albus: Thank you.

By Mr. Broker:

Q. Do you know of any railroad system in the United States that is as competitive with the TP&W as the Pennsylvania system?

A. Well, from my standpoint, Mr. Broker, and I say this with great respect for the Nickel Plate, which is a very valued connection of ours, I would be at a loss to draw the distinction between the Nickel Plate and the Pennsylvania. I would put them both in the same category, except—I am not being quite accurate, except that the Pennsylvania is much larger, originates much more traffic, influences much more traffic accordingly and presumably exercises in dollars and tons more influence on traffic than the Nickel Plate.

Q. Do you think that size is an important consideration and that influence important considerations in determining competitive relationships?

A. Yes, sir, and being associated with a small railroad I feel that very strongly.

[fol. 1129] Q. So that, in fact, taking all of those things in consideration, size and influence, do you think that the Pennsylvania system is more competitive with the TP&W than the Nickel Plate?

A. In taking all of those into account and not confining myself to the geographical locations of the gateway and traffic solicitation policies as I understand them, my answer would be yes.

Mr. Broker: Thank you.

Exam. Albus: Mr. Davis.

Cross examination.

By Mr. Davis:

Q. Mr. Heineman, you make reference on page 6 of your prepared statement to the Wabash being the Pennsylvania's

owned and controlled subsidiary. Do you use the word "controlled" in that statement in the sense that it is a stock controlled subsidiary?

A. I use it in the sense that the Pennsylvania or Pennsylvania Company, I have forgotten which, used it in connection with its application to the I.C.C. for control of the Wabash.

Mr. Davis: That is all I have. Thank you.

Exam. Albus: Is there any further cross-examination? Mr. Thomas.

Further cross examination.

By Mr. Thomas:

Q. One question, Mr. Heineman, on page 27 of your prepared statement—

[fol. 1130] A. Yes, sir.

Q. (Continuing) —you state that you were informed that the Pennsylvania-Santa Fe had bought all the stock of the TP&W. You understand that that is not correct information, do you not?

Mr. Wheeler: Mr. Examiner, I object to a question of that kind. I think he should ask him a direct question.

Mr. Thomas: May I begin?

By Mr. Thomas:

Q. Are you familiar with the fact that, as Mr. Wheeler has been doing in all of his cross-examination.

Exam. Albus: That is true.

By Mr. Thomas:

Q. Are you familiar with the fact that that is not a correct statement?

A. Yes, sir. I was testifying to what I was informed and I thought the record was amply clear on what happened.

Q. You weren't informed by a representative of the trustees in any official capacity, were you?

A. No, sir.

Mr. Wheeler: Pardon me.

A. No, sir.

Exam. Albus: Let the answer stand.
Next question, please.
Mr. Thomas: That is all.
Mr. Lucas: Mr. Examiner, I would like to ask a question.
Exam. Albus: Mr. Lucas, please.

[fol. 1131] Further cross examination.

By Mr. Lucas:

Q. Mr. Heineman, are you taking the position that the TP&W as in its present status is inefficiently operated?
A. Oh, of course not.
Q. I didn't catch the answer.
A. Of course not.
Q. You consider that Mr. Coulter is operating the property and conducting the affairs of the TP&W in a good businesslike manner?
A. Better than good businesslike manner.
Q. Would you consider that he has a better basis for appraisal of the traffic competition of the TP&W than you do?
A. If I were to choose between Mr. Coulter's judgment and my own I would choose Mr. Coulter's, and I was asked for my own and by that I mean I would still have to give my own judgment and opinion. If it is mistaken, it is mistaken, but I was asked for my opinion.

Mr. Lucas: That is all.
Exam. Albus: Is there any further cross-examination?
Mr. Begley: In behalf of the State of Illinois my appearance is on—
The Witness (Interrupting): May I interrupt a second?
Exam. Albus: One minute, please.
The Witness: I would like to say this, I say this with [fol. 1132] the greatest deference of Russel Coulter for whose judgment I have the highest respect, that in certain areas, which are very understandable, his opinions have changed somewhat since May 26 from what they were before.
Exam. Albus: Now, sir.

Cross examination.

By Mr. Begley:

Q. Mr. Heineman, do I understand on page 46 of your direct testimony that Mr. Devins, whom I understand is president of the M&StL, stated to you that there were definite train operation abandonments from the abandonment of the western end of the TP&W?

A. At that time what I said was that we discussed them. Now, I will be glad to tell you what he said, if you wish.

Q. Yes, I would like to know what Mr. Devins had to say.

A. If I could refer to Exhibit 19. What he said was that we are a light density railroad, that it might be possible that he was speaking at the time without study to have the same carriage of traffic over the M&StL between Peoria and Nemo that we now have plus the carriage from Peoria to Lomax over the M&StL to Nemo where it would be delivered to the Santa Fe and that that would provide considerable additional density on this segment (indicating) and safe train miles in the event we acquired the property. I want to emphasize that that was a discussion between two officials of a railroad considering the acquisition of another, and we have tried to consider all possibilities, and [fol. 1133] we have discussed many that haven't been brought out here. I say that openly. But I have testified to what our final policy is after full consideration.

Q. You testified, I believe, as to policy of not abandoning it. But has there been anything changed since May, I think is when you said you talked to Mr. Devins about this, in the physical characteristics of the operation that would cause any change?

A. Yes, sir—well, not change, but additional factors that we were not taking into account in that preliminary discussion.

The M&StL has a 2.2 per cent grade out of its Peoria yard. That is a very substantial grade. It has been a matter of concern to the M&StL and for a great many years, and I ought to say that there were people who will testify from the M&StL that can testify technically much better than I can on this.

Now, the grade, as I understand it, westbound, and indeed eastbound, on the TP&W, the controlling grade is substantially, substantially less than that 2.2 per cent grade, and moreover we have certain curvature problems which are not present on the west end, and with respect to it I personally are not too familiar from an operating standpoint, so that after studying it, after inspecting the property, after considering it from a train operations standpoint, service, and all the elements that enter into such, public relations, all the elements that enter into it, traffic solicitation, we are all [fol. 1134] convinced that not only do we have no policy to abandon it, but that it would be contrary to the best interests of the unified system to abandon it.

Q. When you say "we"—

A. (Interrupting) I am talking about officials of the M&StL.

Q. And, of course, I take it that they are subject to the same mortality that you said God forbid to Mr. Coulter?

A. We all are. Pardon me?

Q. I think you said Mr. Coulter is a mortal like all of us and he may die?

A. The corollary of that is that we are all mortal.

Mr. Begley: That is all.

Exam. Albus: Are there any further questions?

Mr. Broker: Yes, sir, I have another question to ask in response to what Mr. Lucas said.

Further cross examination.

By Mr. Broker:

Q. When Mr. Coulter gave his opinion he spoke about the Pennsylvania Railroad, didn't he?

A. I am sorry, Mr. Broker, I don't know which opinion you are referring to.

Q. Let's put it this way, your opinion is based on the Pennsylvania's system, isn't it?

A. My opinion is based on the Pennsylvania railroad and the Pennsylvania system.

Mr. Broker: Thank you.

[fol. 1135] Exam. Albus: Is there any further cross examination?

(No response.)

Exam. Albus: Is there any redirect?

Mr. Wheeler: Yes, sir.

Exam. Albus: Mr. Wheeler, please.

Mr. Wheeler: First of all, Mr. Examiner, I would like to clear up a point that I failed to do on direct examination. I want to announce that this question is in the nature of direct rather than redirect normally so as not to indicate that I am cutting off cross on this question.

Further direct examination.

By Mr. Wheeler:

Q. Mr. Heineman, did Mr. Coulter indicate to you knowledge on his part prior to May 26, 1955, of the desire of the Santa Fe and the Pennsylvania Railroad to acquire control of the TP&W?

A. Yes, sir.

Exam. Albus: Is that the only direct question you are going to ask?

Mr. Wheeler: Yes, sir.

Exam. Albus: Is there any cross examination on this question?

Mr. Wheeler: Mr. Examiner—

Exam. Albus: I am sorry, Mr. Wheeler. What I was trying to do—

Mr. Wheeler: I understand what you are trying to do. [fol. 1136] I just want to think about this.

Exam. Albus: All right, you take your time and continue with the redirect, then.

[fol. 1137] By Mr. Wheeler:

Q. Can you indicate generally when Mr. Coulter indicated such knowledge on his part to you, that is, prior to May 26, 1955?

A. On a number of occasions and at least around April 15 or 20—well, I can do it better than that. At least, around April 20.

Mr. Wheeler: Now, Mr. Examiner, that concludes this question, the two questions that I wanted to ask, that I should have asked on direct.

Exam. Albus: Is there any cross examination on those two questions?

Mr. Thomas: No, sir.

Mr. Lucas: No, sir.

Exam. Albus: Now we are on redirect.

Redirect examination.

By Mr. Wheeler:

Q. Mr. Heineman, would you clarify for the record the situation with respect to the voting trust certificates of the Monon which you held and in that particular indicate whether or not those certificates had any voting power?

A. At no time that I or any of my associates owned any interest in the Monon did the certificates that we owned have any voting power.

Q. Mr. Heineman, you discussed the question of control of a corporation. Would you please state for the record whether or not control of the proxy machinery by the man-
[fol. 1138] agement is an element in determining control.

A. It is next to ownership, itself, of the securities. It is the second most important element to be taken into account in control situations.

Q. In your opinion, can management continue its control of a corporation as against the holder of a substantial block of securities in a company so long as that substantial block is less than a majority of the outstanding stock of the company?

Mr. Thomas: Isn't this a legal question we are getting into?

Mr. Wheeler: Mr. Examiner, this is merely to clear up a question that was opened on cross examination.

Exam. Albus: The witness may answer.

Mr. Broker: Could we have the question read again, please, Mr. Examiner.

Exam. Albus: Yes.

(The last question was read.)

Mr. Broker: I am going to object, Mr. Examiner.

Exam. Albus: On what grounds?

Mr. Broker: Until this is related to a specific situation.

Exam. Albus: No, it was brought out on cross, the question on cross examination pertaining to what Mr. Heineman had thought constituted control.

Mr. Wheeler: And the questioner, as I recall there, refused to localize it to a particular situation.

Exam. Albus: Let's have an answer, please. The objec-
[fol. 1139] tion is overruled.

The Witness: I am terribly sorry, myself. I really don't have the question.

Exam. Albus: We will take a 10-minute recess.

(Short recess.)

Exam. Albus: The hearing will please come to order. When we started the recess there was a question pending.

Mr. Wheeler: Mr. Examiner, suppose I try to reframe that question.

Exam. Albus: If you will, please, Mr. Wheeler.

By Mr. Wheeler:

Q. Mr. Heineman, what, in your opinion, is the power of management as against the holder or holders of large blocks of stock so long as those blocks are less than 50 per cent of the outstanding stock of the corporation?

A. Well, it is—well, my opinion is that management that controls proxy machinery that represents the status quo is extremely difficult to dislodge, even by relatively large blocks of stock, less than 51 per cent and, even from an objective test, there might be very good reasons for dislodging them.

Q. Mr. Heineman, during your cross examination by Mr. Thomas, I believe, he referred you to—

A. (Interrupting) And I might say, even though the management itself has almost no stock, in other words, the proxy machinery makes that much difference.

[fol. 1140] Q. Mr. Heineman, during the cross examination by Mr. Thomas he referred you to the paragraph at the top of page 27 of your written statement.

A. Yes, sir.

Q. And asked you a question in the light of the testimony heretofore given in this proceeding regarding the contract for the purchase of the TP&W stock from the trustees. I believe your answer was not clear and I should like you to restate your position with respect to that paragraph.

A. Well, this, in this part of the testimony I was trying to give a story of the negotiations, and this was precisely what I was informed. Now, I have never been clear whether the Santa Fe bought for its own account or bought as agent for the Santa Fe and Pennsylvania, and whatever those facts are, I did not intend to deal with those facts in any answer I gave to whoever it was who asked me the question. I was just commenting on this very narrow paragraph here.

Mr. Wheeler: I have no further questions.

Exam. Albus: Is there any recross examination of Mr. Heineman?

Mr. Broker: Just one question in recross examination. If you will recall, I objected to the question and it was reframed just before the recess and I assume my objection still holds even though reframed, is that right?

Exam. Albus: Yes, sir.

[fol. 1141] Recross examination.

By Mr. Broker:

Q. Mr. Heineman, as an additional element involved, if the block of stock which is less than 51 per cent has power to elect by cumulative voting?

A. I thought the question, Mr. Broker, was in terms of control, and I do not quite see how holders at a meeting with less than 51 per cent can elect a majority of the board, even though cumulative voting is permitted.

Q. You were thinking in terms of election of a majority of directors, I take it?

A. I was thinking in terms of control, yes, sir.

Q. Control in the sense that you have a majority of directors?

A. I don't want to get into the Nickel Plate's controversy with the Lackawanna or whatever, I mean, I am not—I was thinking in terms of a majority of the board, yes, sir.

Mr. Broker: Thank you.

Exam. Albus: Are there any further questions?

OFFERS IN EVIDENCE

Mr. Wheeler: Mr. Examiner, before Mr. Heineman leaves the stand, I would like to offer in evidence those documents that have been identified as H-19 through H-23.

Exam. Albus: They are received at this time.

(Applicant's Exhibits Nos. H-19 through H-23, inclusive, Witness Heineman, were received in evidence.)

Exam. Albus: You are excused, Mr. Heineman. Thank you.

(Witness excused.)

[fol. 1142] Mr. Wheeler: I will call Mr. John Devins.

Exam. Albus: Mr. Devins.

JOHN W. DEVINS was sworn and testified as follows:

Direct examination.

By Mr. Wheeler:

Q. Will you please state your full name and address, Mr. Devins?

A. My name is John W. Devins. My address is 111 East Franklin Avenue, Minneapolis.

Mr. Wheeler: Mr. Examiner, in connection with the testimony of Mr. Devins I should like to have marked for identification two documents: the first entitled "The Family Tree of the Minneapolis and St. Louis Railway", which I would like to have marked Exhibit H-26.

Exam. Albus: That will be marked H-26 for identification.

(Applicant's Exhibit H-26, Witness Devins, was marked for identification.)

Mr. Wheeler: The second is entitled "Minneapolis & St. Louis Railway Company Gateway Routing Map, the Peoria Gateway".

Exam. Albus: That may be marked for identification H-27.

(Applicant's Exhibit H-27, Witness Devins, was marked for identification.)

By Mr. Wheeler:

Q. Mr. Devins, do you have a statement to make to the Commission in connection with these proceedings?

A. I have a written statement I would like to read into the record.

[fol. 1143] I am president of The Minneapolis & St. Louis Railway Company. My experience in respect of railway operations extends over a period of 46 years, and includes service with five railroads, being variously occupied in their traffic, mechanical, accounting, transportation and executive departments. The aggregate length of my service with The Minneapolis & St. Louis comprises 41 years, which includes the period between 1923 and 1943 when the railway was operated by a receiver appointed by a United States District Court.

In connection with request for an R. F. C. loan, and on the recommendation of that agency, I was employed during the 1940's by two railroads to make a complete examination of their properties and operations and render a report thereon.

As shown by Exhibit H-26, the present Minneapolis & St. Louis system is the result of bringing together in 1912 the Iowa Central Railway Company of Illinois and The Minneapolis and St. Louis Railway Company (of Minnesota and Iowa). These two lines were conceived and constructed independently of one another—the Iowa Central being of Iowa lineage and the M. & St. L. being of Minnesota lineage. Each had humble beginnings, the Iowa Central traces its origin to the Eldora Railroad and Coal Company formed in 1866, which was no more than a 16-mile coal road between Eldora and Ackley, Iowa. The M. & St. L. had its birth in the Minnesota Western Railroad Company [fol. 1144] formed in 1853 to build a railroad from Fort St. Croix River through St. Paul past the Falls of St. Anthony on the Mississippi River (at present Minneapolis) to the western boundary of Minnesota.

A number of independent railroad companies are shown on Exhibit H-26. As to those concerning the Iowa Central, they became merged in one way or another: through sale, consolidation, or incorporation as subsidiaries with later absorption.

The shaping of the Iowa Central was in three states:

First, north and south between Minnesota and Missouri between 1866 and 1878, in which year the Central Railroad Company of Iowa, as it was then called, went into receivership and emerged in 1879 known as Central Iowa Railway. From the very beginning this north and south line suffered from financial reverses and insufficient traffic.

The second phase of the Central Iowa Railroad was east and west: from Oskaloosa to the Mississippi River, beginning in 1880. By 1882 the portion from Oskaloosa to the Mississippi River was in operation.

Meanwhile (the third stage) railroad developments were taking place on the Illinois side of the Mississippi River, beginning in 1869 with the company calling itself the Peoria and Farmington Railway. Through this company and the Burlington, Monmouth and Illinois River Railroad, trackage was laid between Peoria and the Mississippi River. During this period and by 1882 a new company was formed to operate this trackage, known as the Central Iowa Rail-[fol. 1145] way Company (of Illinois). So it came to pass that by 1883 there was a through route from Oskaloosa, Iowa, to Peoria, Illinois. This remains to this date. Prior to 1886 the through traffic was ferried across the Mississippi River. In 1886 the Keithsburg Bridge was built by the Mercer County Bridge Company and its successors. This bridge joined the two railroad segments. In 1888 another foreclosure of both the Central Iowa Railway Company (of Illinois) and also of the Central Iowa Railway took place, and they were sold in that year to a new company called the Iowa Central Railway Company of Illinois. This latter company in 1901 purchased the Keithsburg Bridge.

Other segments of the Iowa Central were constructed by independent railroads and later sold to or merged into the Iowa Central.

From its very beginning the Iowa Central had financial and traffic difficulties; it had no important terminals; it

was essentially an intermediate carrier and dependent to a large extent on its connections with other major lines, in which aspect the connecting carrier dictated the policies.

Until the year 1900 the northern terminus of the Iowa Central at Northwood, Iowa, had regressed to the status of an unimportant branch—the original plans to make Albert Lea a gateway for Iowa Central traffic having failed to materialize. In fact, the segment from Manly Junction to Northwood, Iowa, had long before been leased to the [fol. 1146] Burlington, Cedar Rapids & Northern, now the Rock Island Railroad. In 1900 the Iowa Central came under the management of the Minneapolis and St. Louis Railroad Company (of Minnesota and Iowa). Thus began the unified service which has existed to the present day and which from 1912 (when the Iowa Central was sold to the M. & St. L.) has continued under the single name of the latter company.

While the Iowa Central was being formed, the Minneapolis & St. Louis was likewise being constructed between the Twin Cities and the Iowa Line and into Iowa toward Fort Dodge, either under its own corporate name or those of independent railroad companies, which later were acquired.

By 1870 Minneapolis' main industries were lumber and grain milling, but it had no transportation outlets. The Falls of St. Anthony which furnished water power, was at the same time a handicap to river transportation. The rail lines furnishing access to the eastern markets centered in St. Paul. Minneapolis' only rail line to the east and the south was a part of what is now the Chicago, Milwaukee, St. Paul and Pacific Railroad, connecting with the main line of that railroad at Prairie du Chien, Wisconsin. That railroad's main cities were Chicago and Milwaukee. Freight rates were predicated over them rather than Minneapolis.

One of the lines of railroad serving St. Paul, Minnesota, was from Superior, Wisconsin and Duluth, Minnesota, [fol. 1147] which furnished access to the Great Lakes. In 1870 a group of businessmen of Minneapolis, desiring to realize benefits from this line of railroad to Duluth and Superior (by way of White Bear, Minnesota) and also to seek an independently operated railroad to the south and east controlled by local interests, acquired the charter of

the old Minnesota Western Railroad Company which had been incorporated by Minnesota Territory in 1853. In the same year (1870) the name was changed to The Minneapolis & St. Louis Railroad Company, and lines were built from White Bear, Minnesota, to Minneapolis, and thence south to Merriam Junction, Minnesota. These lines were opened for service in 1871. For financial reasons the part of the line from Minneapolis to White Bear was separately incorporated.

Between 1874 and 1877 the road was extended to Albert Lea, Minnesota, and thence to the Iowa State Line at Northwood, Iowa, in connection with the Burlington, Cedar Falls & Northern, now the Rock Island.

Due to the discovery of coal in Iowa in the vicinity of Fort Dodge, the M&StL began acquiring right of way and constructing a line of railroad southwesterly from Albert Lea to the Minnesota-Iowa State Line. Under M&StL sponsorship another company termed the Minnesota and Iowa Southern Railway Company was incorporated in Iowa in 1878; and this company built a railroad from the Minnesota-Iowa State Line to a connection near Livermore, Iowa, with a line built by the Fort Dodge and Fort Ridgely [fol. 1148] Railway Company (incorporated by Iowa people). Thereafter and in 1881, a new consolidated company was formed, called The Minneapolis & St. Louis Railway Company of Minnesota and Iowa. This consolidation was made up of the old company, its subsidiary the Minnesota and Iowa Southern Railway Company, the Fort Dodge and Fort Ridgely Railroad, and a fourth company.

In 1888 The Minneapolis & St. Louis Railway Company went into Receivership and was sold under foreclosure in 1894. The conveyance was in two parts so as to preserve the Iowa franchise rights. The Minnesota lines were sold to The Minneapolis and St. Louis Railroad Company, and the Iowa lines were sold to The Minneapolis & St. Louis Railroad & Telegraph Company of Iowa. In 1895 these two companies were once again brought back into one by the formation of The Minneapolis and St. Louis Railroad Company (of Minnesota and Iowa). During these periods the line of railroad from Hopkins, Minnesota, was extended westerly to Leola and LeBeau, South Dakota.

In 1912 a calamitous crop failure in South Dakota, Western Minnesota and Northwestern Iowa occurred, that drastically affected the M&StL. There was need for retrenchment and reorganization.

The year 1912 proved to be only typical, as M&StL western lines were unprofitable and a disappointment. The attention of the railroad then turned southward to the Iowa Central, which since the turn of the century had been op-
[fol. 1149] erated closely in connection with the M&StL; and traffic to Oskaloosa, Peoria, and the south and east took on added emphasis. On January 1, 1912, the Iowa Central was sold and conveyed to The Minneapolis and St. Louis Railroad Company, after which the two lines were operated as a unit.

Immediately, large expenditures were made between Oskaloosa and Peoria, as well as the acquisition of rolling stock. The crop failures in 1912 resulted in a deficit to the M&StL of over $600,000, and it was seen that the M&StL needed to diverge from a line practically dependent on agriculture with its seasonal fluctuations and periodic crop failures. This rehabilitation was financed through borrowed money.

In 1915 the M&StL purchased the Des Moines & Fort Dodge Railroad which theretofore had been leased, which gave the former a route from Minneapolis to Des Moines. The Des Moines & Fort Dodge Railroad operated from Des Moines to Ruthven, Iowa, through Fort Dodge.

Later and in 1916 the Iowa Central and Western (between Belmond and Algona, Iowa) was consolidated with The Minneapolis and St. Louis Railroad Company (of Minnesota and Iowa), forming The Minneapolis & St. Louis Railroad Company, a corporation of Iowa.

During the first World War years, the business of The Minneapolis & St. Louis Railroad Company was stimulated, as was that of other railroads. However, upon return to
[fol. 1150] private ownership in March 1920 and for succeeding years, the financial condition of the road was precarious. The rolling stock and track had taken a terrific beating under Federal control and much money had to be spent to put the railroad into good condition. Meanwhile prices and wages went up and although freight and pas-

senger rates were increased somewhat, revenues declined. Crop failures occurred. The commercial motor vehicle made its advent with inroads into the railroad's business. The shopmen's strike of 1922 did not add to the company's welfare.

The railroad had a deficit of over $1,800,000 in 1921 and over a million in 1922. Finally in 1923 the road went into receivership with a mortgage debt of over $45,000,000. It was not to be returned to private ownership until more than 20 years later.

When receivership ended, the railroad had accumulated a principal and interest debt on the outstanding bonds secured by the various mortgages, in the sum of $88,900,000.

The foregoing history of the M&StL lends substance to the statement of Commissioner Eastman in the Associated Railways Case (228 I.C.C. 277) that the M&StL was a sick railroad for a great many years (p. 375 of 228 I.C.C.). Commissioner Meyer in the same case noted that the M&StL was a problem long before the depression and the droughts of the 1930s (p. 378 of 228 I.C.C.).

As had been indicated by the record, the Railway from its inception and up to the year 1936, had found it difficult [fol. 1151] to operate successfully, to say nothing of profitably. At times its several managements' efforts to simply make both ends meet resulted in failure, finally culminating in a receivership in 1923. During the receivership period and prior to 1933, the Receiver found it necessary to borrow (through the medium of receiver's certificates) funds for use in maintaining the physical property, and, even then, by the year 1933, the railroad's roadway and equipment had reached such an advanced state of disrepair there was an unsuccessful effort made to borrow additional funds from the Reconstruction Finance Corporation, for current operating expenses. In 1935 there was a change in the personnel of the Railway's management. The country was just then commencing to emerge from the 1930-1935 depression. General business conditions began to improve. The upward trend continued, but notwithstanding, in 1936 eight midwestern railroads banded together, and, captioned as the Associated Railways, by petition to the Interstate Commerce Commission sought to acquire all of the properties

of The Minneapolis & St. Louis Railroad, with a view to pay therefor $7,200,000.

The Associated Railways alleged the railroad was in an advanced state of disrepair, was in the process of disintegration and could not be operated successfully as a unit. The Interstate Commerce Commission, in 1938, denied the Associated Railways' petition. Since 1936 the Railway steadily improved its position as such, and prospered, with the result that plans of reorganization of the M&StL as [fol. 1152] an independent carrier were progressed and thereafter successfully effectuated by the sale of the properties to the present company on December 1, 1943, and December 1, 1944. During the twenty-year period 1936 to and including 1955, the average annual operating revenues have been $15,845,000. The Railway has no outside sources of revenue. During the same twenty-year period and through the medium of earnings, and only through that media, the following major developments, among others, have taken place:

(A) Paid in full, Merriam Junction Bonds $1,562,180

(B) Paid in full, receiver's Certificates aggregating $1,185,000.

(C) Paid in full, debts incurred prior to receivership, amounting to $2,495,497.

(D) Paid in full, receivership expenses, totaling $2,427,434.

(E) Rehabilitated and improved its roadway and structures, including the installation of 137,540 tons of heavier rail, 5,518,000 cross ties and 2,391,611 cubic yards of crushed rock and high grade gravel, all at an aggregate charge to operating expenses of $47,988,738.

(F) Completely replaced steam locomotives with an adequate number of units of Diesel power, at an aggregate cost of $8,137,765. $7,193,605.

As of December 31, 1955, $7,193,605, or 88.4 per cent of that amount, has been paid. The average age of this equip- [fol. 1153] ment is 9.8 years.

(G) Acquired freight and passenger cars at a total cost of $19,323,187. $14,090,418.

As of December 31, 1955, $14,090,418, or 73 per cent of that amount, has been paid. The average age of this equipment is less than 10 years.

(H) Expended and paid for all additions and improvements to the physical property, excluding rolling stock, a net amount of $15,075,663.

(I) Paid dividends in the aggregate amount of $8,254,005.
Total $100,272,540.

In the year 1923 the annual operating revenues of the railroad aggregated $16,605,000, while 31 years later or in 1955, annual operating revenues amounted to $20,941,000. Now, it is not the purpose here to eulogize the management, but rather to establish the fact The Minneapolis & St. Louis Railway Company is a well established and going concern, and on the basis of its record in these later years is entitled to very serious consideration in its effort to augment its freight traffic volume. The railroad, consisting of approximately 1400 miles of principal main track, extends through the highly productive areas of four states. The population density adjacent to its lines is relatively light, as likewise is its freight volume per mile of operated railroad. Agricultural products and products related to agriculture constitute a substantial portion of its tonnage, which in all [fol. 1154] averages in excess of 210,000 revenue carloads annually. During the years 1951-1954, the annual interchange with connecting lines averaged 487,756 cars, loaded and empty. During four years from 1950, approximately 67 per cent of the railroad's aggregate loaded tonnage, either terminated or originated or did both on its rails, which fact discloses that during the same period approximately 33 per cent of the aggregate was bridge type traffic. It has connections with 25 railroads at 58 different places. There are 141 communities that are served exclusively by the M&StL. With modern rolling stock in adequate supply and in fit condition, the railroad is in a position to accommodate and handle in a safe and expeditious manner at least 25 per cent more freight volume over its well constructed and maintained trackage. Modern shops and other up-to-date

facilities have been constructed and installed to keep locomotives and cars in good serviceable condition.

As stated heretofore, during the period 1936 to and including 1955, the management of the railroad spent on the physical rehabilitation of the property $84,348,424 out of operating revenues only, without borrowing. This expenditure has made the railroad at the present time a modern and efficient operating plant. However, we are not utilizing the full capacity of our property because of our preponderant dependence on agriculture and absence of diversified traffic has prevented us from obtaining the volume we are now equipped to handle.

[fol. 1155] The population of the United States has increased from 105,710,620 in 1920 to 151,132,000 in 1950. The purchasing power of the dollar has dropped, but purchases by the consuming public have increased tremendously with the growth of the national income. This is a matter of common knowledge. Notwithstanding this, the gross revenues of this railroad have not kept pace with the enlarged economy of the country and Class I railroads. Its gross revenues, 1955 over 1923, are only approximately $4,000,000 greater. The primary reason is that the Railway is still tied closely to agriculture. It has not participated in the tremendous increase in manufactured consumer goods. In support of this statement, I call attention to the following tabulation which is an extraction from Moody's Transportation Manuals. This tabulation establishes the fact that in the period from 1936 to 1954 the Santa Fe and the Pennsylvania have shown very substantial increases in the percentage of their revenues derived from manufacturing and miscellaneous products. They have participated to a very large degree in the industrial growth of the country. The M&StL has not enjoyed this growth, as shown by the same tabulation:

	Percent to Total Revenue					
	M&StL		*Santa Fe*		*Pennsylvania*	
	1936	1954	1936	1954	1936	1954
Products of Agriculture	28.3%	30.4%	27.3%	18.4%	7.6%	9.5%
Manufactures & Miscellaneous	38.1%	43.6%	47.0%	64.0%	39.4%	51.1%

[fol. 1156] We feel that with the expenditures made to equip and modernize this railway, it can more efficiently and more adequately serve the public if it be permitted to broaden its service area and diversify its traffic. We have the modern plant, but unless this plant is utilized to its full extent by allowing this railroad to expand its commodity and revenue base, it will continue to be straight-jacketed in the channels of service that have handicapped it throughout its history, and this additional dedicated capital could by non-use be lost not only to the railroad itself but also to the shipping public. Having built the railroad to its present stage for public use in the public interest, it and the public should enjoy its full use. Acquisition of the TP&W by the Minneapolis & St. Louis will not only infuse into the unified system additional revenues as will be shown in detail by Mr. Nelson, but will also have the additional important aspects of diversifying the commodity base of the two railroads, and the greater utilization of both railroads, and lend impetus to the continuing improvement program of both carriers.

An inspection of the TP&W and inquiry into its management, recently made, is basis for the conclusion that this 239 mile railroad has plant capacity greatly in excess of its present utilization rate. Its fairly well maintained roadway and equipment gives ample evidence of a past and continuing improvement program, apparently designed, gauged and obviously calculated to observe the necessities of the present and future. Terminal properties and facilities are [fol. 1157] in an excellent state, and so located and of the type and capacity to accommodate additional volume. Space is available for expansion and enlargement, if necessary, of its East Peoria Yard. Motive power units are adequate. Freight car ownership is scant. It connects with all rail carriers entering Peoria. Personnel and management methods are to be admired. In short, unification with the Minneapolis & St. Louis could take place without extraordinary net capital outlay.

The real economic basis for existence of The Minneapolis & St. Louis Railway in the first instance consists in the mainline mileage of the road running in a generally southerly direction from the Twin Cities through Mason City

to Oskaloosa and Albis and in a generally easterly direction from Oskaloosa across the Keithsburg Bridge to Peoria. In addition to this mileage the railroad has numerous branch lines and feeders, some of which have value from an economic standpoint and others of which it would appear could not be abandoned in the public interest. The main line from the Twin Cities to Peoria connects the entire empire of the Northwest with the industrial and shipping centers of the East and Southeast, and avoids the congestion and delay in shipping freight through the Chicago gateway. The Peoria line is, therefore, the very backbone of the system. For a great many years "The Peoria Gateway" has appeared as a major contribution in the Railway's adver- [fol. 1158] tising programs, and its entire operations have been and are largely predicated over the flow of traffic through that passageway. A great many of its freight cars carry "The Peoria Gateway" as the Railway's only slogan. I invite your attention to the junction or gateway routing map of the M&StL which has been marked Exhibit H-27.

For purposes of brevity, I shall hereafter refer to the most important segment extending between the Twin Cities and Peoria, as the Peoria Line.

The Minneapolis & St. Louis maintains through routes and joint rates with its important connections by way of many junction points. The most important of these routes are maintained in connection with the Peoria Line which is an important carrier of east and west traffic, and one of the most effective routes between the Northwest and the East, South and Southeast. This railroad has through [fol. 1159] rates on business passing through Peoria to and from points east, south and southeast of Peoria. West of Peoria the traffic may move in connection with various railroads through 30 junction points in Illinois, Iowa and Minnesota. The railroad provides freight train service over all of its lines and passenger train service over some segments. Through freight train service is provided daily between Peoria and the Twin Cities, with same day arrival in each direction. The principal interchange point is the Twin Cities in Minnesota, where, during the two-year period 1954-1955, the average annual interchange was 160,408 cars.

The second principal interchange point is Peoria, where during the same period average annual interchange aggregated 114,276 cars. Of these, 101,316 at the Twin Cities were loaded cars and 82,570 at Peoria were loaded cars. The latter figures represent cars handled in line haul movements.

As will be later demonstrated, to curtail such volume would most certainly and adversely affect M&StL revenues, and thus hamper and impede its efforts to enlarge and improve service to the public generally, and to the area it independently and otherwise serves. If the M&StL is permitted to acquire the TP&W Railway, interests of both carriers and the public would be materially advanced by the introduction of a commercially sound through route. In all the country's major wars the nation's railroads have indispensably contributed to their success termination, and [fol. 1160] in this Atomic Age it is not inconceivable to regard the Peoria Gateway as of major consequence in by-passing the Chicago area in routing traffic between the East and the West, and between the North and the South. Based upon my foregoing testimony and upon a study which has been made of the properties and which will be discussed in detail by witnesses to follow, it is my opinion that the following major developments would ensue within a reasonable time if the M&StL were permitted to acquire control of the TP&W through stock ownership:

(A) There would be an improvement in service to the public. The improved service would be an advancement over that presently in effect, would be especially beneficial to all independent areas served by this railroad, and would create a greater utilization of freight car equipment.

(B) New service routes would be established for passing traffic between the East and the West and the North and the South, and there would be continued the routes presently existing.

(C) There would be substantial economies in the operating expense of each and both carriers.

(D) On account of the present scant car supply owned by the TP&W, there would be greater protection afforded it

by reason of the fact the M&StL owns and operates equipment sufficient to protect its needs and still make available a supply for the TP&W.

[fol. 1161] (E) The M&StL is closely tied in with agriculture and its products and is therefore largely dependent upon crop conditions. With improved service, particularly as to the time factor, there would be an attraction sufficient to result in handling tonnages other than those above mentioned. In other words, it is certain the railroad's commodity base would be diversified to a much greater extent than now existing.

(F) If unification is permitted, each and both carriers would have funds available, without borrowing, to adequately improve the physical property of both roads.

(G) At a point approximately 25 to 30 miles west of Peoria there are located on the M&StL two coal mining operations which produced for the period 1951 to 1955, both inclusive, an average annual aggregate of 27,585 loaded cars of coal for line haul movement. The production at these mines has gradually receded as compared with the former years when the coal market was less competitive. At the present time there is a considerable movement of coal by barge via the Illinois River into the Chicago area, and these mines find themselves at a disadvantage in respect of being on equal footing with their coal producing competitors in this area, in that they do not have direct access to the Illinois River. Some of their production now moves by barge via the Illinois River at a docksite cost to them higher than their neighbors'. The M&StL rate for [fol. 1162] handling this coal locally to Peoria is on a competitive basis with other railroads, but because the M&StL does not have direct access to the Illinois River there is an added charge which falls on the mines in order to complete the haul to docksite. This latter charge is assessed by the P&PU as a switching charge.

If the TP&W is acquired by the M&StL there will be an opportunity thereby furnished to provide direct contact with the Illinois River at a place not far from Hollis, which is located on the TP&W and near Peoria. If the

TP&W is acquired by the Pennsylvania-Santa Fe, this unfavorable situation will still prevail.

(H) I have been with this railroad for 41 years. I know the importance of the Peoria Gateway to our continued solvency. In my opinion, the M&StL could very easily find itself in straitened circumstances in the future if it were to lose—and I think we would lose it if the Pennsylvania-Santa Fe were here successful—a considerable volume of our traffic now flowing through the Peoria Gateway, particularly that moving through our western connections via the Kansas City and Omaha gateways.

(I) And finally: Here is a railroad that is on the block for sale. The present owners desire to get out of the railroad business. Some railroad is likely to purchase it. From my experience, not only with the railroad of which I am now President, but with other railroads, particularly in the middle west, I fervently believe it would more re- [fol. 1163] dound to the public's benefit, interest and service if the TP&W were acquired by the M&StL instead of the combined ownership of the Pennsylvania and Santa Fe. This 239-mile railroad would become an important and major portion of the M&StL which itself is small as many railroads go in this country. The M&StL would at all times be concerned that this 239-mile railroad be utilized to its full capacity, in a service to the public and in revenue returns to it and to the M&StL. The utility of the TP&W would be vital to the economy of both companies.

On the other hand, this 239-mile railroad would likely be lost in the huge combination of the Pennsylvania-Santa Fe Railroads, which together aggregate more than 20,000 miles. As to those railroads, this small 239-mile railroad would probably be no more than a secondary line and the revenues accruing from its operations would have no substantial effect one way or the other upon the gross revenues or net income of the Pennsylvania-Santa Fe. Because the TP&W is going to be purchased by someone, I think, and it is my deep conviction, that the only logical railroad to take it over is the M&StL.

Mr. Wheeler: Does that complete your direct testimony, Mr. Devins?

The Witness: Yes, sir.
Mr. Wheeler: That is all.
Exam. Albus: We will recess until 4:30.

(Short recess.)

[fol. 1164] Exam. Albus: The hearing will please come to order, gentlemen.

We will continue with the cross-examination.

Mr. Thomas.

Mr. Thomas: Mr. Examiner, I want to make a suggestion that we defer the cross examination of this witness until we have heard the witnesses who are going to present the studies which he has apparently reached conclusions from. We have here a series of conclusions with no supporting facts, and he tells us that those facts are to come or the studies are to come from other witnesses. I think we will save a lot of time. We may not have to cross-examine this witness at all, if we can hear the details that are supposed to support these conclusions, then we will know whether we should waste any time examining regarding these conclusions.

Exam. Albus: Mr. Wheeler, do you have anything to say as to that?

Mr. Wheeler: May I consult with my witnesses?

Exam. Albus: Personally, I think it is a good suggestion in view of the fact that we only have 30 minutes or so left, to defer the cross-examination until tomorrow morning when the opposition has an opportunity to look over this stuff.

Mr. Thomas: I might say, Mr. Examiner, looking over this material here won't give us the basis for cross.

Exam. Albus: I realize your situation, Mr. Thomas.

[fol. 1165] Mr. Wheeler: Do I understand that not only Mr. Thomas but other counsel wish to have him—

Mr. Lucas: I join very heartily in that suggestion, Mr. Examiner.

Exam. Albus: I think it would be a good idea.

Mr. Wheeler: We have no objection.

Exam. Albus: Thank you very much.

May we have the next witness for direct, then.

With the understanding that Mr. Devins is the first witness for cross-examination tomorrow morning.

Mr. Wheeler: May I at this time offer in evidence these two exhibits.

Exam. Albus: Yes, exhibits marked for identification H-26 and H-27 are received at this time.

(Applicant's Exhibits Nos. H-26 and H-27, Witness Devins, were received in evidence.)

Mr. Thomas: Mr. Examiner, I am still not quite clear on this cross-examining. My suggestion was that we should hear the detailed testimony of these witnesses from whose studies Mr. Devins has drawn conclusions before we start to cross-examine those conclusions. We can't do it without the facts.

Exam. Albus: Off the record, please.

(Discussion off the record.)

Exam. Albus: On the record.

Mr. Wheeler: Mr. Examiner, at this time and very [fol. 1166] briefly, I'd like to recall Mr. Heineman to the stand to cover one phase of his testimony that I have neglected to cover.

Exam. Albus: All right.

Ben W. Heineman was sworn and testified as follows:

Redirect examination.

By Mr. Wheeler:

Q. Mr. Heineman.

A. Yes, sir.

Q. In your previous testimony you referred to a luncheon conference with Mr. Gurley, president of the Santa Fe, regarding acquisition by the Santa Fe and the Pennsylvania of the TP&W stock. Was there any further aspect of that acquisition that you discussed with Mr. Gurley at that conference?

A. Yes, as a matter of fact, unintentionally I omitted what was really the major purpose of the conference.

Q. Will you please state that purpose?

A. This conference was immediately following May 26—by immediately I mean a few days, I don't know exactly when, but quite shortly after the May 26 meeting. I have also forgotten whether Mr. Gurley called me or I called him. But, in any event, we met and the purpose of the meeting was to discuss what M&StL's views were with reference to joint ownership of the TP&W. Mr. Gurley said that he understood that the M&StL's views were and always had been that we were interested in sole ownership but that he wished to give me the opportunity to state to [fol. 1167] him whatever my views were. At that time I was distressed by what had happened. I was trying to find some solution that would perhaps salvage something to the M&StL, and I asked Mr. Gurley if he would be interested in a two-way partnership with the M&StL. Mr. Gurley asked me whether the M&StL would have any interest in a, I believe he said five-way partnership, because at that time we knew, as a matter of fact, he told me that the Nickel Plate and the Rock Island both made inquiry as to whether they could participate. I said that we would not have any interest—well—that is not accurate. I said that so far as I was concerned, I did not believe the M&StL would have any interest in a five-way partnership, that I would recommend against it to our board of directors if the opportunity were provided, that I thought the price was too high, without the benefits of unification, but I said it was a final matter for our board of directors to decide, not for me to decide, but that I would strongly recommend against it. I don't believe there was much further discussed about two-way ownership with the Santa Fe. Mr. Gurley was very pleasant and said that he would let me know—I have forgotten whether he said then or later, after he had given the matter full consideration. Now, that was, to the best of my recollection that was the extent of that conversation.

I would like to say, however, on the record that I think that what I had in mind, and I did not communicate this [fol. 1168] to Mr. Gurley, was some arrangement whereby if he told me at that luncheon and I had been otherwise informed, they were concerned about the Lomax gateway by their partnership with us, I thought that we could pro-

tect, that that would give them assurances of our protection of the Lomax gateway, and that by working out some kind of a management arrangement we could get the benefits or at least the partial benefits of unification. Now, in any event, as I say, or I guess I haven't said, sometime later, I believe in July, Mr. Gurley wrote a letter to us, and I believe to all the other interested carriers saying that they were going to go it with the Pennsylvania.

Now, I am sorry, Mr. Examiner, I didn't cover that. It was really the most important part of the conversation.

Q. Just one further question, Mr. Heineman. You have here testified that the board of directors of the M&StL are now in favor only of sole ownership of the TP&W by the M&StL.

A. Yes, sir. That is also the uniform policies of all operating personnel.

Mr. Wheeler: No further questions.

Exam. Albus: Is there any cross-examination?

Mr. Thomas: No, sir.

Mr. Lucas: No, sir.

Exam. Albus: You are excused, Mr. Heineman. Thank you very much.

(Witness excused.)

[fol. 1169] Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

[fol. 1170] Mr. Wheeler: I would like to call Mr. Swanson.

JAMES A. SWANSON was sworn and testified as follows:

Direct examination.

By Mr. Wheeler;

Q. Will you state your name and address, Mr. Swanson?

A. My name is James A. Swanson. I have offices at 111 East Franklin Avenue, Minneapolis 4, Minnesota.

Mr. Wheeler: Mr. Examiner, I would like at this time

to have marked for identification the exhibits that will be offered through Mr. Swanson.

Exam. Albus: Very well.

Mr. Wheeler: Mr. Examiner, I regret to say they are not here, they are on their way down but they haven't arrived yet.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: The hearing will please come to order. We will mark the exhibits to be introduced through Mr. Swanson at this time.

Mr. Wheeler: Mr. Examiner, at this time I should like to have marked for identification the exhibits which will be offered through Mr. Swanson.

Exam. Albus: Very well.

Mr. Wheeler: Will H-28 be the next?

Exam. Albus: Yes.

[fol. 1171] Mr. Wheeler: I would like to have marked first H-28, combined statements of revenue tons by product classification;

H-29 statement showing loaded cars.

Exam. Albus: Consisting of how many sheets?

Mr. Wheeler: Five sheets, actually six sheets, five numbered pages.

As H-30, one sheet, gross freight revenues.

H-31, one sheet, summary of gross freight revenue and revenue cars.

As H-32, summary of traffic moving between Nemo, Illinois, and Peoria, Illinois, a booklet.

As H-33, revenue freight traffic statistics, one sheet.

H-34, the dark blue covered pamphlet headed "Percentage Divisions".

H-35, a map of railroad freight classification territories.

As H-36 an analysis of typical carload movements eastbound and westbound, a booklet.

(Applicant M&StL Exhibits Nos. H-28, H-29, H-30, H-31, H-32, H-33, H-34, H-35, and H-36, Witness Swanson, were marked for identification.)

By Mr. Wheeler:

Q. Mr. Swanson, have you prepared a statement for presentation to the Commission in these proceedings?

A. I have.

Q. Will you please give that statement.

A. I am employed by The Minneapolis & St. Louis Rail- [fol. 1172] way Company as its freight traffic manager. I am now specifically charged with supervision over the matter of freight rates, routing, and division of revenues as they involve shippers and movements on our railroad. I have been employed by the M&StL Railway since June 16, 1932. I came to the road as a clerk; I was appointed Chief of Tariff Bureau in March 1939, Assistant General Freight Agent in October 1941, General Freight Agent in December 1950, and to my present position on October 15, 1955. Prior to my service with the M&StL Railway, I had 10 years of service in the Tariff Department of the Soo Line Railroad. My overall railroad experience embraces some 33 years.

Now, I will skip to the top of page 3 of my prepared statement, the exhibits having been offered.

Upon reference to Exhibit H-28, it will be noted that the five-year average for the M&StL shows manufactures and miscellaneous, 33.1 per cent of total. The same group on the TP&W for the five-year period was 52.9 per cent of total. The combined properties over the five-year period handled revenue tons in manufactures and miscellaneous group representing 38.9 per cent of total traffic. Similar percentages were: for PRR, 32.6 per cent; for Santa Fe, 42.1 per cent.

In the group embracing products of mines, the M&StL movement over the five-year period represents 29.4 per cent of total traffic. The TP&W tonnage in the same group [fol. 1173] for the same period was 16.7 per cent of total tonnage. This made the percentage for the combined properties in the same group for the same period, 25.7 per cent. Similar percentages were: for PRR, 57.3 per cent; for Santa Fe, 27.1 per cent.

Products of agriculture produced 25.7 per cent for the total tonnage handled by the M&StL for the five-year

period. The same group produced 20.2 per cent of the total tonnage handled by the TP&W for the same period. The same group produced 24.0 per cent of total tonnage handled by the combined properties in the same period. Similar percentages were: for PRR, 5.8 per cent; for Santa Fe, 20.6 per cent.

Similar percentages in the group embracing products of forest were: M&StL, 8.9 per cent; TP&W, 5.0 per cent; combined properties, 7.8 per cent; PRR, 2.3 per cent; Santa Fe, 5.9 per cent.

Similar percentages in the group embracing animals and products, were: M&StL, 2.2 per cent; TP&W, 4.6 per cent; combined properties, 2.9 per cent; PRR, 0.8 per cent; Santa Fe, 2.2 per cent.

Insignificant percentages were contributed by less than carload traffic and forwarder traffic. Particular attention is drawn to the fact that the combined figures would serve to reduce the M&StL's reliance on products of agriculture and would serve to increase its percentage on manufactures and miscellaneous. This would have a stabilizing [fol. 1174] influence on the traffic flow over the combined properties in the event our application to acquire control of the TP&W were approved.

Referring to Exhibit H-29, it will be found that the number of cars interchanged with the TP&W by the M&StL, Pennsylvania, Santa Fe, Rock Island and Nickel Plate Railroads has been compared with the total number of cars handled by each line for each of the years shown. I might elaborate on that and say these are loaded cars, and the percentage these interchange cars bears to the total business handled by each line has also been computed. It will be noted that the M&StL's interchange with the TP&W at Peoria represents a far greater percentage of its total revenue cars handled than is shown for any other applicant carrier. This shows that relatively, traffic interchanged with the TP&W is more valuable to the M&StL than to any of the other carriers listed in this exhibit.

I have also approached this theme from another angle. I have taken the gross freight revenues of the TP&W and each of the aspirants for control of that property, for the seven-year period, 1948 through 1954, and have set

them out in a single page exhibit which has been marked Exhibit H-30.

This exhibit also portrays the relative importance of the TP&W to the M&StL as contrasted with the other applicants and interveners. It will be noted that the average gross freight revenues of the TP&W for the seven [fol. 1175] year period were 30.4 per cent of the similar figure for the M&StL, while they amounted to only 0.9 per cent of the Pennsylvania, 1.4 of the Santa Fe, 3.9 per cent of the Rock Island, and 4.5 per cent of the Nickel Plate average gross freight revenues for the same period.

In line 9 of this exhibit I have also made a comparison of the total mileage operated by the TP&W with the total mileage operated by each of the other lines shown, which presents much the same picture.

I also invite attention to Exhibit H-31. This exhibit gives the gross freight revenue and revenue cars handled between the M&StL and the TP&W at Peoria for the four years ending December 31, 1955. It also shows the percentage of such revenue and revenue cars to the total freight revenue and total revenue cars of the M&StL for the same years.

From an examination of the last three exhibits, Nos. H-29, H-30 and H-31, it is at once seen that no other carrier interested in the acquisition of all or a portion of the control of the TP&W interchanges anything like such a percentage proportion of total revenue cars with the TP&W, or receives anything like such a percentage proportion of its total revenues from its interchange with the TP&W, as does the M&StL.

In analyzing the proposals here under consideration, I have undertaken to develop what it will mean to the revenues of the M&StL if the application of the Santa Fe and [fol. 1176] the Pennsylvania railroad in Finance Docket 18991 to acquire the control of the TP&W, be approved.

Particularly vulnerable to loss to our railroad in that event is traffic moving over our line channeled through the Peoria Gateway. This traffic may be subdivided into several categories. First and foremost is traffic which is now moving in connection with the Santa Fe system via

Nemo, Illinois. In the second category I would place that traffic which is bridged over our line via Peoria and junction points other than Nemo but which moves through the Kansas City or Omaha gateways to that area in the West and Southwest, which could be handled over the Pennsylvania, TP&W, Santa Fe route.

In the next category I would place our interline received traffic moving to Peoria as a destination and our interline forwarded traffic moving from Peoria as an origin. In the next category I would place our other westbound bridge traffic moving via Peoria destined to that broad territory in the northwest. In the next category I would place our other eastbound bridge traffic moving via Peoria which has its origin in the northwest, together with our westbound terminations at competitive stations and our eastbound competitive originations channeled through the Peoria gateway.

In connection with the traffic which we interchange with the Santa Fe at Nemo and handle over our rails to or from Peoria, Illinois, I have had prepared Exhibit H-32, which [fol. 1177] is an analysis of our accounts of this traffic for the years 1952, 1953 and 1954, as well as the first seven months of 1955.

The first page of this exhibit, which has been marked Schedule 1, is a synopsis of the material contained in the remainder of the exhibit. Upon reference to Schedule 1, it will be found under caption "Revenue Cars Handled" that 117 cars were listed in 1954 under the column "Interline Received". Note 1 shows that this is traffic terminating at Peoria, Illinois. 92 of these 117 cars originated on the Santa Fe System. Of the 242 cars listed under the caption "Interline Forwarded" for the same year, which includes the cars originating at Peoria, Illinois, 179 terminated on the Santa Fe System. Of the 3,311 eastbound bridge cars in 1954, 2,630 originated on the Santa Fe and 481 terminated on the Pennsylvania Railroad. Of the 6,580 westbound bridge cars, 1,665 originated on the Pennsylvania, and 5,668 terminated on the Santa Fe system.

Without a doubt, the originating carrier on whose line the shipping industry is located, has the greatest influence

upon routing that shipper's traffic. Normally the industry feels a definite obligation to that carrier. He seeks rate and [fol. 1178] routing information from that line, places his rate problems before it, looks first to it for car supply, relies upon it for tracings and diversions. Frequently traffic comes to the originating carrier unrouted or, in some instances, showing only the delivering line. As a matter of fact, the Freight Traffic Redbook, which is a recognized shipper's manual, exhorts shippers unfamiliar with the complexities of tariffs to leave routing open on bills of lading to assure themselves of obtaining the lowest rate. When a carrier accepts a bill of lading that shows neither rate nor route, it becomes its duty to transport the shipment to destination over a route which will produce the lowest charge affording it a line haul. In these cases the originating carrier naturally has the opportunity to insert its own preferred routes on its own way bills. The terminating line which serves the consignee also has a dominant influence upon movement of traffic. That line becomes aware of the traffic movements and seeks to secure routing orders from that consignee directing the shipper to favor it with routing on his bills of lading. Now with these heavy originations and terminations on the lines of the Santa Fe and Pennsylvania railroads on this traffic which has been moving over our line, we are fearful that ownership by these two large railroads of the TP&W will result in a substantial drying up of this desirable flow of traffic over our line.

In addition to the traffic covered by Exhibit H-32 I [fol. 1179] have examined our accounts for the year 1954 and find that we received 11,724 cars at Peoria, Illinois, which we handled as a bridge carrier and delivered to connecting lines at junction points in Illinois (other than Nemo)—I might qualify and say that these are loaded cars—Iowa and Minnesota during that year. Furthermore, we received at Peoria 12,439 cars which terminated on our railroad. 10,425 cars of this latter total were destined to competitive points, that is, points reached by other lines connecting or connected with the TP&W. Likewise, we delivered 15,290 cars of eastbound bridge traffic received from connecting carriers at junction points in Minnesota,

Iowa and Illinois (other than Nemo) to connecting carriers at Peoria, Illinois. We originated on our railroad 14,365 cars which we delivered to connecting carriers at Peoria for movement beyond that point. Of this latter number, 9,060 cars were competitive traffic which originated at stations on our line also served by other carriers connecting or connected with the TP&W. The amount of revenue which our railroad received from this traffic which was received from or delivered to connecting carriers at Peoria (apart from the bridge traffic carried via the Nemo interchange) during the year 1954, was $7,167,072. Only $929,993 of this was derived from traffic originating or terminating at points on our railroads which are not served by other carriers. The remainder, or $6,237,079, is strictly competitive traffic. We also forwarded from Peoria to [fol. 1180] destinations on connecting lines a total of, and I will have to supply that figure tomorrow, carloads producing revenue of $86,741, and we received from connecting carriers destined to Peoria, Illinois, 495 cars producing aggregate revenues of $67,707.

In connection with this particular traffic moving from, to, or via Peoria over our line through junction points with connecting carriers other than Nemo, Illinois, I have a detailed study of waybill abstracts for four months of the year 1954, namely, January, April, July and October, to develop the extent of the traffic moving over our line with which the Pennsylvania-TP&W-Santa Fe route would be directly competitive. And by that I mean the route in the reverse direction, Santa Fe-TP&W-Pennsylvania as well. I picked the four months named to minimize the work of gathering the material over that which would be entailed on a full annual basis. The months shown are so spaced as to include all seasonal trends. I projected the results of my study to an annual basis by the simple expedient of multiplying the figures obtained by three.

In my opinion, the result so obtained fully and truly portrays the picture on an annual basis.

The detailed study of our accounts for the four months named in 1954 showed that during those four months our eastbound business on this type of traffic produced reve-

nues to the M&StL in the amount of $72,864, and west [fol. 1181] bound business in the same category produced revenues to the M&StL of $70,600, the combined total being $143,464. Projecting this revenue on an annual basis by multiplying the foregoing figure by three, we arrive at an eastbound figure of $218,592. On westbound traffic the projected figure is $211,800. The combined figure is $430,392 of revenue to the M&StL. This total figure represents 2.2 per cent of our gross freight revenues for the year 1954.

Examples of the movements included in this study follow:

Wrought pipe from origins in Pennsylvania to Kansas destinations which we received from connections at Peoria and delivered to the Rock Island Railroad at Brighton, Iowa, for movement through the Missouri River gateways. We handled a movement of tractors from Detroit, Michigan, consigned to Lubbock, Texas, routed beyond Peoria via M&StL-Marshalltown, Iowa, in connection with the Chicago Great Western Railroad through the Kansas City gateway. A car of bicycles moved from Cleveland, Ohio, destined Kansas City via Peoria-M&StL-Monmouth-CB&Q. We received a car of peanuts originating in Virginia at Peoria, which we delivered to the CMStP&P railroad at Hedrick, Iowa, for movement to Los Angeles, California, via Kansas City in connection with the Santa Fe railway. A car of pulpboard originating at Fulton, New York, moved to Kansas City, Missouri, via Peoria-M&StL-Ackley, Iowa-IC railroad through the Omaha gateway in connection with the Union Pacific.

[fol. 1182] Likewise, we handle a goodly amount of eastbound traffic from western territory to points east of Peoria which is delivered to us by lines other than the Santa Fe. Examples of this type of traffic are as follows: A movement of wheat from Kansas City, Missouri to Buffalo, New York, routed via CB&Q-Monmouth, Illinois-M&StL to Peoria, Illinois, thence NYCStL. A movement of flour from St. Joseph, Missouri, to Boston, Massachusetts, received from the Chicago Great Western Railroad at Des Moines, Iowa, and delivered to eastern connections at

Peoria, Illinois. A movement of lettuce from El Centro, California, to North Hawthorne, New Jersey, received from the CRI&P Railroad at Brighton, Iowa, delivered to eastern connections at Peoria, Illinois. A movement of propane gas from Hocker, Oklahoma, to Marion, Indiana, received by our line from the Milwaukee Road at Hedrick, Iowa, delivered to eastern connections at Peoria, Illinois.

This traffic, the traffic interchanged with the Santa Fe at Nemo, and the other traffic channeled through the Peoria Gateway and that moving to and from Peoria which moves from or to connecting lines or from or to competitive stations—100 per cent of it—is competitive. By that I mean it is traffic which does not necessarily have to move over the rails of the M&StL to obtain the benefit of the lowest rate. It could be diverted away from our line to the lines of the applicants and their controlled subsidiary, the TP&W. [fol. 1183] In the year 1954 this traffic produced in excess of $7,000,000 in gross revenues to the M&StL.

We have analyzed this traffic and have come to the conclusion that based upon 1954 figures we would suffer an annual loss of approximately $1,110,000 in the event the application of the Pennsylvania and Santa Fe were granted.

All of this business I have described as being vulnerable to loss to the M&StL, is very desirable traffic. It not only pays its way but lends substantial support to our entire system. Without it our low density lines in South Dakota, Western Minnesota, and Western Iowa could not survive. In support of this statement I have made some computations from Exhibit H-32, taking the year 1954 as representative, which are designed to show that our ton mile earnings on the Peoria-Nemo bridge traffic greatly exceed our system average ton mile earnings and that the revenue per mile of road derived from the Peoria-Nemo bridge [fol. 1184] traffic contributes greatly to the system average. The distance over our railroad from Peoria to Nemo, Illinois, is 58.5 miles. Our average haul on revenue freight during the year 1954 was 198 miles. The revenue per ton mile from business covered by Exhibit H-32 was 4.2 cents as contrasted with the system average of 1.4 cents (see Exhibit H-33). The traffic covered by Exhibit H-32 produced in 1954 revenue per mile of road of $11,821 as con-

trasted with a system average revenue per mile of road of $14,088 (see Exhibit H-33). This in spite of the fact that the business covered by Exhibit H-32 contributes only 9 per cent of the revenue derived from all traffic handled over the segment between Nemo and Peoria. So it may be seen that this business makes a very important contribution toward bringing up the system average.

With reference to Exhibit H-35, which is the map, all of the representative points on the Pennsylvania Railroad used in Exhibit H-34 are located in that territory colored in yellow on the map designated as Official Classification Territory. All of the representative points on the Santa Fe System used in Exhibit H-34 are located in that territory colored blue on the map, which is Western Classification Territory. Some of them are in the subdivision of that section designated as Western Trunk Line Territory. Some of them are in that section designated Southwestern Freight Bureau Territory and some of them in that section designated as Mountain Pacific Territory. Traffic between Moun- [fol. 1185] tain Pacific Territory and the east is generally referred to as "Trans-Continental Traffic".

In connection with general percentages between Western Trunk Line Territory and Official Classification Territory, the primary division break is made over such gateways between Western Classification Territory and Official Classification Territory as Chicago, Peoria, St. Louis-East St. Louis. A secondary break in the proportion accruing west of these gateways is made on the Missouri River—in this case, Kansas City, Missouri. Via the routes of the Santa Fe-M&StL, or Santa Fe-TP&W through Kansas City and Peoria, the revenue accruing between those points is then subdivided on established percentages. This same general basis also prevails on transcontinental traffic—that is, traffic to and from Mountain Pacific Territory.

On traffic to and from Southwestern Freight Bureau Territory, the primary division break is made on Mississippi River crossings. Where the Santa Fe hauls traffic to or from its junction points with the M&StL at Nemo, Illinois, or the TP&W at Lomax, Illinois, the primary division break is made over East Fort Madison, Illinois. A secondary break of the eastern factor is then made over the

Peoria gateway. A secondary break of the western factor is made over the Kansas City gateway. Then the proportion accruing between Kansas City and Peoria is lumped together and the established divisions in effect between Kansas City and Peoria are applied to that lumped factor [fol. 1186] to ascertain the divisions of the Santa Fe for its haul between Kansas City and Nemo or Lomax, and the proportions of the M&StL or TP&W between those junction points and Peoria.

Where the Wabash Railroad hauls the traffic east of the Kansas City gateway and crosses the Mississippi River at East Hannibal, Illinois, the primary division break is made on that Mississippi River Crossing. Where traffic is handled east of Kansas City gateway by the Wabash Railroad through St. Louis-East St. Louis in connection with the Pennsylvania Railroad, the division break is made on East St. Louis on eastbound traffic and on St. Louis on westbound traffic.

Exhibit H-34 sets out percentage divisions supplied to us by the Santa Fe, applicable between the following representative points on the Pennsylvania, namely: Grand Rapids, Michigan; Detroit, Michigan; Cleveland, Ohio; Pittsburgh, Pensylvania; Philadelphia, Pennsylvania; New York, New York; Fort Wayne, Indiana; Logansport, Indiana; Columbus, Ohio, and Cincinnati, Ohio, on the one hand; and the following representative points on the Santa Fe System on the other, namely: Kansas City, Missouri; Dodge City, Kansas; Denver, Colorado; Oklahoma City, Oklahoma; Tulsa, Oklahoma; Fort Worth, Texas; Galveston, Texas; Amarillo, Texas; El Paso, Texas; and San Francisco, California.

[fol. 1187] The information is shown where applicable via the following routes:

1. PRR—Chicago—Santa Fe.
2. PRR—Effner—TP&W—Lomax—S.Fe.
3. PRR—Peoria—TP&W—Lomax—S.Fe.
4. PRR—Peoria—M&StL—Nemo—S.Fe.
5. PRR—Effner—TP&W—Peoria—M&StL-Nemo-S.Fe.

6. PRR—Decatur—Wabash—Kansas City—S.Fe.

7. PRR—St. Louis—Wabash—Kansas City—S.Fe.

8. PRR—Logansport—Wabash—Kansas City—S.Fe.

8A. PRR—Fort Wayne—Wabash—Kansas City—S.Fe.

Apart from divisions on eastbound Lumber from Mountain Pacific Territory and eastbound Grain and Grain Products from Western Territory, there is a general percentage basis of divisions applicable to practically all other traffic which is currently moving. These percentages are shown on pages 1 through 32. Specific commodity divisions in effect on eastbound Lumber from Mountain Pacific Territory have been taken care of by a showing of the eastbound Lumber divisions from San Francisco, California, on pages 33, 34, and 35. Rates on Grain and Grain products eastbound make on the basis of combination rates over the gateways through which such traffic ... ves and a picture of this is shown by the representative percents each line receives of the total revenue accruing from representative points of Dodge City, Kansas, and Kansas City, Missouri, to the [tol. 1188] eastern points selected as shown on pages 36 to 41. I might interpolate that the Kansas City per cents have been based on the proportional rates east of Kansas City.

On pages 48 to 60 of this exhibit, I have prepared line graphs setting out the percentages each line involved in the specified routes receives on eastbound and westbound business between the eastern points and western points employed in that exhibit. An examination will disclose that the Santa Fe System lines in almost every instance receive their maximum proportions on traffic routed via the Chicago Gateway. It also shows that the Pennsylvania Railroad, considered apart from the Wabash Railroad, generally receives its maximum proportion on traffic routed via the St. Louis-East St. Louis Gateway. Furthermore, it shows that the lumped proportion of the Pennsylvania Railroad and the Wabash Railroad is always greatest when the Wabash Railroad receives the haul to or from Kansas City, Missouri. This lumped proportion is shown because

the Pennsylvania Railroad owns 99 plus per cent of the common stock of the Wabash Railroad and, accordingly, has a definite interest in traffic routed over that line.

Exhibit H-36 is an analysis via the same routes to the extent they have application, as were used in Exhibit H-34, of revenues which accrued on several actual representative shipments which moved during 1954—both eastbound and westbound. These happen to be shipments which were [fol. 1189] channeled through Nemo and Peoria, Illinois, but rates have been checked and have been found to be equal via all routes for which the analysis has been made.

A study of this exhibit serves to bear out the facts developed by the previous exhibit, No. H-34, to the effect that Santa Fe maximum earnings generally accrue when they haul traffic to or from Chicago, and that Pennsylvania System earnings are found to be greatest over its routes with the Wabash Railroad through the Kansas City gateway. The revenues of the Pennsylvania Railroad, considered apart from the Wabash, will be found to be generally greatest via its St. Louis-East St. Louis interchange.

Q. Does that conclude your direct testimony, Mr. Swanson?

A. Well, I have a few remarks that I should like to make off the cuff on these line graphs.

Exam. Albus: I think they can wait until tomorrow.

How long will it take you?

The Witness: It might take as long as a half an hour, Mr. Albus.

Exam. Albus: This case is adjourned until tomorrow morning at 9 o'clock.

(Whereupon, at 5:40 p.m., an adjournment was taken until 9:00 a.m., Thursday, February 9, 1956.)

[fol. 1190]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Finance Docket No. 19086

[Title omitted]

The Carrousel Room,
Pere Marquette Hotel,
Peoria, Illinois.

TRANSCRIPT OF HEARING—February 9, 1956

Met, pursuant to notice, at 9:00 a.m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 1192] PROCEEDINGS

Exam. Albus: The hearing will please come to order, gentlemen.

We will start out this morning with cross-examination of Mr. Devins. Mr. Thomas, please.

JOHN W. DEVINS resumed his testimony as follows:

Cross examination.

By Mr. Thomas:

Q. Mr. Devins, has the Association of American Railroads made recommendations to you about your car supply --car ownership, I mean?

A. Yes, sir.

Q. Have you complied with those recommendations?

A. No, sir.

Mr. Thomas: That is all I have.

Exam. Albus: Mr. Lucas, please cross-examine.

Cross examination.

By Mr. Lucas:

Q. Mr. Devins, will you turn to page 18 of your prepared text, please.

A. Yes, sir.

Q. The opening part of the full paragraph more than halfway down says: "As will be later demonstrated, to curtail such volume would most certainly adversely affect M&StL revenues", and the balance of the quotation. Are you referring to the later demonstration on the part of Mr. Swanson?

A. Yes. It will be gone into in detail by traffic representa- [fol. 1193] tives. There will be others than Mr. Swanson.

Q. Are you assuming that if the applicants obtained control that the M&StL will suffer materially in respect to its revenues in conjunction with the TP&W?

A. Yes.

Q. If you had a participation in an aggregate revenue of two and a half million dollars, would you undertake to foster and protect it?

A. Will you read that question, please.

(The last question was read.)

A. That is a hypothetical question. I'd have to have all of the details.

By Mr. Lucas:

Q. If I confine it to participation in the flow of traffic that represents annually two and a half million dollars to the M&StL, what would be your position with respect to fostering it and protecting it, if you could?

Mr. Wheeler: Mr. Examiner, I don't understand the question.

Exam. Albus: Do you understand the question, Mr. Devins?

The Witness: No, I do not. I wouldn't understand it unless I had complete details.

By Mr. Lucas:

Q. All right. I wonder if your counsel would furnish you with a copy of Exhibit H-5.

Mr. Wheeler: I don't have it to furnish him.

Mr. Lucas: I hope that doesn't reflect your attitude toward it.

By Mr. Lucas:

Q. Mr. Devins, you have a copy of Exhibit H-5 before [fols. 1194-1195] you, do you?

A. Yes, I do.

Q. Will you turn, please, to page 5.

A. Yes.

Q. Will you look on the left to item 3.

A. Yes.

Q. And then will you carry your eye across, please, to the figures under column 5. Do you follow me?

A. Yes, I do.

Q. Do you notice that that column is one of three that is headed "Revenue Accruing to the TP&W" in connection with various forms of traffic in which they participate?

A. Yes.

Q. Going down to item 3, do you see my figure of 2,574,853?

A. Yes.

Q. If the Minneapolis & St. Louis had that participation in that amount of money derived from traffic interchanged with a connecting road, would they be interested in fostering and protecting it?

A. We'd be interested in fostering and protecting any kind of traffic, in any volume.

Q. And you would certainly be interested in protecting that amount, would you not?

A. We'd be interested in protecting two and a half million dollars any time.

[fol. 1196] Q. All right. Now may I direct your attention to the same column, item 1-E, an additional amount of 3,171,600; if that were added to the two million and a half, you would be even all the more interested, would you not, in protecting it and fostering it?

A. I don't understand your expression "protecting it." We don't have it now.

Q. Just what did you mean by the fact that you might consider if the applicants obtained control that you would lose some revenue?

A. I think we would lose because of the kind, of three railroads.

Q. What are the three roads, if you please?

A. The Santa Fe, Pennsylvania and the TP&W, if you acquired it.

Q. Going back to the 3,171,000, if that were added to the 2,574,000 would you not be just as interested, even more, in seeing to it that nothing happened to that aggregate of $4,800,000?

A. But, in my opinion, it would not be added, it wouldn't be added under my circumstances.

Q. If you will take my assumption that the two might well be put together, would you consider a traffic stake of 3,800,000, nearly four—

A. I don't like to take an assumption, if you will pardon me.

Q. You don't like to answer the question the way I put it?

A. No.

Mr. Lucas: That is all, Mr. Examiner.

[fol. 1197] Exam. Albus: Mr. Cassell?

Mr. Cassell: No.

Exam. Albus: Mr. Broker?

Mr. Broker: No cross examination.

I want to ask Mr. Lucas—were you assuming that the revenue accrued to the M&StL in that situation? I didn't understand your question.

Mr. Wheeler: I didn't, either, Mr. Examiner, and I don't think the witness did.

Mr. Lucas: Mr. Broker, do you want me—

Mr. Broker: I would like to hear the question clarified. This says "Revenue Accruing to the TP&W." Are you trying to say would he be interested in protecting revenue accruing to the M&StL in that amount?

Mr. Lucas: In the same amount, certainly.

Exam. Albus: Mr. Davis?

Mr. Davis: No, sir.

Exam. Albus: Is there any further cross examination?

(No response.)

Exam. Albus: Redirect?

Mr. Wheeler: Yes, Mr. Examiner.

Redirect examination.

By Mr. Wheeler:

Q. Mr. Devins, did you understand that the revenue about which Mr. Lucas testified now accrues to the TP&W and not to the M&StL?

[fol. 1198] A. I did. I understood in both instances it accrued to someone else or some other railroad and not to us.

Q. And therefore it was traffic that the M&StL could not protect at the present time?

A. Right.

Mr. Wheeler: I have no further questions.

Exam. Albus: Is there any recross?

(No response.)

Exam. Albus: You are excused, Mr. Devins.

[fol. 1199] Exam. Albus: Mr. Swanson for cross examination, please.

James A. Swanson resumed the stand and testified further as follows:

Direct examination (continuing).

Mr. Wheeler: Mr. Examiner, I believe that Mr. Swanson had not quite finished his direct last night.

Exam. Albus: I am sorry. All right, you may continue, then, with your direct.

The Witness: In the first place I should like to supply the figure that was left blank on page 10 of my prepared statement where we also forwarded from Peoria to destinations on connecting lines a total of 432 carloads. This should be understood to be via routes other than Nemo, Illinois.

I indicated at adjournment yesterday that I should like to make some remarks about the line graphs shown on pages 48 through 60 of Exhibit H-34. To begin with I should like to invite attention to figures in Exhibit H-36, particularly on each page, line 9, or rather line 11, which shows the total freight revenues accruing on a number of typical shipments. You will find that the range is from $400 per car on page 27 up to $1,645 per car on page 8. Now having that range in mind I think that it is reasonable to use a hypothetical figure of $1,000 for simplicity purposes in connection with some remarks I would like to make on these line graphs.

If you will turn to page 49, for example, of Exhibit H-34, [fol. 1200] it can be readily seen that with a hypothetical figure on per car earnings of $1,000 you may simply move the decimal point in the percentages one digit to the right to obtain the earnings of the involved carriers via the routes shown, in other words, in this particular instance the Pennsylvania combined with the Wabash would earn through the Kansas City gateway via its route through East Hannibal, $690; via the St. Louis gateway $678. The Pennsylvania alone without the Wabash would earn $480 via St. Louis or East St. Louis. The Pennsylvania through its Peoria branch thence through Lomax, including half of the revenues that would accrue to the TP&W, would earn $435, and so on down the page.

Now, you will note that the revenues to the Pennsylvania via St. Louis or East St. Louis, giving the traffic to a carrier other than the Wabash the combined system revenues considering the Wabash part of the system would be reduced by $210, via Peoria branch Lomax, including one-half of the TP&W revenues, the earnings would be reduced by $255.

By Mr. Wheeler:

Q. Mr. Swanson, why do you include one-half of the TP&W?

A. I am assuming now if the Santa Fe and Pennsylvania were to acquire ownership each of them would obtain half of the benefits that accrue to the TP&W. Via their route through Effner and Lomax the revenues of the Pennsylvania would be $303 less than maximum earnings through Kansas City. Via Effner and Peoria, which would contem-

[fol. 1201] plate handling the traffic west of Peoria via a carrier other than the TP&W, still including one-half of the earnings that would accrue to the TP&W between Effner and Peoria, the revenues would be $353 less than maximum earnings via Kansas City.

Now taking the Pennsylvania Railroad alone their maximum earnings are via St. Louis or East St. Louis where they would obtain $480 out of this hypothetical shipment. Their next best route from the standpoint of earnings in this case would be via their Peoria branch through Lomax, including one-half of the TP&W, which would be $45 less than their maximum earnings.

If the shipment were handled via Effner and Lomax the revenues to the Pennsylvania would be $93 less than their maximum earnings. If it were handled via Effner and Peoria, using a line other than the TP&W west, their revenues would be $143 less than their maximum earnings.

Now turning to the Santa Fe, it will be noted that their maximum earnings on this hypothetical shipment would be $695. That would accrue to them via their route through Chicago. Their next best route would be Effner-Lomax westward or Effner-Lomax eastward where their earnings would be $82 less than their maximum earnings. That includes one-half of the TP&W. Then if they were to handle that shipment eastward via Lomax and Peoria, delivering [fol. 1202] the traffic to a carrier other than the TP&W there, their earnings together with one-half of the TP&W earnings would be $130 less than their maximum earnings via Chicago.

I have made similar computations on all of these sheets, but I think that portrays the general picture. It generally follows that pattern.

Q. Mr. Swanson, could you discuss the next item under Santa Fe per cent?

A. The next item under Santa Fe percents that reads Effner-Peoria-Nemo would contemplate movement via the M&StL west of Peoria, and in that event the Santa Fe's earnings would be $146 less than their maximum earnings. These routes were all included to give a complete picture of all of the routes used on pages 1 through 41 of the exhibit.

Q. Now, the last item that you discussed, that is, Effner-Peoria-Nemo, would yield less revenue to the Santa Fe than via Effner-Lomax or Peoria-Lomax, would it not?

A. That is right Effner-Lomax would yield $613, Peoria-Lomax $565, Effner-Peoria-Nemo $449.

Q. Does that conclude your statement?

A. Yes, it does, Mr. Wheeler.

[fol. 1203] Exam. Albus: Cross examination, please.

Mr. Wheeler: Mr. Examiner, I did omit one item here.

Exam. Albus: You may ask it now.

By Mr. Wheeler:

Q. Mr. Swanson, under the part of this exhibit labeled "PRR Per Cents," what item would cover a shipment going from Peoria to Nemo?

A. Are you referring now to the line graph that we—

Q. Yes, sir. I am speaking now of a shipment that would travel over that route, not that it would just begin at Peoria and end at Nemo.

A. Would you read that question, please, I don't quite follow it.

(The question preceding the last question was read.)

A. That would be the item labeled Effner-Peoria. That item contemplates the Pennsylvania's delivery of westward traffic at Effner to the TP&W and the TP&W's delivery of that traffic to a connecting line at Peoria, which in the instance of your question would be the M&StL via Nemo.

Mr. Wheeler: Thank you.

Exam. Albus: Now cross examination, please.

Cross examination.

By Mr. Thomas:

Q. Will you look at your Exhibit H-29, Mr. Swanson.

A. Yes, sir.

Q. Do the cars shown in column B, on page 1, include cars [fol. 1204] as to which the TP&W had only a switch movement?

A. My understanding is that they do not.

Q. Would you give me the figures which include the cars having a switch move?

A. I can't supply them at this time.

Q. Are you positive that there are no cars in there which are given only a switch move by the TP&W?

A. I might say that the information under column B of this exhibit was borrowed from Exhibit H-51 that was submitted by the TP&W in the Illinois Terminal case, and that I verified the figures for 1954 with our car service department. Those cars did not include a switch move. Our figures were two cars off of the figures that were in the TP&W Exhibit H-51 in the Illinois Terminal case.

Q. Does the record in the Illinois Terminal case show whether or not those 1954 figures include cars having only a switch move on the TP&W?

A. I don't know.

Q. From what reports did you check these figures?

A. I had the head of our car service department verify the figures for 1954.

Q. What sources did he use for that verification?

A. Our interchange with connecting carriers.

Q. You mean--

A. (Interrupting) Our interchange with the TP&W.

[fol. 1205] Q. Are those from the station records?

A. I might say, Mr. Thomas that Exhibit H-31 shows the same, 11,999 cars, under the column headed 1954, and that is divided as to interline received, interline forwarded, and intermediate cars. The interline received cars are those cars received at Peoria from the TP&W moving to a destination on our line. The interline forwarded cars are those cars which move from a station on our line via Peoria to the TP&W. If there were any switch cars included, that would not be under either of those categories. It would be under local traffic.

Mr. Thomas: May I go off the record for a minute?

Exam. Albus: Yes.

Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

By Mr. Thomas:

Q. Mr. Swanson, did you request the TP&W to provide you with interchange information about the M&StL-TP&W interchange?

A. I made no such request.

Q. You just used this data from the Illinois Terminal case?

A. That is correct.

Mr. Wheeler: I believe you also said you checked it against your own information.

The Witness: Yes, for the year 1954, we checked it against our own information.

[fol. 1206] By Mr. Thomas:

Q. Could you supply your total interchange at Peoria with the TP&W, including cars switched by the TP&W shown separately?

Perhaps I have asked for that information.

Mr. Heineman: You asked me for it and it is being prepared.

Exam. Albus: What was the answer?

Mr. Wheeler: It has already been requested and we have agreed to supply it.

Exam. Albus: Thank you.

By Mr. Thomas:

Q. Your Exhibit H-30 shows the gross freight revenues of the M&StL. for the years 1948 through 1954. Do you have the figure for the year 1955 available?

A. Our 1955 gross freight revenues were $20,091,364.

[fol. 1207] By Mr. Thomas:

Q. Mr. Swanson, will you tell me how the M&StL solicits the traffic that it obtains for its line.

Mr. Wheeler: Mr. Examiner, Mr. Swanson—or Mr. Nelson, the head of the traffic department of the M&StL, will follow Mr. Swanson on the witness stand, and I think that question should better be directed to him.

Exam. Albus: Will you reserve it for Mr. Nelson.

Mr. Thomas: The problem is this witness telling about competitive traffic and the dangers of losing it and how traffic is routed and the influences of various roads in obtaining traffic.

Mr. Wheeler: If he wants to proceed after my statement, let him go ahead.

Exam. Albus: You may answer, Mr. Swanson.

A. Well, I was going to tell Mr. Thomas that that is out of my bailiwick and that we will have a witness who will follow me, Mr. Nelson, our vice-president, who has charge of solicitation on our railroad, and I agree with Mr. Wheeler that the question might properly be directed to him.

By Mr. Thomas:

Q. Then, you don't know the influences of solicitation of the traffic moving over your line?

A. Oh, I have some familiarity with that influence, why, certainly.

Q. I find it a little difficult to determine whether I should go on with this or not. You say you are not the witness who [fol. 1208] is to testify about your solicitation policy, but have you had solicitation experience?

Mr. Wheeler: Mr. Examiner, I merely want to make this clear. Mr. Swanson is subordinate in the traffic office to Mr. Nelson. Mr. Nelson has jurisdiction over Mr. Swanson's department and many others. But we do tender Mr. Swanson as qualified to answer any and all questions with respect to these exhibits and as to the basis of the exhibits that he introduced. If it is a question as to his qualifications to prepare and testify with respect to these exhibits, then, I think Mr. Thomas should proceed. If, on the other hand, he wants information with respect to traffic solicitation policy, et cetera, I think he should better wait for Mr. Nelson.

Exam. Albus: All right, let's proceed.

Mr. Thomas: I might say that what I am interested in might not be described as policies, but practices.

By Mr. Thomas:

Q. Does the M&StL maintain a number of off-line offices?
A. Yes, sir.
Q. How many?
A. Well –
Q. Are you planning to put those in the record by another witness?
A. Yes, Mr. Nelson will put those in the record.
Q. You have a number, in various cities?
A. That is correct.
[fol. 1209] Q. Throughout the United States?
A. Throughout the United States.
Q. Take the traffic that you have shown in your Exhibit H-32, is that bridge traffic moving between Nemo and Peoria?
A. Yes, sir.
Q. That traffic, as I understand it, is from or to the Santa Fe, the bridge traffic moving–
A. That is interchanged with the Santa Fe at Nemo, Illinois.
Q. What arguments do your solicitors use in order to get that traffic to the M&StL when they are talking to the shippers?
A. I have had no practical solicitation experience. I know what arguments I would use if I were in the solicitation field, but I don't know what arguments they use in that connection.

Mr. Wheeler: Mr. Examiner, I think this is really within the scope of Mr. Nelson's testimony.
Exam. Albus: I think he answered the question, he doesn't know what arguments are used.

By Mr. Thomas:

Q. Let me ask you about the first schedule of Exhibit H-32. I want to refer to the material indicated as revenue carloads handled—
A. Yes, sir.
Q. (Continuing) About halfway down the page.
A. Yes, sir.

Q. And over on the right-hand side, the third column from the right, you have a heading "Total under bridge."

A. Yes, sir.

[fol. 1210] Q. As I understand, that's the total of eastbound and westbound bridge traffic—

A. That is correct.

Q. (Continuing) —moving between Nemo and Peoria.

A. And Peoria, yes, sir.

Q. Now, for the year 1954, in that third column from the right, under the heading "Revenue Carloads Handled" you show 9,891 cars.

A. That is correct.

Q. Do you know how many of those are interchanged with the TP&W?

A. No, I didn't make that check.

Q. Could you supply that information?

A. Yes.

Q. Now, to obtain that traffic to which I just referred, you have to solicit, or your people, your traffic solicitors, have to solicit against the Santa Fe, which is making efforts to obtain its long haul to Chicago, is that correct?

A. There is no question about that.

Q. And you have to solicit against the TP&W which is attempting to obtain that traffic at Lomax?

A. Surely.

Q. And you have to solicit for it against other connections of the Santa Fe west of Chicago?

A. All of the competitive routes.

Q. That would include routes in which the Santa Fe [fol. 1211] wasn't involved, wouldn't it?

A. Yes, it would.

Q. And you obtain that traffic in spite of all that competition?

A. We have thus far been successful in that effort.

Q. But you do not know the arguments that your solicitors use to obtain that traffic, and I think you so stated?

A. Well, that's correct.

[fol. 1212] Q. Now, if the Santa Fe and Pennsylvania were to acquire the TP&W, what change would there be in the situation from the standpoint of solicitation, if you know?

A. Well, I understand that the Santa Fe will put Lomax on a parity with their Chicago solicitation, and that we will then be soliciting against a new combination. In other words, today we are on a parity with Lomax. We would no longer be on such a parity.

Q. You understand that the Santa Fe is going to solicit for a haul via the TP&W through Lomax?

A. I understand that they will advise their shipping public that they will be just as happy to take traffic via Lomax as via Chicago.

Q. How will that take any additional traffic away from you when they are soliciting for the haul all the way to Chicago now?

A. As I see it, those shippers who prefer the Peoria gateway would be influenced by this additional solicitation on the part of both the Santa Fe and the TP&W.

Q. But today you have both the Santa Fe soliciting for Chicago and the TP&W soliciting for the Peoria gateway?

A. Yes, but tomorrow we would have the Santa Fe also soliciting for the Peoria gateway in connection with the TP&W only.

Q. Is it your understanding that the Santa Fe's proposition here was that the Santa Fe would solicit for the Peoria [fol. 1213] gateway?

A. It is my understanding that they would put Lomax and Chicago on a parity, thereby soliciting alternatively via either route.

Q. Don't you think your solicitors can take some advantage of the fact that it is understood that Lomax is on a parity with Chicago?

Mr. Wheeler: Mr. Examiner, I think this is argumentative and that he is going over the same ground over and over again. I suggest if the Santa Fe is changing their parity policy as between Lomax and Chicago as a predicate for these questions Mr. Duffy should resume the stand and state the present Santa Fe—

Exam. Albus: Do you know the answer to that question, Mr. Witness?

The Witness: Will you read the question again, I didn't understand it at all.

Exam. Albus: Well, then, there is no use reading it. Let's have the next question, or reframe the question, please.

By Mr. Thomas:

Q. Aren't your solicitors pretty vigorous salesmen?

A. I think they are.

Q. Don't you think a good salesman could make a pretty good argument with a shipper that if the Santa Fe isn't complaining against traffic being routed via Lomax that they shouldn't complain about traffic being routed via Nemo?

[fol. 1214] Mr. Wheeler: Mr. Examiner, I don't think there is any such predicate in the record. My understanding of the testimony of Mr. Duffy, who is sitting right here, is that they are placing Lomax and Chicago on a parity.

Mr. Thomas: This question assumes that.

Mr. Wheeler: It does not. It assumes a policy of neutrality as between Lomax, Nemo, and Chicago.

Mr. Thomas: It does not.

Exam. Albus: All right, let's not argue about it. The record will show what Mr. Duffy said on the stand.

Mr. Wheeler: I object to the question as not being consistent with the testimony of record.

Exam. Albus: The objection is overruled.

You may argue that in your brief. That is the proper place for it.

A. Will you read the last question?

(Question read.)

A. Well, he could certainly make that argument, but I am not convinced that it would be successful.

By Mr. Thomas:

Q. Do you think the Santa Fe could afford to tell the shippers how the traffic should be routed beyond the lines of the Santa Fe?

Mr. Wheeler: Mr. Examiner, this man is an employee of the M&StL not the Santa Fe.

Mr. Thomas: I am speaking to a man who has offered [fol. 1215] estimates about the possible diversion of traffic, and I am trying to find out what he knows about the factors that affect the routing of traffic.

Exam. Albus: He may answer.

The Witness: Will you read that, please.

(Question read.)

A. My understanding is that they intend to tell the shippers that with respect to the Lomax route.

By Mr. Thomas:

Q. Would you answer the question on the assumption that the Santa Fe would not want to tell the shipper to use the TP&W route beyond the Santa Fe and thereby offend the Erie, for example?

Mr. Wheeler: Pardon me, may I interrupt.

Is this assuming control of the TP&W by the Santa Fe-Pennsylvania?

Mr. Thomas: Yes, it is.

Mr. Wheeler: Thank you.

A. Well, certainly there are some solicitation policies that the Santa Fe must pursue with its connections, and I certainly am not in a position to be entirely familiar with them.

By Mr. Thomas:

Q. And don't railroads generally make it a point not to interfere with their eastern connections, western railroads?

A. I think that is true.

Q. They need them all, don't they?

[fol. 1216] A. Yes.

Mr. Thomas: We wouldn't want to offend the Nickel Plate either, Mr. Broker. Someone called that to my attention.

By Mr. Thomas:

Q. Now, Mr. Swanson, on page 8 of your prepared statement you discussed the question of traffic which is either unrouted or specifies only the delivering line?

A. Yes, sir.

Q. You say that frequently traffic of this sort comes to the originating carrier?

A. Yes, sir.

Q. Have you made a study to determine how frequently such traffic comes to the originating carrier?

A. It comes to us in such—

Q. (Interrupting) Will you answer my question first and then explain it?

A. I have made no detailed study of that, no.

Q. If the Santa Fe is the originating carrier and the traffic is unrouted and it is traffic going from the Santa Fe territory to the east, doesn't the Santa Fe or wouldn't the Santa Fe, under your theory as expressed here, route that traffic via Chicago to get its long haul?

A. I presume they would.

Q. Now, what would be the change if the Santa Fe placed Lomax and Chicago on a parity?

A. On this particular unrouted traffic I see no change. [fol. 1217] Q. Now take the Santa Fe as the terminating line, where it can influence or control the traffic to the extent you suggest, assuming your theory is correct—

Mr. Wheeler: Just a moment. Again, so that the record will be clear, are you assuming for these questions that you are asking that you have acquired control of the TP&W?

Mr. Thomas: Yes, that is correct.

Mr. Wheeler: Did you so understand, Mr. Swanson?

The Witness: That is my understanding, yes.

Mr. Broker: On a 50-50 basis, is that right?

Mr. Thomas: Yes, let that be understood to all those questions.

Exam. Albus: Very well, that will be understood.

Mr. Thomas: Shall I reframe that question or can you find it and read it?

Exam. Albus: Do you have the question, Mr. Swanson?

The Witness: All I have heard is on westbound traffic.
Exam. Albus: Read the question, please.
(Question read.)

By Mr. Thomas:

Q. (Continuing) —would the Santa Fe not try for its haul today on such traffic?
A. Are we talking about unrouted traffic?
Q. Yes.
A. Then the originating carrier will have control.
Q. Let's not talk about unrouted traffic, let's talk about [fol. 1218] terminating, traffic terminating on the Santa Fe, which under your theory as expressed here would be under the—I think you used the expression dominant influence of the Santa Fe.
A. I used that term?
Q. Yes. Well, assuming that your theory is correct would the Santa Fe use that dominant influence today to get that traffic at Chicago?
A. Today they would, yes.
Q. You would not get it at Nemo if that dominant influence was successful?
A. Not if it prevailed, no.
[fol. 1219] Q. Now will you turn to page 9 of your prepared statement? You refer to 11,724 loaded cars received by the M&StL at Peoria in the year 1954 which were handled by the M&StL as a bridge carrier and delivered to connecting lines at junctions in Illinois other than Nemo and in Iowa and in Minnesota.
A. Yes, sir.
Q. That is westbound traffic, isn't it?
A. That is westbound bridge traffic, yes, sir.
Q. Now, in order to get that traffic, to get the bridge haul between Peoria and Nemo, you have to solicit against the Santa Fe, don't you?
A. This is not Peoria-Nemo and it might well be traffic that wouldn't ordinarily move to points on the Santa Fe. This is our entire westbound bridge traffic.
Q. I understand. I withdraw that question.
But as I understood your implication here was that this traffic is competitive with the Santa Fe.

A. No, Mr. Thomas. My implication was that the latter traffic that I discussed in some detail later, that discussion began with the first full paragraph on page 10 of my prepared statement.

Q. Isn't that what you called your second category on page 6?

A. No, this embraces the traffic in that category, but the broad description on page 9 also includes traffic bridge into the Northwest.

[fol. 1220] Q. Well, let's first discuss traffic moving—let's first discuss traffic included in your second category.

A. That is the traffic I began to describe in the first full paragraph on page 10 of my prepared statement.

Q. You mean your reference there to the waybill abstract?

A. That's correct.

Q. In other words, you have examples there of that traffic?

A. I have some examples of that on pages 11 and 12, I believe.

Q. Let's take the first one there, wrought pipe from origins in Pennsylvania to destinations which you received from connections at Peoria and delivered to the Rock Island at Brighton, Iowa, for movement through the Missouri River gateways?

A. Yes, sir.

Q. Could that have moved via the Santa Fe at Nemo?

A. Yes, sir.

Q. Then you solicited that traffic for a longer haul against the Santa Fe's taking it at Nemo, did you not?

A. No, I don't know that to be a fact. I don't know what solicitation practices resulted in that movement. It may have been the result of some Rock Island solicitation.

Q. Wasn't that Rock Island solicitation solicitation against the Santa Fe?

A. I presume that when the Santa Fe is excluded from a haul that it could obtain that the lack of movement over that line is the result of some adverse solicitation.

[fol. 1221] Q. Isn't that true with respect to the Santa Fe in all these examples?

A. Apparently. There is some cause for the movement via the other routes.

Q. Isn't the Santa Fe in a position in all of those examples both westbound and eastbound, in a position to solicit for a haul via Chicago, and at least a haul by Nemo?

A. They are in such a position.

Q. And all the other routes between the east and the west serving the origin and destination of that traffic are soliciting for that traffic, are they not?

A. Surely.

Q. And yet you obtained it, the M&StL obtained the traffic?

A. I don't know whether we obtained it. We got a haul on it.

Q. Do people just give you traffic without solicitation?

A. Oh, we get an occasional car without asking for it.

Q. Generally speaking, wouldn't you say that you would expect that to be the result of your solicitation efforts?

A. Solicitation by and large is very influential on the movement of traffic.

Q. Now I covered both the examples of westbound traffic and eastbound traffic of the type you called your second category, did I not?

A. I understand that to be a fact.

Q. Now turning to page 9 here, the next type of traffic [fol. 1222] mentioned is 12,439 loaded cars received by the M&StL at Peoria and terminated on the M&StL?

A. That is correct.

Q. You say 10,425 of these were destined to competitive points?

A. That is right.

Q. That is, points reached by other lines connecting or connected with the TP&W?

A. Yes, sir.

Q. What does connecting or connected with mean, is that some destination?

A. I included in this group all cars that terminated at competitive points on our railroad, including such points as might be competitive with such line as the Chicago Great Western. That I indicate as connected with the

TP&W but the other lines are connecting lines of the TP&W, such as the Rock Island and the Burlington.

Q. The Northwestern?

A. The Northwestern would be a connecting line of the TP&W.

Q. The Milwaukee?

A. So would the Milwaukee be a connecting line with the TP&W.

Q. Let's take a place like St. Paul, what are the connecting lines there or lines connected with the TP&W that you refer to as competitive.

A. Well, the principal competitors there would be the Burlington and the Rock Island who connect with the TP&W at Keokuk.

[fol. 1223] Q. How about Minneapolis?

A. The same thing.

Q. Wouldn't that also include the Northwestern and the Milwaukee?

A. To a far lesser extent.

Q. You are getting this traffic in competition with those lines, as I understand it today.

A. Yes, we are getting it in competition with any and all competitors.

Q. And those lines are not involved as applicants in the application of the Santa Fe and the Pennsylvania, are they?

A. Only the Rock Island is an intervenor.

Q. Is an intervenor, but assuming that the Santa Fe and the Pennsylvania acquired the TP&W do you think that traffic moving via the Burlington from the Twin Cities over the TP&W route would be diverted from you?

A. I think there is a greater chance of that westward where the Pennsylvania originates the traffic.

Q. And how would the Pennsylvania come into the picture?

A. In putting the traffic over the TP&W all the way to Keokuk.

Q. You understand that they are going to solicit for the TP&W?

A. I understand they are going to put Effner on a parity with Chicago.

Mr. Cassell: Mr. Swanson, didn't you mean to say Lomax [fol. 1224] instead of Keokuk?

The Witness: No, I am talking about the northwest traffic via the Rock Island or the Burlington through the Keokuk—

By Mr. Thomas:

Q. Isn't the Pennsylvania trying to get that traffic via Chicago today?

A. I rather suppose they are.

Q. Or via St. Louis?

A. It wouldn't move via St. Louis. But you are getting it.

Q. But you are getting it?

A. Yes, we are getting it. These are cars that we had last year.

Q. On page 13 of your study you made an estimate which you said was your conclusion based on 1954 figures as to the approximate annual loss which would be suffered by the M&StL if the application of the Pennsylvania and Santa Fe were granted.

A. Yes, sir.

Q. Did you make a study as a basis for that estimate?

A. Yes, we did.

Q. Is that available for examination by us?

A. I can read it into the record.

Q. We'd like a copy. Could you furnish us with a copy of it?

A. I can furnish a copy of that study.

Q. Thank you.

Mr. Thomas: That is all I have, Mr. Swanson.

Exam. Albus: Mr. Lucas.

[fol. 1225] Cross examination.

By Mr. Lucas:

Q. Mr. Swanson, would be willing to let me have for a reasonable period of time this Exhibit H-51 that was filed in the Illinois Terminal case on behalf of the TP&W?

A. I don't have the exhibit with me at the moment.

Mr. Broker: Mr. Lucas, may I answer that, one of our exhibits will be H-51 in the I.T. case, and I will get it for you this noon.

Mr. Lucas: That is fine. I just want to see what it is.

Exam. Albus: Very well.

By Mr. Lucas:

Q. But that is, Mr. Swanson, I think you said is the exhibit from which you took certain of the statistics that appear in your testimony?

A. That is correct.

Q. Will you turn, please, to the same page that Mr. Thomas was just asking you, page 13.

A. Yes, sir.

Q. You base your estimate there on 1954 figures. What about, let's say, a reasonable period prior to 1954, along in the 1950's, would your alleged loss be equally accurate for the period '50, '51, '53, and '52, and '53.

A. It would be substantially the same estimate.

Q. Are you anticipating that there will be a change in the TP&W's solicitation policy?

A. I would rather expect that there would be some change.

[fol. 1226] Q. You do not believe that the independent management will be free to solicit traffic for the benefit of the TP&W?

A. Well, it certainly will solicit traffic for the benefit of the TP&W.

[fol. 1227] Q. At page 15 of your prepared text, Mr. Swanson, do you have that, sir?

A. Yes, I do.

Q. The bottom paragraph sets out percentage division supplied us by the Santa Fe. I just want to clear up. I think you probably don't mean to exclude the participation in that information being supplied the Pennsylvania Railroad, do you?

A. I didn't mean to exclude it, I just mean to indicate we had received it from the Santa Fe.

Q. And the applicants joined in supplying you the information that was requested in advance of the hearing?

A. That is my understanding, Mr. Lucas.

Q. Will you turn now, please, to page 18.

A. Yes, sir.

Q. And in the full paragraph on that page toward the bottom you used the term "lumped proportion of the Pennsylvania Railroad and the Wabash Railroad".

A. Yes, sir.

Q. The words "lumped proportion" are the ones that underlie certain of your exhibits in which you show the Pennsylvania Railroad and the Wabash in combination?

A. Yes, sir, including the Wabash proportion.

Q. Will you take up, please, Exhibit H-28.

Let me take the years 1954 and 1953 for the basis of my next questions. Will you note the middle column relating [fol. 1228] to the TP&W, please.

A. Yes, sir.

Q. And opposite the "Products of mines", "Bituminous coal", do you note the increase for 1953 from 212,000 revenue tons to 324,000 revenue tons in 1954?

A. I do.

Q. If you will accept my mathematics, that is an increase of 133,000 tons. Does that seem to be correct?

A. That is correct.

Q. Do you know whether there was a mine or certain mines opened on the TP&W for the strip mining of bituminous coal in 1953 and '54?

A. I know that they have some substantial strip mines on the TP&W. I am not familiar with the time when they were opened.

Q. That increase there with respect to products of mines has some effect, does it not, on your percentage figures that you show otherwise on this page?

A. It would have some effect. It would increase, of course, the average percentage for the five years on products of mines over and above that which obtained in 1953.

Q. On that same commodity classification, products of mines, the percent of total of the TP&W changed from 14.7 to 19.8 from '53 to '54, did it not?

A. That is correct, in the average of 16.7.

Q. And that increase in the movement of bituminous [fol. 1229] coal would also affect the figures down at the bottom, the percentage of total, or let me ask it this way: Do you think that increase in coal movement had some

effect on the TP&W change in respect to manufacturers and miscellaneous—

Mr. Wheeler (interrupting): Just a moment, please. I think the witness is entitled to know what the questioner means by "some".

Mr. Lucas: All right, Mr. Wheeler. Let me start over again.

By Mr. Lucas:

Q. I direct your attention to the percent of total, about 6 lines from the bottom, under the TP&W 1953. Do you follow me on that, Mr. Swanson?

A. The percent of total under "Manufacturers and miscellaneous"?

Q. That is right. 54.1 per cent for the year '53, is that right?

A. That is correct.

Q. And the percent of manufacturers and miscellaneous dropped in the year '54 to 49.4?

A. That is correct.

Q. Do you think the increase of 130,000 tons between those two years in bituminous coal had something to do with that reduced percentage on manufacturers and miscellaneous?

A. Oh, surely, when you increase the tonnage under one commodity classification, it is bound to lower the percentage on the other.

Q. On this same exhibit, H-28, do you understand whether [fol. 1230] there is or is not any duplication in revenue tons figures there shown for the M&StL and the TP&W combined?

A. The combined figures are the combined tonnages of the two lines.

Q. I assume that is correct. Now, however, let me give you an example. If a car of wheat moves over both the M&StL and the TP&W, is it not shown as revenue tons for both railroads?

A. It would be duplicated, yes, sir.

Q. You do not know how much duplication might be involved in the figures, the figures in the six columns which show the combined—

A. No, I don't.

Q. On page 4 of your prepared statement, Mr. Swanson, I direct your attention to the second sentence at the top of the page reading "Particular attention is drawn to the fact that the combined figures would serve to reduce the M&StL's reliance on products of agriculture and would serve to increase its percentage on manufactures and miscellaneous", and you say this, which I assume means the predicate of that is the part I just read, is that correct?

Mr. Wheeler: Mr. Examiner, could I have that question read. I don't follow it.

Exam. Albus: Do you understand it, Mr. Swanson?

The Witness: No, I am not quite clear.

Exam. Albus: Read the question.

[fol. 1231] A. Well, the following statement is predicated upon that statement that was read.

By Mr. Lucas:

Q. My question was probably not very clear, but that is what I meant to develop, for sure.

Then you say this, which you have now cleared up, and I quote, "This would have a stabilizing influence on the traffic flow over the combined properties in the event our application to acquire control of the TP&W were approved." Just what do you mean would have a stabilizing influence on the traffic flow over the combined properties?

A. Well, we find that manufacturers and miscellaneous contributes more steady flow over the year than does agriculture which follows a seasonal pattern, and what I meant to point up by this statement was the fact that there would be some stabilization in the direction of humps and valleys in seasonal trends.

Q. Do you mean or assume that the manufacturers of miscellaneous traffic on the TP&W would then all automatically flow over the M&StL?

A. Oh, no.

Q. Do you mean that some of it would, in your opinion?

A. Not necessarily, no. We'd anticipate pretty much the same flow of traffic over the M&StL as at present and the same flow of traffic over the TP&W as at present.

Q. Your answer would be the same, that you wouldn't [fol. 1232] assume that the agricultural traffic of the M&StL. would automatically flow over the TP&W?

A. Oh, that's obvious.

Q. What is the source of the figures shown in Exhibit H-29?

A. I responded to that on a question by Mr. Thomas.

Q. In other words, Exhibit H-51?

A. That is correct, except that I had the year 1954 verified by our carrier service department as to the TP&W and M&StL interchange?

Q. And in my question I meant, Mr. Swanson, to identify that as H-51, in the exhibit filed by the TP&W in the Illinois Terminal case.

A. I understand.

Q. Your effort to verify the figures taken from Exhibit H-51 in the Illinois Terminal case, did it make any check against the freight commodity statistics for the year 1954?

A. I don't know to what statistics you have reference.

Q. Are you familiar with the statement fifty-five one hundred, number five five one hundred?

A. No, sir.

Q. So you don't know whether the verification included a check of these figures against statement no. 55-100?

A. I don't know what the verification includes.

Q. If there is a discrepancy there of 13,000 cars, you can't clear that up for us today without any further information, can you?

[fol. 1233] Mr. Wheeler: Mr. Examiner, I don't think that question is at all fair. I don't think he should be asking this witness about a document that he doesn't have before him or have some opportunity to examine.

Exam. Albus: I will sustain that objection.

By Mr. Lucas:

Q. Well, do the total revenue cars in column C on page 1 of your Exhibit H-29 include cars switched?

A. No; they are all line haul cars.

Q. Well, then, I come back to the question how do you account for a difference of thirteen thousand cars, if my figures are correct, in connection with statement no. 55-100?

Mr. Wheeler: What is statement 55-100? I think that is what the witness is entitled to see.

Mr. Lucas: ICC freight commodity statistics for the year 1954.

A. I don't know where the differences occur.

By Mr. Lucas:

Q. Do you have any information as to the volume of cars switched at Peoria, total cars switched at Peoria?

Mr. Wheeler: By whom?

Mr. Lucas: Total cars switched at Peoria.

By Mr. Lucas:

Q. By all railroads.

A. No.

Q. Do you have the information as to how many cars as between the M&StL and the TP&W are switched at Peoria?

A. Yes.

Q. Does that appear in your—

[fol. 1234] A. (Interrupting) I don't have it here. No, it doesn't appear here.

Q. Is that something you are going to supply in response to—

A. (Interrupting) As I understood it, Mr. Heineman agreed to supply that information.

Q. That is all right, then.

Have you ever been to Effner, Mr. Swanson?

A. No, I haven't.

Q. You have no basis, then, personal knowledge, for comparison of switching at Effner and switching at Peoria?

A. No personal knowledge of it, no.

Q. Have you gained any knowledge through your activities in the industry, so to speak?

A. Oh, I have gained a lot of knowledge of it right here.

Q. Would you say that there is a very close comparison between switching of cars at Peoria and switching of cars at Effner?

Mr. Wheeler: Mr. Examiner, if this is from an operating standpoint, we will have an operating witness later.

Mr. Broker: I object to that, too, because this man isn't qualified, for instance, to describe a switching service between the TP&W and the Nickel Plate at Farmdale.

Exam. Albus: If he has never been to Effner, he doesn't know what the situation is.

Mr. Lucas: Well, he said he had some knowledge gained [fol. 1235] in the trade.

Exam. Albus: He knows what a switched car is, but how they switched it is something else again.

By Mr. Lucas:

Q. Have you any information as to the number of cars switched at Effner compared with Peoria?

A. I think the only switching you have at Effner is the interchange switching. I don't know, there would be far less at Effner than Peoria, I rather imagine.

Q. Now, on Exhibit H-30, I direct your attention to percentages shown in columns 4, 6, 8, 10 and 12.

A. Yes, sir.

Q. I guess you readily agree with that because they would vary with the total volume of traffic handled by each line, would you not?

A. That is the reason, of course, the percentages vary. The smaller line has the larger percent.

Q. On that basis, the Chicago-Illinois Midland would have a greater interest than the M&StL to get the TP&W, would it not?

A. I don't know what their interest would be. I know ours is great.

Q. In connection with your testimony, also the last pages of Schedules 4 and 5 of Exhibit H-32—

A. Yes, sir—

Q. (Continuing) —there you give the total traffic interchanged at Peoria, do you not?

[fol. 1236] A. Are we referring to Exhibit H-32?

Q. That is right.

A. Only that traffic interchanged that we receive from the Santa Fe at Nemo, Illinois, or delivered to the Santa Fe at Nemo, Illinois.

Q. Will you turn, please, to page 9 of your prepared text, Mr. Swanson.

A. Yes, sir.

Q. I think you have already indicated to Mr. Thomas that the figure you have given there towards the beginning of the first full paragraph, the westbound bridge traffic, 17,724 cars at Peoria—

A. Yes, sir.

Q. That is what you received, is that right?

A. That plus the Nemo interchange shown on page H-32, the westbound bridge traffic.

Q. And on that same page you say: "Likewise, we delivered 15,290 cars of eastbound bridge traffic received from connecting carriers" and so forth.

A. Yes, sir.

Q. Can you give us the number of cars interchanged with the Nickel Plate?

A. I don't have that available.

Q. Would it be much trouble to develop that and supply it to us?

Mr. Lucas: Mr. Wheeler, do you have any objection? I [fol. 1237] should address it to you.

Mr. Wheeler: Off the record.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Mr. Wheeler: We will be glad to furnish it.

Mr. Lucas: Just to clear up what we are asking for, it is the year 1954, all cars that went through Peoria for receipt from or delivery to the Nickel Plate in conjunction with the M&StL.

Mr. Wheeler: Mr. Lucas, on these requests, so that we can have them straight in the record, would you mind giving me a letter on them?

Mr. Lucas: I will be glad to.

By Mr. Lucas:

Q. I think you have already agreed to supply, in response to question of Mr. Thomas, the traffic analysis that appears on page 11. When that is produced, will it show the complete routing?

A. No.

Q. Do you have available here the complete routing for the nine examples that you site?

A. Yes, I can give you that.

Q. Would it save time to get it in a tabulation or can you give it quickly in the record?

A. Well, I have it in a maze of figures in my room. I [fol. 1238] would have to ferret it out.

Q. Suppose we get that later.

Exam. Albus: Include that in your request.

By Mr. Lucas:

Q. Mr. Swanson, I understand that I am in error in indicating that that analysis is the one to which I now should be directing my attention and your attention, too. On page 10 of your prepared text, the second paragraph, or the first full paragraph, you say: "I have made a detailed study of waybill abstracts for four months of the year 1954" and so forth. That is the study to which I should be referring and would like to have produced.

Mr. Lucas: Can I also include that in the letter, Mr. Wheeler?

Mr. Wheeler: Yes, sir.

By Mr. Lucas:

Q. And will that study show the complete routing, the analysis of the waybills?

A. Yes, it does.

Q. Now, Mr. Swanson, when you were furnished the information to which I directed your attention earlier, by both the Pennsylvania and the Santa Fe, were there not some footnotes and notations on that information?

A. May I have that question, please.

Mr. Lucas: Will you read the question.

(The last question was read.)

A. You refer now, I presume, to the information with [fol. 1239] respect to divisions prepared jointly by the Pennsylvania-Santa Fe?

By Mr. Lucas:

Q. Maybe I can clear it up this way, was there any supplemental information to the effect that the percentages shown would be reduced by changes accruing to intermediate carriers in the Chicago and St. Louis areas, wherever those two gateways were applicable?

A. There was no such information in the memorandum that I have, although I understand that where an intermediate carrier is used at Chicago or the terminal railroad at St. Louis there are deductions for that intermediate service.

Exam. Albus: Let the record show a ten-minute recess.

(Short recess.)

Exam. Albus: The hearing will please come to order.

If there is no chance of finishing this case by Saturday evening we are going to adjourn early tomorrow, around 4:30, the same as we did last week, to afford the people from Chicago a chance to return home for the weekend. We may be in a little better position to tell tomorrow whether or not there is a chance of winding it up on Saturday; if there is, we will probably work Saturday. Otherwise we will adjourn from tomorrow afternoon until Monday.

Mr. Broker: Mr. Examiner, Mr. Wichman called for examination in Ex Parte 196 and we would like very much to have him go on tomorrow. I don't think any of the railroads will object to that, but I'd like to point out this matter.

[fol. 1240] Exam. Albus: Is he your only witness, Mr. Broker?

Mr. Broker: No, sir. I have one other witness who will not take very long.

Exam. Albus: Very well, we will take care of Mr. Wichman tomorrow.

Mr. Davidson: In that connection, I have consulted with counsel and it will be agreeable for Mr. Atkinson, President of the Wabash, to be accommodated this morning.

Exam. Albus: Very well. If it is agreeable to counsel, it is certainly agreeable with the Examiner.

Mr. Cassell: I think Mr. Adams has spoken to a number of counsel, considering a similar problem of ours, that Mr. Gainnie will not be available next Monday, depending on whether or not, on how the case is going to go, on the time. We may ask the courtesy of putting him on tomorrow.

Exam. Albus: Very well. Anything you counsel agree to or any procedure you want to follow is certainly all right with me.

Now we will continue with the cross-examination of Mr. Swanson. Mr. Lucas, please.

By Mr. Lucas:

Q. Mr. Swanson, perhaps I can shorten the particular point that I was discussing with you just before the adjournment. If I read into the record from the bottom of the information, information sheet, relative to divisions, percentages that were supplied to you by the Santa Fe and the [fol. 1241] Pennsylvania, this note appearing at the bottom and I now quote: "Note—percentages shown above would be reduced by changes accruing to intermediate carriers in the Chicago and St. Louis areas to the extent applicable", I mean, the information you received had that qualification and your use of the material was subject to that qualification, was it not?

A. I didn't understand that that qualification was shown on any of the information that I had, Mr. Lucas.

Q. Perhaps you didn't see it, but that is a copy of what was supplied by the Pennsylvania and the Santa Fe.

A. Oh, that is with respect to the eastbound lumber.

Q. Is that lumber?

A. Yes, that is lumber.

Q. Again trying to shorten it, Mr. Swanson; also, Mr. Examiner—

Exam. Albus: That is all right.

By Mr. Lucas:

Q. (Continuing) —exactly the same note appears at the top of all of the additional sheets pertaining to other commodities. Can you verify on the record that that is so?

A. I find that notation on the eastbound lumber, the eastbound grain and grain products, from both Kansas City and Dodge City—yes, the notation is there. I understood that that would be a fact. I see it on the top of the general percentage sheet that note is shown.

Q. It is opposite all of the commodities, is it not?

[fol. 1242] A. Yes.

Q. On all the sheets?

A. Yes.

Q. Mr. Swanson, some of the revenues received by the M&StL are a result, are they not, in part, of the solicitation policy of the TP&W?

A. I presume that there would be some measure of traffic that would move over our line that would be the responsibility of the TP&W solicitation.

Q. Now, I qualify that by saying if, if their solicitation policy is unchanged, presumably you would still have the benefit of whatever that proportion of revenues would be?

A. We would have that proportion if their policy were unchanged, yes.

Mr. Lucas: That completes it, Mr. Examiner.

Exam. Albus: Mr. Cassell?

Cross examination.

By Mr. Cassell:

Q. Mr. Swanson, in your testimony and in your exhibits you have shown an amount of revenue that you feel is vulnerable to loss?

A. Yes, sir.

Q. If the Santa Fe and Pennsylvania application is approved, isn't that right?

A. Yes, sir.

Q. Isn't the premise for that the fact that it is going to [fol. 1243] be acquired and owned by competing carriers?

A. That is the premise upon which that statement was made.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Mr. Broker: No questions. I should like to point out for the record, though, that I have furnished to Mr. Lucas a copy of the exhibit in the Illinois Terminal case, and I believe the proper number of that is H-52, in that case.

Exam Albus: Very well.

The Witness: Thank you.

Mr. Lucas: I apologize, Mr. Broker, in not having said something about that.

I think that clears up the H-52. In fact, Mr. Examiner, he said we may retain that.

Exam. Albus: Very well.

Mr. Davis, please, for cross-examination.

Cross examination.

By Mr. Davis:

Q. Mr. Swanson, do I understand from your testimony, particularly as concerns the St. Louis gateway and divisions thereover, that the Wabash and the Pennsylvania are direct connections at St. Louis or East St. Louis?

A. I understand that the connection at East St. Louis is through the Terminal Railroad Association.

Q. And how about at St. Louis?

A. I am not wholly familiar with that St. Louis-East [fol. 1244] St. Louis situation.

Q. Then, you don't know that the Wabash and the Pennsylvania have no direct connection except through the Terminal Railroad at St. Louis and East St. Louis?

A. I understand that the Terminal Railroad's charges are absorbed in that interchange traffic. That's my understanding.

Q. Now, as far as the paying of those charges is concerned on traffic, for example, moving to and from the Southwest via that gateway, the delivering line would pay those charges out of their divisions, is that correct?

A. That is my understanding.

Q. Now, on page 16 of your prepared statement, the last sentence in the first full paragraph states that where traffic is handled east of Kansas City gateway by the Wabash Railroad, St. Louis-East St. Louis, in connection with the

Pennsylvania Railroad, the division break is made on East St. Louis on eastbound traffic and on St. Louis on westbound traffic. Now, would that not depend, the accuracy of your statement depend, upon the origin and destination of the traffic involved?

A. The information—yes, there is some dependence upon that, that is true.

Q. In other words, upon transcontinental traffic the break might be at East St. Louis in all situations, might it not?

A. The break there is at East St. Louis.

Q. Now, from that same sentence that you have just [fol. 1245] read, do you mean to indicate that the divisional break is any different between the Wabash and the Pennsylvania than it is between the Wabash and any other connection at that gateway?

A. No, they are the same.

Q. Now, I direct your attention to the statement on page 18 of your prepared statement wherein you refer to the lumped proportion—

A. Yes, sir.

Q. (Continuing) —of the Pennsylvania Railroad and the Wabash Railroad, and I believe that you also make a similar reference in your Exhibit H-34, where you show Pa. percentages, including Wabash, is that not correct?

A. Yes, sir, it is.

Q. Now, Mr. Swanson, do you know of any instance in which, in the making of divisions, Wabash is lumped with PRR in making those divisions?

A. That isn't part of the divisional arrangement. That is merely a lumping together of the two proportions that accrue to each line.

Q. Then, your answer is that in making divisions those two lines are separated and treated wholly apart from one another?

A. That is my understanding.

Q. It further is not your understanding, is it, that the Wabash proportion would accrue directly to the Pennsylvania Railroad?

A. No, it accrues directly to the Wabash, and it is only through the Pennsylvania's ownership of the Wabash that [fol. 1246] they have an interest.

Q. And that those revenues that the Wabash receives from its proportion would only directly benefit the Pennsylvania insofar as the sum that trickles down through the form of dividends accrues to the benefit of the Pennsylvania, is that not correct?

A. That is correct, they have that ownership interest.

Q. As a matter of fact, the actual stock control is in the Pennsylvania Company, is it not, rather than in the Pennsylvania Railroad Company?

A. Well, I am not familiar with the whole relationship, but I think they are synonomous.

Mr. Davis: That is all I have.

Exam. Albus: Is there any further cross-examination? Mr. Broker.

Mr. Broker: Earlier in the hearing I raised the question as to what is a gateway, if you will recall.

Exam. Albus: Yes.

Mr. Broker: This witness has some testimony on that.

Cross examination.

By Mr. Broker:

Q. A "gateway", as more properly used in this case, is a point with a primary division break, isn't it, such as Peoria, St. Louis, or Chicago, isn't that right?

A. That would be my definition of a gateway. I presume that there are both major and minor gateways for the move-
[fol. 1247] ment of traffic and that such a point as Lomax or Effner might be considered a minor gateway and Peoria the major gateway.

Mr. Broker: I have nothing further.

Exam. Albus: Is there any further cross-examination?

Cross examination.

By Mr. Davidson:

Q. Mr. Swanson, you have studied the traffic on the TP&W and its movements, have you not?

A. No, I have made no detailed study of the TP&W traffic.

Q. You don't know where its traffic originates or anything, is that it?

A. Oh, I have some definite ideas. We have testimony here that shows a large movement of traffic over the TP&W between the Pennsylvania and the Santa Fe.

Q. Now, do you have any opinion, as an expert on traffic movements, do you have any opinion on the movements west of Peoria on the TP&W, whether the movements, whether the interchange traffic is more than, equal to or less than traffic originating on the TP&W between Peoria and its western termini?

A. Will you read that question, please.

(The last question was read.)

Mr. Wheeler: Mr. Examiner, I submit, there are a multitude of questions there. I don't understand the question. I don't know whether to object to it or not.

Exam. Albus: Does the witness understand the question?

The Witness: I am not sure that I do.

Mr. Davidson: I will break it down.

[fol. 1248] By Mr. Davidson:

Q. Do you have any idea whether there is more interchange traffic than traffic originating between Peoria and the western termini?

Exam. Albus: On the TP&W.

A. What do you mean by "the western termini"? Online traffic?

By Mr. Davidson:

Q. Keokuk and Lomax.

Exam. Albus: This is on the TP&W, Mr. Swanson.

A. That is what I want to develop. I understand that the interchange traffic is far greater than the originating and terminating traffic.

By Mr. Davidson:

Q. Do you have any knowledge based on your study how much of that traffic, that interchange traffic, comes from lines that do not connect with the M&StL at Peoria or west of Peoria?

A. I repeat, I have made no study, so I have no knowledge of that.

Q. Do you have any opinion on it?

A. Oh, I have my opinion, my own opinion, yes.

Q. What is that?

A. My opinion would be that the greater part of the traffic would or could be channeled through the Peoria gateway. It certainly can be channeled through the Peoria gateway because it is today.

Mr. Davidson: All right.

Exam. Albus: Are there any further questions on cross?

[fol. 1249] (No response.)

Redirect examination.

By Mr. Wheeler:

Q. Mr. Swanson, were all of the exhibits which you have presented discussed with Mr. Nelson and the traffic department of the M&StL prior to their final preparation?

A. Yes, they were.

Q. And did they receive the approval of Mr. Nelson and other members of the traffic department?

A. They did.

[fol. 1250] Q. You were asked a question with respect to unrouted traffic originating on the Santa Fe. Would not the differential between Chicago—

Mr. Thomas: May I object. I see we can get into leading questions on redirect by the form of that question.

Wasn't that starting out to be a leading question, Mr. Wheeler?

Mr. Wheeler: I don't think so.

Exam. Albus: Let's proceed and we will find out what it is.

By Mr. Wheeler:

Q. Do you have an opinion, Mr. Swanson, with respect to whether the Santa Fe would receive, not more revenue on traffic originating on its lines and traversing the TP&W before or after acquisition of the latter property?

Mr. Thomas: Let me get that question clearly, Mr. Wheeler. Was your reference to what, gross revenue or net?

Mr. Wheeler: Gross.

Exam. Albus: Let's have the answer, if you have one.

A. Yes, it is obvious that the Santa Fe through its ownership interest in the TP&W would receive a larger proportion after acquisition than at present.

By Mr. Wheeler:

Q. Now refer to the notes on the divisional information sheets furnished you by the Santa Fe-Pennsylvania.

A. Yes, sir.

Q. To which reference was made by Mr. Lucas.

A. That's right.

[fol. 1251] Q. In what instances would that note apply?

A. Well, I can give you an example on westbound traffic, if you will refer to sheet—

Q. (Interrupting) Mr. Swanson, let me change the question in order to simplify this.

In what instances would the note not apply?

A. The note would not apply, as I understand it, where direct interchange is made between the carriers.

Q. Now, when the note did apply, would it significantly affect the information with respect to which you have heretofore testified?

A. Not significantly, no.

Mr. Wheeler: I have no further questions.

Exam. Albus: Is there any recross-examination?

Recross examination.

By Mr. Lucas:

Q. Mr. Swanson, do you have any familiarity with the movement over the EJ&E through Chicago, through the Chicago area?

A. I know they have a substantial interchange movement.

Q. And how about the Indiana Harbor Belt?

A. They have also a substantial interchange movement. I developed the charges on that and can read them into the record, if you would like.

Q. The EJ&E develops a substantial amount of traffic incident to switching to and from local industries in the [fol. 1252] Chicago district, does it not?

A. Without a doubt.

Q. And so that is equally true of the Indiana Harbor Belt?

A. Yes, it would be true of them without a doubt.

Q. Does the Pennsylvania railroad have a direct interchange with western lines at St. Louis?

A. Not to my knowledge.

Q. They do have to proceed through intermediate switching carrier, do they not?

A. I understand the Terminal Railroad Association interchanges that traffic.

Mr. Lucas: That is all.

Exam. Albus: Mr. Davis.

Recross examination.

By Mr. Davis:

Q. What is the transfer charge assessed by the Terminal Railroad Association at St. Louis, Missouri, for the river crossing between east and west lines at that point?

A. It varies according to the commodity.

Q. What is the top figure?

A. I believe the top figure to be $25.81 a car.

Q. Do you consider that to be insignificant?

A. When it is translated into percentages it is not particularly great.

Mr. Davis: That is all I have.

Exam. Albus: Are there any further questions of Mr. Swanson?

[fol. 1253] Further redirect examination.

By Mr. Wheeler:

Q. Mr. Swanson, are you familiar with the ownership of the Terminal Association of St Louis?

A. I understand that it is owned by all of the St. Louis lines, that there are 15 owners with the Missouri Pacific having two ownerships or 16 shares in it.

Mr. Wheeler: I have no further questions.

Mr. Broker: For the record the Nickel Plate is not a part owner of the Railroad Terminal Association, although uses its facilities.

Exam. Albus: Mr. Swanson is excused.

The Witness: Thank you.

(Witness excused.)

Exam. Albus: And the record will show that the exhibits marked for identification H-28 to and including H-36 are received at this time.

Mr. Lucas: May I make an objection to so much of the exhibits as purport to show the Pennsylvania and the Wabash on a lumped proportion basis?

Exam. Albus: Yes, sir, you may make that objection.

It is overruled.

Mr. Thomas: Mr. Examiner, I just wanted to state, as I did earlier, that there is some question about certain interchange figures in Exhibits H-29 and H-30. We are going to try to clear them up off the record.

[fol. 1254] Mr. Davidson: Due to circumstances under which I have no control, to wit, the weather, made me arrive late. I wonder if I can impose on counsel and the Examiner that Mr. Devins may be placed again on the stand so I may ask him a few questions.

Exam. Albus: On cross-examination?

Mr. Davidson: Yes.

JOHN W. DEVINS was sworn and testified as follows:

Cross examination

By Mr. Davidson:

Q. Mr. Devins, on page 16 of your direct testimony, I believe you testified that the railroad now has, one of the problems which faces the M&StL, are branch lines and feeders that are not justified from a economic point of view, is that correct?

A. That is correct.

Q. Now, Mr. Devins, you heard the testimony of your traffic man in which he testified that the bulk of the traffic on the western half of the TP&W, that is, that portion west of Peoria was interchange traffic?

A. Yes.

Q. And you further heard, you further heard him testify that practically all that interchange traffic could be handled on the M&StL's line west of Peoria?

A. Yes.

[fol. 1255] Q. Now, may I ask you this, did you at any time discuss with Mr. Heineman the possibility of savings that could be effected by abandoning the western half of the TP&W?

A. I think I ought to explain this—

Q. (Interrupting) Did you or did you not?

A. I discussed with Mr. Heineman—

Q. (Interrupting) When and where?

A. I think in Chicago at one time.

Q. Who was present?

A. He and I.

Q. What did you say and what did he say?

A. I think I told him about the conversation that we had previously had between myself and Mr. Sprague some 16 or 18 years ago when this subject first came up as to the desirability of the M&StL acquiring the TP&W railroad, that in scanning maps and looking over the situation from them, and that only, that we had thought that there might be a possibility of abandoning the west end of the TP&W railroad and thus avoiding a need for two routes, but that subsequently when we came to find out

all of the facts and details about the operation on that end of the line we dropped the subject entirely because obviously it could not be done and shouldn't be done.

Q. Have you made any study of the direct savings that could be effected by abandonment of that line, assuming the M&StL handles that traffic?

[fol. 1256] A. No, sir.

Q. So you don't know whether you can save any money or not?

A. No, I don't. We never even considered it.

Mr. Wheeler: May the witness finish his answer.

A. Never even considered it. We were not thinking in those terms whatever.

By Mr. Davidson:

Q: Do you know what the maintenance cost on the west end of the TP&W is?

A. No, I do not, and I think it is immaterial. It is a good railroad, and I think it is immaterial.

Mr. Davidson: I ask that the last part be stricken.

Exam. Albus: It may be stricken.

By Mr. Davidson:

Q. So you don't know what it costs?

Exam. Albus: That is what he said.

By Mr. Davidson:

Q. What is the dollar value of traffic originating west of Peoria on the TP&W?

A. If you refer to traffic, intermediate traffic, between the west end of the line and Peoria I do not.

Q. Has the board of directors ever discussed the cost of maintaining the TP&W west—the board of directors of the M&StL, you are on that, are you not?

A. Yes, sir.

Q. Have you ever considered the cost of maintaining the TP&W west of Peoria?

A. No, sir.

[fol. 1257] Q. Has it ever been discussed with the board?

A. No, sir.

Q. The west end of the TP&W has never been discussed by anyone in the M&StL, in your presence, except the conversation you had in Chicago with Mr. Heineman?

A. None whatever.

Mr. Davidson: Thank you.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, Mr. Devins. Thank you.

Mr. Davidson: Thank you.

(Witness excused.)

Mr. Wheeler: Mr. Examiner, Mr. Carr has asked to be heard at this time, and we are yielding to him.

Exam. Albus: Thank you very much, Mr. Wheeler. Mr. Carr, please.

(Applicant's Exhibits Nos. H-28 through H-36, inclusive, Witness Swanson, were received in evidence.)

[fol. 1258] C. A. Carr was sworn and testified as follows:

Direct examination.

The Witness: My name is C. A. Carr. I am a rate expert in charge of the traffic department of the South Dakota Public Utilities Commission in the State House at Pierre, South Dakota.

For the past 20 years I have been engaged in various phases of transportation, including appearances in finance dockets before the Interstate Commerce Commission and numerous rate proceedings and so forth.

In this case I am appearing for the State of South Dakota and for the South Dakota Public Utilities Commission who have intervened in this case in support of the Minneapolis & St. Louis Railway.

The M&StL operates a segment of rail line entering the State of South Dakota east of Watertown and extending west and northwest a distance of approximately 154 miles.

It is an important agency and link of rail transportation in the state, serving 17 cities and towns and the trade area adjacent thereto.

In my testimony in this proceeding I wish to show that the acquisition by the M&StL of the TP&W is in the public interest, that the acquisition of the TP&W by the Pennsylvania Railroad and the Atchison, Topeka and Santa Fe Railway Company by reason of competitive relations be- [fol. 1259] tween said carriers and the M&StL will produce adverse financial results to it by loss of traffic and will tend to reduce its capacity to render adequate service over its system, including particularly that segment thereof located in the State of South Dakota, and hence would not be in the public interest.

I submit the following facts are common knowledge of persons in transportation circles:

That there are certain rail traffic gateways through which the predominant volume of freight traffic passes handled by railroads;

That most of the large railway systems of the United States, which includes the Pennsylvania and the Santa Fe, converge at the Chicago gateway;

That the second important gateway involved in this proceeding is the Peoria gateway;

That the M&StL, unlike its competitive rail lines, does not enter the predominant gateway or interchange freight traffic at Chicago;

That no railway system can operate for any length of time without handling interline or overhead traffic with other carriers;

That such interline traffic is transferred from one rail line to the other at the gateways;

That the M&StL is dependent on the TP&W for a large [fol. 1260] volume of interchange of freight traffic delivered to it or delivered by it through connections with the TP&W. Reference is made to the decision of the Commission in Finance Docket No. 10947, 228-ICC-277, in 1935, where its operations in connection with the interchange of traffic at Peoria, Illinois, is referred to in the following language:

"The most important of these through routes are maintained in connection with the Peoria line, which is an im-

portant carrier of east and west traffic, and one of the most effective routes between the Northwest and the East and South. The Minneapolis & St. Louis has joint rates with many carriers on business passing through Peoria, to and from any points east of Peoria. West of Peoria the Burlington through Monmouth, the Milwaukee through Hedrick, the Milwaukee through Marshalltown, and the Rock Island through Brighton. In 1935 east side lines delivered to west side lines through the Peoria & Pekin Union Railway at Peoria 66,478 carloads, of which 22 per cent went to the Minneapolis & St. Louis."

I am reading from the decision.

Exam. Albus: That isn't necessary, Mr. Carr, if you can just make a reference to it.

The Witness: All right, I will do that.

That is found on page 317 of that decision.

In commenting upon the present and probable condition of the M&StL in the above-quoted decision, the Commission [fol. 1261] again refers to the overhead traffic and the future of the M&StL. And then I wish to call attention to page 363 of that decision, Mr. Examiner.

Exam. Albus: Thank you very much.

The Witness: I have distributed an exhibit which I would like to have identified at this time.

Exam. Albus: The Exhibit referred to by Mr. Carr may be marked for identification H-37.

(Intervenor's Exhibit No. 37, Witness Carr, was marked for identification.)

The Witness: This exhibit consists of 10 pages and a cover page. Page 1 is a sketch of the M&StL in South Dakota. It covers a distance of 153.97 miles. This line runs through a very fine agricultural territory. It produces a surplus of grain, livestock and potatoes, which has to find its way to the markets. You will note there are 15 towns shown in South Dakota along the line of the M&StL, which goes through six counties. The largest town in South Dakota which the M&StL serves is Aberdeen. Aberdeen is the third largest town in South Dakota, with a population of 21,051 people. It has 23 industries located on the M&StL Railway. The second largest town is Watertown, which is

the fifth, in terms of population, in South Dakota. Its population is 12,699. It has 18 industries located on the M&StL Railway. The other towns are smaller but in an agricultural territory such as this the population of the [fol. 1262] town isn't so important as the production in that territory. I know of one town in this area with a population of 25 people that has shipped as much as one trainload of potatoes in one day.

Page 2 shows the production in farm value of agricultural commodities produced in the counties tranversed by the M&StL in South Dakota. The names of the counties are shown over the different columns. These six counties have a total land area of 6,685 square miles. There has been noted under each county the production and farm value of the various different commodities that are produced in those counties in 1954. The total value, as shown on the extreme lower right, is $92,081,400.

I do not wish to infer that all this production moves out by rail or by the M&StL Railway, but we have to ship a great deal of it out and we need a good sound railroad to market our produce.

Pages 3 and 4 show the number of cars in tons of freight originating and terminating in South Dakota on the M&StL since 1928. I have shown it, you will note, by different groups.

During this 27-year period, you will note at the bottom of page 4, there was an average of 3,478 cars originating and 3,029 cars terminating each year.

Pages 5 to 10 show actual shipments made by the Minneapolis & St. Louis Railway, both originating and terminat- [fol. 1263] ing, both local and interline. The figures speak for themselves and are put into the record, Mr. Examiner, to show the importance of the M&StL in South Dakota.

Exam. Albus: Thank you very much. Does that conclude your testimony?

The Witness: No. I have some more.

Exam. Albus: Very well.

The Witness: The Examiner of the Commission, by reason of the several cases before the Commission relating to the M&StL, including the abandonment of certain of its

branch lines in Finance Docket No. 12436, 240 ICC 329, and Finance Docket No. 10907, 224 ICC 523, is familiar with the fact that the M&StL Railway for many years in financial difficulties, has improved and strengthened its financial status, it has set its house in order and has become a reasonably prosperous railroad when contrasted with railroads generally. That the portion of the M&StL Railway located in South Dakota is one of its less remunerative branch lines and one upon which the impact of detrimental competition and diminution of earnings will first be reflected in inadequate common carrier rail service. I am of the opinion and it is also the opinion of the interests I represent that the acquisition of the link of rail transportation over which the M&StL here seeks to obtain control, is essential and necessary to enable it to successfully compete with two transcontinental and powerful railroads seeking the same [fol. 1264] authority.

We had a meeting of the Governor of the State of South Dakota and the Attorney General, Mr. Examiner, and our Commission, and they were unanimous in taking the position that we are taking here at this time.

That is all I have.

Exam. Albus: Thank you very much.

Is there any cross-examination of Mr. Carr?

Mr. Thomas: No, sir.

Exam. Albus: Mr. Lucas.

Cross examination.

By Mr. Lucas:

Q. Mr. Carr, do you know whether there has been any solicitation in South Dakota of traffic by representatives of the TP&W?

A. Not that I know of.

Q. If some of this tonnage is the result of such solicitation, it either originated or terminated, some of it at least on the M&StL?

A. That is right.

Q. And if their solicitation policy should continue, would you assume that probably the tonnage would continue to move as reflected in your exhibit?

A. Yes, the tonnage would move if we had a good railroad there to move it.

Q. And if the TP&W solicits the traffic in conjunction [fol. 1265] with the M&StL to and from South Dakota, presumably the statistics would probably continue as shown in your Exhibit H-37?

A. Yes, we hope so. Our position, of course, is that we want to keep a strong railroad up there. If the tonnage would keep on the way it is now, it would be perfectly satisfactory. We would like to improve the railroads that are in there or keep them as strong as they are now.

Mr. Lucas: That is all I have.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Carr, I take it, the affairs of your state are based on the fact that the TP&W is going to be bought by a competitor of the M&StL?

A. Yes, sir.

Q. It is the fact that the new owners may be a competitor of the line in which you are interested that causes you that worry, is that right?

A. It is a competitor of the M&StL that we are worrying about. We would like the M&StL to acquire that property.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker?

Mr. Broker: No questions.

Exam. Albus: Mr. Davis.

Mr. Davis: No questions.

Cross examination.

fol. 1266] By Mr. Davidson:

Q. Mr. Carr, by getting its house in order, I assume you mean the M&StL got rid of a funded debt?

A. Well, I don't know whether you are familiar with the M&StL or not. The history is in the record. It has been in receivership.

Q. I am asking what you meant when you said it got its house in order.

A. I am trying to tell you, in the record, that the M&StL. has been in receivership, and they have gotten out of that, they have been rather prosperous, fairly prosperous, in recent years and that is what I mean by getting their house in order.

Q. The receivership was the result of a funded debt, was it not?

A. If you say so.

Q. Then, you don't know whether it was or not, what caused the receivership?

A. I don't know what causes a receivership.

Q. What caused the receivership of the M&StL.? You said they had gotten their house in order. I am trying to find out what you meant by your answer or your statement.

A. It could be if you say it was funded debt, I don't know. I know they were in receivership. I don't know why.

Q. Did you also mean by that that they got rid of unprofitable branches?

[fol. 1267] A. Some of their lines they abandoned.

Q. And if they should take over the TP&W they should adopt a policy of stripping branches that don't contribute revenue, shouldn't they?

Mr. Wheeler: Mr. Examiner, I object to that question on the grounds that this man is not going to formulate the policies of the M&StL.

Exam. Albus: I will sustain the objection.

Mr. Davidson: May I address myself to the Examiner. This man is an expert on traffic and on railroad management and he sets up what is good policy and what builds a strong railroad. He says they got their house in order and I am trying to find out what he means by that.

Exam. Albus: I think he has already told you.

By Mr. Davidson:

Q. Now, you are an expert in railroading, are you not?

A. I hope so.

Q. And one of the things that contribute to railroad management problems is unprofitable branches, is it not?

A. Yes, sir.

Mr. Davidson: No further questions.

Exam. Albus: Are there any further questions of Mr. Carr?

(No response.)

Exam. Albus: Let the record show at this time the exhibit identified as H-37 is received.

[fol. 1268] (Intervenor State of South Dakota's Exhibit No. H-37, Witness Carr, was received in evidence.)

Exam. Albus: You are excused, Mr. Carr. Thank you very much.

(Witness excused.)

[fol. 1268a] Mr. Wheeler: I would now like to call Mr. Nelson.

Roy W. Nelson was sworn and testified as follows:

Direct examination.

By Mr. Wheeler:

Q. Mr. Nelson, will you state your name and address for the record?

A. My name is Roy W. Nelson, 111 East Franklin Avenue, Minneapolis, Minnesota.

Mr. Wheeler: Mr. Examiner, at this time I should like to have marked for identification the exhibits which have already been distributed.

The first is a pamphlet entitled "Maps Showing Route of the Toledo, Peoria, and Western Railroad and Connecting Carriers".

Exam. Albus: Those maps may be marked for identification Exhibit H-38.

(Applicant M&StL's Exhibit No. H-38, Witness Nelson, was marked for identification.)

Mr. Wheeler: The second is entitled "Description of the Territory Served by the Minneapolis, St. Louis Railway, Toledo, Peoria, and Western Railway".

Exam. Albus: The exhibit referred to may be marked for identification as Exhibit H-39.

(Applicant M&StL's Exhibit No. H-39, Witness Nelson, was marked for identification.)

Mr. Wheeler: The third is entitled "Trends of Popula-
[fol. 1269] tion, Manufacture and Agriculture of the States Served by the M&StL, TP&W, Santa Fe and Pennsylvania.

Exam. Albus: That will be marked for identification H-40.

(Applicant M&StL's Exhibit No. H-40, Witness Nelson, was marked for identification.)

Mr. Wheeler: Thank you.

By Mr. Wheeler:

Q. Mr. Nelson, have you prepared a statement for presentation to the Commission in this proceeding?

A. I have.

Q. Will you please give that statement?

A. I am Vice-President—Traffic of The Minneapolis & St. Louis Railway Company. I have charge of Traffic, Sales, Rates and Divisions, Industrial Development, and Advertising.

I entered railroad service in the Freight Claim Department of the Minneapolis & St. Louis on July 24, 1914, and advanced through various positions in that department until January 18, 1926. At that time I was promoted to the position of Chief Clerk to the Chief Traffic Officer, which position I held until July 15, 1935. I was then promoted to the position of General Agent, St. Paul, which position I held until May 1, 1937, when I was promoted to General Agent, New York. I was subsequently appointed to the positions of Assistant Traffic Manager, Eastern Traffic Manager, Assistant Vice President-Traffic, and Resident Vice President, New York, which latter position I held until April 1, 1954, at which time I was elected to the position
[fol. 1270] of Vice President-Traffic, which I now hold.

During my tenure of office in New York, I was quite active in the affairs of the Traffic Club of New York; and in the year 1947 was elected Chairman of the Board of

Directors of that club, and in 1949 was elected President of the same organization.

The M&St.L operates in the States of Illinois, Iowa, Minnesota and South Dakota. It currently operates a total of 1,397 miles of trackage.

The TP&W extends from the Illinois-Indiana state line at Effner, Indiana to Keokuk, Iowa, where it connects with the Chicago, Burlington & Quincy and the Chicago, Rock Island and Pacific Railroads, and to Lomax, Illinois, where it connect. ith the Santa Fe System. It also has a branch line from Hamilton to Warsaw, Illinois. Its total mileage is 239.4 miles.

I have had an exhibit prepared designated as Exhibit No. H-39 which sets out the population of each county served by both lines divided as to urban and rural population. Page 1 of this exhibit is a country map of the area served by the M&St.L and TP&W in which the lines of these carriers have been traced to indicate the counties of the states through which those lines operate.

Pages 2 to 5, inclusive, of the exhibit also show the latest available information with respect to the value of agricultural products in each of the counties served, also the [fol. 1271] number of manufacturing establishments with average number of employees for each of the counties designated.

From this exhibit it will be noted that the M&StL serves substantially rural counties in the four-state area in which it operates. In South Dakota, 58.8 per cent of the population served by the M&StL is rural. In Minnesota the area served is comprised of 22.1 per cent rural population. This percentage figure is low solely because the area includes the densely populated cities of Minneapolis and St. Paul in Hennepin and Ramsey Counties. In Iowa, the area served is comprised of 46.7 per cent rural population, and in Illinois, 36.6 per cent.

The number of manufacturing establishments and average number of employees engaged in such establishments comprise a comparatively small portion of the population in the counties served by the M&StL, as is shown in those exhibits. Of the population in the counties served by the M&StL in the four-state area, the percentage of those em-

ployed in manufacture in the State of South Dakota is 1.7 per cent; in Minnesota, 9.8 per cent; in Iowa, 5.5 per cent; and in Illinois, 7.9 per cent. In the counties in Illinois and Iowa served by the TP&W, 11.1 per cent of the population is employed in manufacturing establishments.

I have also made a study of the population, manufacturing and agricultural trends in each of the four states served by the M&StL and the TP&W, as well as the states served by the Santa Fe System and the states served by the Penn- [fol. 1272] sylvania Railroad, and have prepared an exhibit which has been designated as Exhibit No. H-40 depicting that trend. Pages 2 and 3 of the exhibit show the population trend in the decade 1940 to 1950. It will be noted that there was a percentage increase in population of only 7.9 per cent in the four-state area served by the M&StL and TP&W, while the increase was 12 per cent in the states served by the PRR, and 18.6 per cent in the states served by the Santa Fe System.

Pages 4 to 9, inclusive, of that exhibit show the manufacturing trend for the year 1947 as compared with 1953. With respect to the manufacturing trend as shown on Pages 4 through 9 of Exhibit No. H-40, it will be noted that in the four-state area served by the M&StL-TP&W the largest gain by far with respect to value added by manufacturing and gain in the number of employees engaged in manufacturing was in the State of Illinois.

This gain took place largely in the Chicago land area, which is not served by the M&StL or the TP&W, and to support this, we have secured from the Chicago Association of Commerce and Industry, information that the total industrial production in this area in 1947 was $11,640,000,000, and for the same year, the value added by manufacture was $5,529,000,000.

This latter figure is 47½ per cent of the total industrial production.

The 1953 total industrial production was $18,300,000,000, and, in the absence of a 1953 figure representing value [fol. 1273] added by manufacture, we have applied the 47½ per cent figure, obtained from the 1947 figures, to arrive at $8,692,500,000 as the value added by manufacture in 1953.

This would indicate an increase in the Chicagoland area of $3,163,500,000 as value added by manufacture, whereas the increase in value for the entire state of Illinois was $3,431,487,000.

Pages 4, 5, and 6 of the exhibit show the manufacturing trend in the area served by the M&StL, Pennsylvania, and Santa Fe Systems.

It will be noted that the percentage of gain in the four-state area served by the M&StL is 53.4. This percentage presents an inflated picture because it includes a gain of $3,431,487,000. in the State of Illinois, much of which was added by industry in the Chicagoland area, which is not served by the M&StL. Even so, the percentage gain in the area served by the Pennsylvania Railroad was higher than the M&StL area, being 62.2 per cent on page 5; and the percentage gain in the area served by the Santa Fe was also higher, being 75.5 per cent, as shown on page 6.

Similarly, pages 7, 8 and 9, showing the number of employees engaged in manufacturing in the same areas show a percentage gain of 12.6 for the M&StL four-state area, which also includes the sizeable gain in Illinois, much of which may be attributed to the gain in the Chicagoland area. However, the percentages of both the area served [fol. 1274] by the Pennsylvania and the area served by the Santa Fe are higher, being 16.8 per cent and 30.0 per cent, respectively.

This shows that the M&StL territory is not developing as fast as the territory served by the Santa Fe and the PRR and accordingly that the M&StL does not have a territory of growth and development such as the East, Southwest and West to fall back on in the event it loses traffic.

Pages 10 to 19, inclusive, of that exhibit show the value of agricultural products in each of these states for a five-year period 1950 through 1954.

The unification of the M&StL and the TP&W would provide additional interchange points on the TP&W between Peoria and Effner, wherein we would be in position to interchange traffic through direct deliveries to the following railroads:

Pennsylvania at Effner, Indiana
G.M.&O. at Chenoa, Illinois
Illinois Central at Gilman and El Paso, Illinois
C.&E.I. at Watseka, Illinois
New York Central at Sheldon, Illinois
Wabash at Forrest, Illinois
Nickel Plate at Farmdale, Illinois
C.M.St.P.&P. at Webster, Illinois

I have prepared an exhibit consisting of 16 pages, which has been identified as Exhibit No. H-38. This exhibit con- [fol. 1275] sists of a large scale tracing of the lines of the M&StL and the TP&W in Illinois, and on each set of maps is traced the route of the connecting carrier of the TP&W. Each large scale tracing is accompanied by a system map of such connecting line.

These interchange points will provide additional traffic to the unified lines of the M&StL and TP&W. This would create new traffic via these lines, which currently moves principally through the Chicago Gateway and which, to a large extent, moves via the direct Chicago-Twin Cities lines.

The M&StL now operates trains with the Illinois Central via our Albert Lea interchange carrying considerable traffic through Chicago moving interterritorially between the South, Southeast and Northwest sections of the country, out of which our earnings are considerably lower than would accrue to the M&StL if that same traffic was handled in connection with the M&StL-TP&W.

There is considerable traffic originating at the destined to points on the M&StL and throughout the Northwest that moves via Albert Lea or other junctions short of our maximum haul for service reasons. A considerable portion of this traffic could be kept on the M&StL-TP&W long haul routes due to the faster freight service that this combination would establish. This would provide longer haul revenue for the M&StL and new business for the TP&W.

Referring now to Exhibit H-38.

Pages 1 and 2 show the lines of the Illinois Central Rail- [fol. 1276] road. It will be noted that interchange points

exist between the Illinois Central and the TP&W at Gilman and El Paso, Illinois.

Gilman is located on the Chicago-St. Louis and the Chicago-New Orleans main lines and also on the line going to Birmingham with southern connections beyond.

El Paso is located on the Centralia, Illinois-Madison, Wisconsin, line, and which line connects with the main line to and from New Orleans and Birmingham at Centralia, Illinois. This line serves such principal industrial cities as Bloomington, Clinton, Decatur and Centralia, Illinois.

While the M&StL presently connects with the Illinois Central Railroad at Peoria, Illinois, interchange at that point must be made through an intermediate carrier. Furthermore, Peoria, Illinois is located on a branch line of the Illinois Central Railroad and traffic, presently routed via M&StL-Peoria-I.C. from and to the South and Southeast, takes some 24 to 48 hours longer than would prevail through direct interchange at main line junctions of Gilman or El Paso on traffic moving via a unified M&StL-TP&W route.

The present short-line mileage, used in connection with the I.C.C. Docket 28300 Class Rates, between Minneapolis and New Orleans is 1210 miles. Via the following routes, the distance between these points is as follows:

M&StL-Albert Lea-Illinois Central through Chicago, 1409 miles.

[fol. 1277] M&StL-Peoria-Illinois Central, 1313 miles.

M&StL-Peoria-TP&W-El Paso-Illinois Central, 1228 miles.

M&StL-Peoria-TP&W-Gilman-Illinois Central, 1400 miles.

The same relative difference in distance will prevail from and to points on, or via, the Illinois Central, south of Cairo, Illinois.

Turning now to pages 3 and 4 which show the Gulf, Mobile & Ohio Railroad:

It will be noted that interchange exists between the GM&O and the TP&W at Chenoa, Illinois.

Chenoa is located on the main line of the GM&O between Chicago and New Orleans, Mobile, St. Louis, also Montgomery, Alabama, for southern connections beyond.

While the M&StL presently connects with the GM&O at Peoria, interchange at that point must be made through an intermediate switching carrier. Furthermore, Peoria is located on a branch line of the GM&O, and traffic, presently routed M&StL-Peoria-GM&O, to and from the South and Southeast, requires a longer time in transit than would prevail through direct interchange at the main line junction at Chenoa, moving via the unified M&StL-TP&W route.

The direct interchange at Chenoa will accomplish faster freight service for traffic originating at or destined to M&StL stations and the Northwest on traffic originating at or destined to M&StL stations and the Northwest on traffic [fol. 1278] to or from the Chicago area, than can be presently accomplished via M&StL-Peoria-GM&O.

The present short-line mileage, used in connection with the I.C.C. Docket 28300 Class Rates, between Minneapolis and Mobile is 1163. Via the following routes, the distance between these points is as follows:

M&StL-Peoria-GM&O, 1278 miles.

M&StL-Peoria-TP&W-Chenoa-GM&O, 1345 miles.

The same relative difference in distances will prevail from and to points on or via the GM&O south of Cairo, Illinois.

The present short-line mileage, used in connection with the ICC Docket 28300 Class Rates, between Des Moines and Chicago is 337. Via the following routes, the distance between these points is as follows:

M&StL-Peoria-GM&O, 470 miles.

M&StL-Peoria-TP&W-Chenoa-GM&O, 429 miles.

Turning now to pages 5 and 6 which show the Chicago and Eastern Illinois Railroad:

It will be noted that interchange exists between the C&EI and TP&W at Watseka, Illinois.

The interchange at Watseka should open new avenues of traffic between M&StL stations and the Northwest territory, on the one hand, and the South and Southeast territory on the other.

Watseka is on the main line of the C&EI, Chicago to St. Louis and Chicago to Evansville.

[fol. 1279] The C&EI has a large interchange at Evans-

ville with the Louisville & Nashville to and from Nashville, New Orleans and Florida.

The service via Watseka would by-pass the Chicago Gateway, and attract business now moving via railroads other than M&StL-TP&W for service reasons. Traffic moving between the Northwest territory and stations on, or via the C&EI, is now funneled through the Chicago Gateway. Direct main line interchange at Watseka, Illinois, with the unified lines of the TP&W and M&StL would provide a faster freight service route on this traffic, and would produce additional business for both the M&StL and the TP&W.

The present short-line mileage, used in connection with the I.C.C. Docket 28300 Class Rates, between Minneapolis and Evansville, Indiana, is 650. Via the following route, the distance between these points is as follows:

M&StL-Peoria-TP&W-Watseka-C&EI, 786 miles.

The present short-line mileage, used in connection with the I.C.C. Docket 28300 Class Rates, between Des Moines and Evansville, is 471. Via the following route, the distance between these points is as follows:

M&StL-Peoria-TP&W-Watseka-C&EI, 588 miles.

Turning now to pages 7 and 8 which show the Nickel Plate Railroad:

It will be noted that interchange exists between the Nickel [fol. 1280] Plate and the TP&W at Farmdale, Illinois.

Presently the interchange between the Nickel Plate and the M&StL is accomplished through an intermediate switching carrier at Peoria, and this service could be improved with direct interchange being made at Farmdale.

Turning now to pages 9 and 10 which show the New York Central System:

It will be noted that interchange exists between the New York Central and the TP&W at Sheldon, Illinois.

Peoria, Illinois is located on the Peoria & Eastern Railway, a subsidiary of the New York Central. Via this line, the New York Central serves Danville, Indianapolis and Cincinnati. While the Peoria interchange would continue to be used on traffic moving over that line, the direct interchange between the TP&W and the New York Central at Sheldon would provide a source of new business for the

unified route of the M&StL-TP&W on traffic to and from the New York Central points in Northern Indiana, Michigan, Northern Ohio and New York.

The present short-line mileage, used in connection with the I.C.C. Docket 28300 Class Rates, between Minneapolis and Detroit, Michigan is 595, computed across Lake Michigan. Via the following routes, the distance between these points is as follows:

M&StL-Peoria-New York Central, 991 miles.

M&StL-Peoria-TP&W-Sheldon-New York Central, 806 [fol. 1281] miles.

The present short-line mileage, used in connection with the I.C.C. Docket 28300 Class Rates, between Des Moines and Detroit Michigan is 598. Via the following routes, the distance between these points is as follows:

M&StL-Peoria-New York Central, 794 miles.

M&StL-Peoria-TP&W Sheldon-New York Central, 710 miles.

Turning now to pages 11 and 12 which show the Wabash Railroad:

It will be noted that interchange exists between the Wabash and the TP&W at Forrest, Illinois.

Forrest, Illinois, is located on the main line of the Wabash from Chicago to Decatur, connecting at Bement, Illinois, with the line of the Wabash from Buffalo and Detroit to St. Louis and Kansas City.

While we presently interchange traffic with the Wabash at Albia and Des Moines, Iowa, we have no present interchange east of the Mississippi River, and the Albia and Des Moines routes provide, at best, circuitous service to the East, on the Wabash. The Forrest route would provide a service route between stations on the M&StL and the Northwest territory, on the one hand, and eastern stations served by, or via the Wabash, on the other hand. The Forrest route would help us to secure business originating at or destined to points on the Wabash in Michigan, and also on business [fol. 1282] to and from Canada, through the Detroit Gateway, and business to and from the East that moves through Buffalo or the Niagara Frontier.

The present short-line mileage, used in connection with the I.C.C. Docket 28300 Class Rates, between Minneapolis

and Buffalo is 788, computed across Lake Michigan. Via the following routes, the distance between these points is as follows:

M&StL-Albia-Wabash, 1254 miles.

M&StL-Peoria-TP&W-Forrest-Wabash, 1121 miles.

The present short-line mileage, used in connection with the I.C.C. Docket 28300 Class Rates, between Mason City and Detroit, Michigan is 564. Via the following routes, the distance between these points is as follows:

M&StL-Albia-Wabash, 878 miles.

M&StL-Peoria-TP&W-Forrest-Wabash, 746 miles.

Turning now to pages 13 and 14 which show the Pennsylvania Railroad:

It will be noted that interchange exists between the Pennsylvania and the TP&W at Effner, Indiana.

While the M&StL presently connects with the Pennsylvania at Peoria, Illinois, interchange at that point must be made through an intermediate switching carrier. Furthermore, Peoria is located on the Peoria-Terre Haute branch of the Pennsylvania, which line operates through Indianapolis, Columbus and Pittsburgh to the East, and provides, at best, a circuitous movement of traffic between [fol. 1283] Peoria and eastern terminals of the Pennsylvania. The Effner Gateway will eliminate both the intermediate switching and the circuitous routing.

The unified M&StL-TP&W route, through the Effner Gateway would provide improved service to and from points on the M&StL and its connections in the Northwest, West, or Southwest.

The present short-line mileage, used in connection with the I.C.C. Docket 28300 Class Rates, between Minneapolis and Pittsburgh is 843. Via the following routes, the distance between these points is as follows:

M&StL-Peoria-Pennsylvania, 1101 miles.

M&StL-Peoria-TP&W-Effner-Pennsylvania, 1037 miles.

Turning now to pages 15 and 16 which show the Chicago, Milwaukee, St. Paul & Pacific Railroad:

Webster, Illinois is located on the Terre Haute line of the CMStP&P. There is a sizeable movement of coal that originates on the Terre Haute line of the CMStP&P to destinations on the M&StL and the Northwest that could move

through the Webster interchange and thereby provide additional traffic to both the M&StL and TP&W with the establishment of the unified service.

There is also a large volume of traffic that originates from or is destined to points in eastern Wisconsin, such as Milwaukee, Racine, Green Bay, Beloit, to and from Southwest territory that could move through the Webster interchange.

While many of the routes with the TP&W via its junction [fol. 1284] points with connecting carriers east of Peoria are open under the tariffs today, they are not being used—first, because we have no integrated freight schedules in connection with the TP&W via most of these junction points; Second, the time required in switching at Peoria; Third, because we have no incentive at the present time to solicit traffic via the TP&W since we obtain our maximum haul and revenue on any traffic that we receive from or deliver to connections at Peoria; and Fourth, shippers' resistance to inclusion of a non-affiliated carrier in the route.

If we were to acquire control of the TP&W we could establish an integrated service in which no switching time would be required and that would otherwise facilitate the movement of the traffic via the TP&W through its junction points with other carriers east of Peoria, Illinois. Furthermore, we would actively solicit traffic for movement over the TP&W lines via those junction points, since it would enhance our revenues on all business handled in that way by the amount of the earnings on the TP&W lines.

With the expanded use of the various junctions resulting from the unified service of the M&StL-TP&W we would be in position, competitively, to meet the freight service of our competition, now generally channeled through the Chicago Gateway.

The acquisition of the TP&W by the M&StL would estab- [fol. 1285] lish faster freight service routes beneficial to the shipping public, via junction points on the TP&W with connecting carriers located east of Peoria, Illinois.

The use of these routes by the shipping public would provide new revenue for both the M&StL and TP&W; and strengthen the financial position of both and enable them to better meet our competition.

For a period of years the Pennsylvania has maintained a neutral attitude with respect to the flow of traffic moving through the Peoria Gateway, and likewise, the Santa Fe on traffic moving via its Illinois junctions thru the Peoria Gateway,—in other words, where we have prevailed upon shippers to use our route through Peoria, these lines have not opposed it.

Reference is made to the large map of the United States on which the lines of the Pennsylvania and the Santa Fe have been traced, which has been introduced as Exhibit No. H-19. It will be noted that the lines of the Pennsylvania blanket the eastern portion of the United States and that the lines of the Santa Fe, similarly, blanket that territory in the Southwest and the South Pacific Coast Territory. As a result, there are, naturally, many heavy shipping industries located directly on the lines of those two carriers.

It is common railroad experience that concerns located on-line will, to the greatest practicable extent, use the lines [fol. 1286] by which they are directly served, because of freight service requirements, equipment supply, rate quotations, rate assistance, car tracings and diversion, industry locations, and many other special services in kindred categories.

If the Santa Fe and Pennsylvania acquire control of the TP&W, their individual traffic solicitation forces will continue to seek to influence the movement of the traffic flow between the East and the West over their long-haul routes; but if the shippers, for any reason, desire the use of the Peoria Gateway, that solicitation influence of the combined Pennsylvania-Santa Fe System would be brought to bear in the direction of movement of traffic between Effner and Lomax for TP&W long haul, to the detriment and disadvantage of the M&StL.

The M&StL and the TP&W currently maintain traffic agencies at the following points:

Chicago, Illinois	Minneapolis, Minnesota
Cincinnati, Ohio	New York, New York
Cleveland, Ohio	Omaha, Nebraska
Dallas, Texas	Peoria, Illinois
Detroit, Michigan	Philadelphia, Pennsylvania

Indianapolis, Indiana	Pittsburgh, Pennsylvania
Kansas City, Missouri	St. Louis, Missouri
Los Angeles, California	San Francisco, California
	Seattle, Washington

The M&StL has traffic agencies at the following points [fol. 1287] where the TP&W does not:

Albert Lea, Minnesota	Fort Dodge, Iowa
Birmingham, Alabama	Houston, Texas
Boston, Massachusetts	New Orleans, Louisiana
Buffalo, New York	Portland, Oregon
Denver, Colorado	St. Paul, Minnesota
Des Moines, Iowa	Spokane, Washington
Duluth, Minnesota	Washington, D. C.
Fargo, North Dakota	Winston-Salem, North Carolina

The TP&W has traffic agencies at the following points where the M&StL does not:

Keokuk, Iowa
Tulsa, Oklahoma

It will be noted that the M&StL has agencies at all points in which the TP&W has agencies, except at Tulsa, Oklahoma and Keokuk, Iowa. With the unification of the M&StL and TP&W, economies in traffic expense could be realized to the extent of approximately $454,471.

In estimating this saving, we currently anticipate that it could be accomplished through elimination of duplications in traffic agencies, supervisory and general office expenditures, including advertising, stationery and printing. The present traffic personnel of the TP&W is comprised of 57 persons. It is our opinion that a number of these people could be readily absorbed into a unified traffic force, at the [fol. 1288] same time showing a saving through elimination of duplicate facilities. The assimilation of certain of the TP&W personnel would serve to provide more extensive and intensive use of our present facilities. Thus we would not only realize immediate savings but we would plow back part of them by increasing the number of our solicitation offices and increasing the present personnel of others. This beyond question will increase the traffic over the combined M&StL-TP&W properties.

If the M&StL were to acquire control of the TP&W the services of each line would be complementary to the other, and this acquisition would serve to produce new business for each line. On the other hand, if the Santa Fe and the Pennsylvania were to acquire control of the TP&W, a large part of the business that they could add to the TP&W would be that now enjoyed by the M&StL. The Pennsylvania and Santa Fe lines presently have a direct connection between their systems in Chicago, Illinois, which is used extensively. The Pennsylvania, through its 99 per cent owned subsidiary, the Wabash, also has direct connection with the Santa Fe in Kansas City via alternate routes through Hannibal and St. Louis.

The long haul route of the Santa Fe, on both east and westbound traffic, on which it receives its maximum earnings, is via Chicago. The long haul route of the Pennsylvania, considered apart from the Wabash, on which it receives its maximum earnings, is via the St. Louis-East [fol. 1289] St. Louis Gateway. The long haul route of the Pennsylvania-Wabash combined, on which that combination of lines receives maximum revenues, is via the Kansas City Gateway. Accordingly, we can see no incentive for either line to actively solicit business via an intermediate route of the TP&W.

If the Pennsylvania and Santa Fe lines were to acquire control of the TP&W, this acquisition would result in a substantial financial loss to the M&StL and would threaten its present financial and competitive position in the industry. On the other hand, if the M&StL were to acquire control of the TP&W, it would strengthen the position of both carriers as a result of increased revenues derived from additional traffic becoming available through improved service.

The addition of the routes which would be made available by the joinder of the M&StL and the TP&W would enhance revenues of both by attracting additional traffic, as previously mentioned. The result would be a stronger financial position, with the ability to perform greater service to the shipping public.

With regard to our solicitation policy, it is our intention to place the Nemo, Lomax and Keokuk Gateways on a

parity. With respect to the Nickel Plate, I wish to say that we have absolutely no intention of disturbing the present flow of tonnage now moving in connection with that line. We would not disturb our present profitable interchange with the NKP. We would not be pennywise and pound foolish, and I repeat that we would not be pennywise and [fol. 1290] pound foolish. Furthermore, it is our intent to preserve the solicitation policy with these roads now maintained by the TP&W.

In recent years we have expanded the activities of our Industrial Development Department. The M&StL, like other railroads, has observed the trend in the location of industries outside the congested business areas and appreciates the necessity of securing industrial property in suburban areas adjacent to the larger cities.

On March 1, 1955, we employed the services of Mr. Frank E. Clawson as Director of Industrial Development. Mr. Clawson was previously engaged in a similar capacity for the Minneapolis Chamber of Commerce. At the time we undertook to engage him, we found that the State of Minnesota was also seeking his services as head of its department for the development of industrial growth in that state, which indicates that he is a man of outstanding ability in that field.

Since coming with our company, Mr. Clawson has made a complete industrial survey in Minneapolis, Peoria, and other communities served by our railroad. In the metropolitan area of Minneapolis served by the M&StL, we found there is very little industrial property available for our use. Accordingly, on January 31, 1956, the Board of Directors of our company authorized the purchase of the Minnesota Western Railroad, subject to approval of the Interstate Commerce Commission, with the purpose in mind [fol. 1291] of acquiring additional properties adjacent to that line for industrial growth.

At the present time, in the City of Peoria the M&StL finds itself in a strait jacket because we have no industrial property adjacent to our line suitable for industrial expansion. I have had Mr. Clawson make a survey of the properties of the TP&W suitable for industrial growth and have a favorable report from him indicating that there is

land suitable for this purpose adjacent to the rails of the TP&W.

When we acquire the TP&W you may be sure we will carry on an aggressive program to bring new industries to Peoria and promote the expansion of existing plants. We would then have property of our own to promote as well as participating in the over-all industrial development of Peoria in cooperation with the Association of Commerce.

Q. Does that conclude your direct testimony, Mr. Nelson?
A. It does.

Mr. Wheeler: That is all.
Exam. Albus: We will take a recess until 2 o'clock.

(Whereupon, at 12:40 p.m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 1292] AFTERNOON SESSION 2:00 p.m.

Exam. Albus: The hearing will please come to order.
We will continue with the cross-examination of Mr. Nelson.
Mr. Thomas, please.

Cross examination.

By Mr. Thomas:

Q. Mr. Nelson, are you familiar with the schedules of the Illinois Central on its line from Chicago through Filman to the south?
A. No, I am not.

Mr. Thomas: Mr. Examiner, it seems to me that if we put a rate and division man to talk about schedules on the railroads, and we put a solicitation man on to talk about service, I find it very difficult to cross-examine.
Will there be some witness provided later for that sort of thing?
Mr. Wheeler: Yes, sir, Mr. Schroder.

Mr. Thomas: It seems to me he should have been put on first so we'd have something to go on.

By Mr. Thomas:

Q. I would be taking up your time if I examined you about service and schedules, is that right?

A. I will try to answer it to the best of my ability.

Q. If you don't know the schedules, it isn't much help.

You have shown a lot of junctions on page 5 of your statement.

A. Yes, sir.

[fol. 1293] Q. Those are the junctions through which you hope to develop additional traffic—

A. That is correct.

Q. (Continuing) —for the combined railroads—

A. Yes.

Q. (Continuing) —if your application is approved. They are all east of Peoria?

A. That is correct.

Mr. Thomas: Pardon me for taking a little time. It is going to be pretty short, Mr. Examiner.

Exam. Albus: Thank you very much.

By Mr. Thomas:

Q. You state on page 14 that many of the routes which you have discussed earlier in your testimony via the TP&W and its junctions with other connecting carriers east of Peoria are open under the tariffs today, they are not being used, and you give certain reasons. You say you have no integrated freight schedules with the TP&W?

A. That is correct.

Q. Have you ever approached the TP&W and asked them to work out integrated freight schedules with you?

A. Yes, we have. That's under negotiation at the present time.

We are endeavoring to work an eastbound schedule in connection with the TP&W at the present time.

Q. Is that the one via the Nickel Plate?

A. It would be comparable to the Nickel Plate, sir.

[fol. 1294] Q. Did you say you approached the TP&W to work that out?

A. Let me explain it in my own language. At the present time our cutoff time with the Nickel Plate is 12:30 and we have been negotiating with the TP&W to agree to a similar cutoff time but up to the present time the TP&W said they have some problems, they have too many trains at one time, and they haven't given me an answer, although Mr. Coulter indicated to me in Chicago that he thought he'd have something for me very shortly.

Exam. Albus: Is that cutoff time a.m. or p.m.?

The Witness: It is a.m.

By Mr. Thomas:

Q. When was this question first discussed?

A. That's been under discussion for some time. In fact, for a period of time, well, we have been getting in Peoria too late to make the Nickel Plate eastbound trains and the same way with the TP&W, and effective December 22 we issued a circular with the approval of the Nickel Plate that the schedule was all tied up and in effect.

Q. Did you tell Mr. Coulter you were going to do that?

A. Yes, I did.

Q. He wasn't surprised?

A. Oh, no. They want our service.

Q. Well, I am speaking of the Nickel Plate, did you tell him you were going to put that in with the Nickel Plate?

A. I don't recall whether I did or not, but I wouldn't [fol. 1295] hesitate in telling them.

Q. Well, it is already in now, isn't it?

A. The TP&W?

Q. No, the Nickel Plate.

A. Oh, yes.

Q. You didn't tell him before you put it in, did you?

A. I don't recall whether I told him or not but this has been a subject of negotiation for several months. I have told the TP&W what we were trying to do with the Nickel Plate.

Q. You give us one of your reasons for not working out integrated schedules with the TP&W the fact that you

have no incentive to solicit traffic via the TP&W since you maintained your maximum haul and revenue on any traffic that you received from and delivered to your connections at Peoria?

A. That is correct.

Q. You think there is a great deal of traffic potentiality over these connecting junctions according to your testimony, is that correct?

A. I do.

Q. Well, if you could work out integrated schedules with the TP&W to develop that traffic potential, why haven't you done so? It seems to me that—strike that question and I will rephrase it.

It seems to me that you would have had an incentive other than the fact—strike that, I will rephrase it.

[fol. 1296] You said you had no incentive—

A. That's right.

Q. (Continuing) —because your long haul is at Peoria?

A. That's right.

Q. But you would get more revenue, wouldn't you, if you had an increased volume of traffic for that long haul to Peoria, wouldn't that be an incentive?

A. Well, it would be an incentive if we had the integrated service and the cooperation of the TP&W.

Q. Do I understand that you haven't received the cooperation of the TP&W?

A. We have never approached them on it, on these routes, with the exception of Effner.

Q. You state another reason for your failure to work out any such integrated service with the TP&W that there is shippers resistance to the inclusion of non affiliated carriers, a non affiliated carrier in a route, is that correct?

A. Yes, we run under that all the time and so does everybody else.

Q. Have you ever heard of the Alphabet Route?

A. Very much so.

Q. Doesn't that involve the Nickel Plate, Wheeling and Lakin, Pittsburgh and West Virginia, Western Maryland and Reading?

A. You can add the CNJ to it, if you want to.

Q. Does that route compete with the direct route of the

[fol. 1297] Pennsylvania from the western territory served by the Nickel Plate to the eastern territory served by the Reading and Western Maryland?

A. It does, and we use it.

Q. Does it handle a large volume of traffic?

A. Well, I wouldn't compare the volume with the major lines but they do very well.

Q. Does it provide a competitive service with the Pennsylvania?

A. I think they do into Chicago. I am not positive. That is only hearsay.

Q. Haven't you successfully worked out a competitive service between Chicago and the territory served by your railroad via the Santa Fe with interchange at Nemo?

A. That service has worked out very satisfactorily, we are proud of it.

Q. Isn't that service in competition with the direct lines from Chicago?

A. Well, I will put it this way, on the northbound traffic it is not exactly competitive. I would say the service would be about 24 hours from Chicago to Minneapolis in connection with the Santa Fe, Nemo route, but eastbound it is not competitive and we are trying to make it competitive.

Q. Has the Santa Fe cooperated with you in providing that service?

A. Yes, they have.

[fol. 1298] Q. Does it handle freight forwarder traffic from Chicago to the Twin Cities?

A. Yes, sir, which I was responsible for.

Q. Do you interchange a large volume of traffic at Peoria with the Nickel Plate through the P&PU?

A. Yes, sir.

Q. Is the P&PU a switch line, a terminal line?

A. It is considered that.

Q. What is the volume of that interchange?

A. I don't have it here.

Q. Is it large?

A. Yes, it is substantially large.

Q. Isn't your largest interchange at Peoria?

A. I would say offhand it is.

Q. Is it substantially larger than the interchange of the TP&W?

A. Yes.

Q. Twice as much?

A. Well, it is hard to say unless I have the figures in front of me but I would say substantially larger than the TP&W, yes.

Mr. Thomas: I have asked for some figures but I am not sure my request was phrased properly. I asked for a break-down of the interchange at Peoria but I didn't make it clear that the figures I want dealt with interchange between line haul railroads even though they may be ac- [fol. 1299] tually effected by an intermediate switch haul of the P&PU. I will take that up with Mr. Wheeler.

Exam. Albus: Very well.

Mr. Thomas: That is all I have. Mr. Examiner.

Exam. Albus: Mr. Lucas, please.

Cross examination.

By Mr. Lucas:

Q. Mr. Nelson, Mr. Devins' Exhibit H-27 is a reproduction of the Peoria gateway, and you are familiar with it?

A. I would like to tell you that this is my baby and I worked months preparing it in New York and spent many of a weekend making it up.

Q. Here is one time, then, we have the witness who really can answer the questions on it. I am only going to ask you—

Mr. Wheeler: Mr. Examiner, I think we can do without these insinuations on the record by counsel.

By Mr. Lucas:

Q. Isn't it a fact that the M&StL holds itself out to reach all the railroads and destination territories through these gateways that are listed on page 5 of your testimony and from there on?

A. I will tell you this, that if the shipper asked for it, we endeavor to reach them through these gateways.

Q. You refer to the Albert Lea interchange with the Illinois Central.

A. Yes, sir.

[fol. 1300] Q. Under your plan of operation and solicitation would not the Illinois Central be short haul if traffic were interchanged with it at Gilman and El Paso instead of Albert Lea and Peoria?

A. It is possible.

Q. Wouldn't the situation be more than possible, wouldn't it be actual?

A. Very probable.

Q. You will go part way with me, will you, but you won't accept the word actual?

A. Let me put it this way, I don't think we would disturb the solicitation that has been conducted by the Illinois Central. We have a standing agreement that we will fight each other on business, but there is a lot of business that we originate and solicit ourselves that we will try to influence for our long haul via Gilman and El Paso.

Q. That route at the present time in conjunction with the M&StL and the Illinois Central is an active one, is it not?

A. Yes, and we have a train a day each one.

Q. By the way, when you speak of unified throughout your testimony, as you do, are you accepting what has been stated, I believe, by Mr. Devins, that there is to be a consolidation, or if not a consolidation, a unification of the Toledo, Peoria and Western and the M&StL under your proposal?

A. Will you explain the difference between consolidation and unification? I mean is there any difference between them?

[fol. 1301] Q. You don't believe you know the distinction between acquisition of control and, say, consolidation, first, of two companies?

A. Oh, I understand the word consolidation but I didn't know what you were driving at.

Q. Well, now, don't you assume—are you familiar with the proposal of your company which appears to call for a consolidation or unifications?

Mr. Wheeler: Mr. Examiner, I object to that as a misleading and inaccurate characterization of the request in this proceedings by the Minneapolis and St. Louis Railway.

Exam. Albus: I think everyone understands that this application is to acquire control of the TP&W. There is no question of consolidation or merger involved here.

By Mr. Lucas:

Q. Then, Mr. Nelson, may I direct your attention to page 18 of your prepared text, at the top of the page, I read you the second sentence and I quote "With the unification of the M&StL and the TP&W economies and traffic expense could be realized to the extent of $254,471", and throughout your testimony you speak of possibility of establishing better gateways, less circuitous gateways, if there is a unification between the TP&W and the M&StL, am I mistaken in the implications of that setup?

Mr. Wheeler: Mr. Examiner, I object to this question. The witness speaks throughout his testimony of unification. [fol. 1302] I believe that is inaccurate. I think the witness did use in his testimony the word unified operation, but I do not believe that except in this instance did he use unification.

Exam. Albus: The record will show what the witness said, there is no question about that.

If you have a question to ask the witness about what he means by unification in that quotation you read him you may do so.

Mr. Lucas: I certainly can't understand Mr. Wheeler's objection because throughout here he speaks of unification.

By Mr. Lucas:

Q. Mr. Nelson, what do you mean when you have used throughout your testimony the unification of the M&StL and the TP&W?

A. Well, my answer to that on unification is that we intend to operate the properties of the TP&W.

Q. And on page 18, in the middle of the second paragraph, and I quote, "assimilation of certain of the TP&W personnel would serve to provide more extensive and intensive use of our present facilities." What do you mean by

the word "assimilation", the words "Assimilation of certain of the TP&W personnel"?

A. Well, we intend to absorb some of the TP&W traffic personnel. They have a very good personnel and we intend to absorb them into our organization.

Mr. Wheeler: Mr. Lucas, you understand that we do not, that the M&StL does not propose a separate independent [fol. 1303] operation such as the Pennsylvania and the Santa Fe, as set forth in their application, do you not?

Mr. Lucas: That is what I interpret your position to be, yes.

By Mr. Lucas:

Q. Mr. Nelson, page 8, you refer to the Peoria interchange with the Gulf, Mobile and Ohio. Under your proposal and your plan of operation and solicitation would not the Gulf, Mobile and Ohio be short changed if its traffic were interchanged with the TP&W traffic at Chenoa instead of Peoria?

A. That would be a divisional arrangement that would have to be worked out. At the present time there is probably no division via that route and that is a matter that will have to be worked out.

Q. If present divisions were not unchanged would not the Gulf, Mobile and Ohio be shorthauled in that situation?

A. Well, in the absence of any agreed divisions they would be.

Q. Now, pages 9 and 10, would not the answer likewise be the same on the Chicago, Eastern Illinois with respect to its traffic through Chicago and your proposal to have it move through Watseka instead of Chicago?

A. I understand there is agreed divisions now between the C&EI and the TP&W.

Q. But they would be shorthauled, the divisions might be another matter, isn't that right?

A. Oh, yes, that is right. That is right.

[fol. 1304] Q. On page 11 isn't the same situation true of the New York Central, Peoria versus Shelton, if you were to establish a new proposed service interchange point at the latter place?

A. That is right.

Q. And would not the Wabash be shorthauled on eastern traffic if the interchange point was moved from Albion-Des Moines, Iowa, to Forest, Illinois?

A. Let me answer you this way, we use the Wabash gateway east of Peoria now but we insert the Chicago, Illinois and Midland. When you compare the C&IM and the TP&W divisions, why, they are, as I understand, approximately the same and I don't think they are going to be hurt.

Q. Would the Milwaukee be shorthauled on coal originating on its line in Indiana if it turned this coal over to the unified TP&W rather than delivery in the Northwest?

A. Yes, but can I clarify that?

Exam. Albus: Yes, sir.

A. This coal originates in the Terre Haute district going to industries on our line, particularly at Mason City and Chaska, and I think we have the right to secure a long haul, if we can get it.

Q. What would be the effect of the establishment of these routes that you indicate Twin Cities via Peoria in respect to Chicago North Western on traffic in that area from the Northwest to the East and Southeast?

[fol. 1305] A. What effect would it have on the North Western?

Q. That is right.

A. I am not in position to speak for the Chicago North Western.

Q. Do you think it might have some effect on the Chicago North Western traffic if you were to accomplish your unification and your proposed gateways in this proceeding?

A. There are possibilities.

Q. Don't you think there would be more than just possibilities, Mr. Nelson?

A. I don't know how good the North Western's solicitation is. I am not in position to know.

Q. You are competitive in the Twin Cities with the Chicago, North Western at the present time, are you not?

A. Yes, sir.

Q. If the present situation remained unchanged you could

work out these junctions and routes east of Peoria, could you not, with the present management of the TP&W?

A. It probably could be done but I don't think the TP&W would be interested.

Mr. Lucas: That is all, Mr. Examiner.

Exam. Albus: Mr. Cassell, please.

Cross examination.

By Mr. Cassell:

Q. Mr. Nelson, will you turn to page 6 of your prepared testimony.

A. Yes.

[fol. 1306] Q. There you are speaking of traffic that you hope to have that is now moving through the Chicago gateways and other gateways, isn't that right.

A. That is right.

Q. That is traffic that is now moving by other carriers, then, isn't it?

A. Which paragraph are you referring to, Mr. Cassell?

Q. The traffic that you are talking about that you expect to get that is now moving via the Chicago gateway and other gateways, that is now moving by other carriers, isn't it?

A. Not all together, we get some.

Q. The traffic you expect to get?

A. Would be new traffic.

Q. New traffic to you?

A. Yes.

Q. But it is not new traffic to railroads, is it?

A. That is correct.

Q. It is traffic presently moving by other railroads, isn't that true?

A. Yes.

Q. So that you expect to divert traffic from other railroads to yourself?

A. Yes.

Q. And then it is not new traffic but diverted traffic?

A. That is correct.

[fol. 1307] Q. And you expect to get that from the roads with whom you now compete?

A. Yes.

Q. The Rock Island is one of those roads, isn't it?

A. Yes, we compete, and we also have connections with you.

Q. That's right. And the Rock Island serves the Twin Cities, doesn't it?

A. It does.

Q. And Chicago?

A. That is right.

Q. And Peoria?

A. That is right.

Q. So that you would expect to get traffic from them as a result of this plan you have?

A. Well, I am talking about the traffic from, say, the Twin Cities to south and southeast.

Q. The Rock Island moves that traffic today, doesn't it, some of it?

A. It certainly does.

Q. And you expect to get some of that?

A. Yes, sir.

Q. On page 19 and successive pages you are talking about, and on the previous pages you speak about these routes which will be created with the use of the M&StL and the TP&W, you gave the mileages and junctions. So far as [fol. 1308] the shipper is concerned there are routes today that can move traffic that would otherwise, which you expect to move over these new routes, aren't there?

A. Yes, sir.

Q. So so far as the shipper is concerned this acquisition isn't essential to them to move their traffic, is it?

A. Well, I am not qualified to answer. As a matter of service, and if you've got the service, why—

Q. Do you know, do you know whether there is any advantage to the shipper or not in having these new routes that you speak of?

A. There is advantage to the shippers on our railroad particularly and to the Northwest.

Q. Don't those shippers in the Northwest have routes today in which they can move their shipments?

A. They have routes but they may not use them.

Q. Do you know?

A. I don't know.

Q. Well, you don't know whether this is any advantage or not, do you?

A. No.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. Does the Nickel Plate give you good service?

[fol. 1309] A. Very, very much so.

Mr. Broker: Thank you, that is all.

Exam. Albus: Mr. Davis.

Cross examination.

By Mr. Davis:

Q. On page 19 of your prepared statement, Mr. Nelson, you make certain references to maximum earnings of the Pennsylvania in conjunction with the Wabash through Kansas City, for example. Did you hear the testimony of Mr. Swanson in response to questions which I asked him this morning concerning divisions?

A. Yes, sir.

Q. Do you agree with the answers which he gave to those questions as being correct?

A. I agree.

Q. Mr. Nelson, is mileage the only determining factor in the development of the junctions which you have shown as interchange points, increased volume, if your application here is approved?

A. Well, it is a combination of mileage and service. Sometimes the mileage may be longer via a certain route but the service is comparable, probably a more direct route. I put those mileages in there for the reason that I thought I'd treat everybody fairly, and I put it in each instance.

Q. Are you aware of the volume of interchange between [fol. 1310] the Wabash and your line via Albia and Des Moines, Iowa?

A. Yes, it is quite extensive.

Q. Would you say that that is larger than your total interchange with the TP&W at Peoria on an annual basis?

A. I would say that Albia and Des Moines would be larger.

Q. And are you aware that a substantial part of that traffic moves to points east of the Illinois-Indiana state line that comes to the Wabash from you at Albia and Des Moines?

A. Well, there is some business that we get from the Wabash that we would call the eastern business, but predominantly it is what we call a north and south route. I mean most of the traffic flow between our line and the Wabash is stuff that moves through the St. Louis gateway and south thereof.

Q. The traffic that does move to the east, which we interchange with you at Albia and Des Moines, would not go through the St. Louis gateway, would it, it would be taken on the Wabash line Moberly through Hannibal and thence eastward, would it not?

A. Yes.

Q. Your answer was yes, wasn't it?

A. Yes.

Q. Your service route, one of your best service routes, between the Twin Cities and St. Louis is in conjunction with the Wabash by Albia and Des Moines, is it not?

A. Yes, sir.

Mr. Davidson: That is all I have.

[fol. 1311] Exam. Albus: Are there any further questions on cross-examination.

Mr. Hoag.

Cross examination.

By Mr. Hoag:

Q. Mr. Nelson, at page 15 of your prepared statement, at the top of the page, you refer to, I believe you are re-

ferring to the Peoria area, you make the statement that should TP&W be acquired by the M&StL that an integrated service could be instituted that there would be no switching time involved. Would you please enlarge upon that statement.

A. I'd rather have Mr. Schroeder answer that but if you ask for my opinion I will give it to you.

Q. It is your statement, I would like to have your background on that.

A. All right. This is what we intend to do in case this happens, our time freight that leaves Minneapolis will go all the way through to Effner. Does that answer it?

Q. What do you propose to do with the yards?

A. Well, I think it was covered in Mr. Devins' testimony, as I recall, that we would probably abandon the present yard we now have inside the city limits of Peoria, which we call the Barlett yard.

Q. You would abandon the present M&StL yard?

A. Yes.

Q. Would you still retain the TP&W yard?

[fol. 1312] A. Yes, sir.

Q. Mr. Nelson, at page 18, I think you make some reference to traffic personnel. On the M&StL what constitutes their total number of traffic personnel?

A. You mean solicitors, solicitors and commercial—

Q. (Interrupting) I am referring to it in the same way as you refer to it as far as the TP&W?

A. Well, in a comparable way I would say about 126 or possibly 127.

Q. That is calculated on the same basis on which you arrived at traffic personnel for 126 to 130?

A. 127, something like that. Maybe somebody resigned yesterday.

Q. Should your present application be approved, what would be the total traffic personnel for the TP&W, M&StL?

A. You mean the combined?

Q. Yes.

A. Well, that is going to be covered in an exhibit, but I will explain it to you briefly. We will retain certain positions in Peoria and we will probably make some additions at Los Angeles, may make some additions at Detroit, and

so forth and so on, and it is difficult to give you an exact figure but I think it is somewhere in the neighborhood—I think we will only acquire about eight or nine, I don't know—can I look at this exhibit a minute?

Q. Go right ahead.

[fol. 1313] A. It is 12.

Q. 12 what, sir?

A. We will retain 12 of the present organization based on this economy figure, but that economy figure is subject to revision and study after we have a chance to study it we intend to take some of these savings and increase our personnel at various offices and utilize the TP&W employees. This is the maximum economy, you understand.

Q. If I am correct in my mathematics, then, on total traffic personnel should your application be granted you would have somewhere in the neighborhood of 138 rather than a combined total presently of 183?

A. That would be an approximate figure providing that we achieve these maximum economies that we have set here.

Q. I believe you quoted a figure of $454,000 as the economies to be realized?

A. Yes.

Q. Could you break that figure down? How much of that constitutes a labor figure?

Mr. Wheeler: May interpose an objection here. I think the word the "could" rather than "would" on the top of page 18 of his statement.

Mr. Hoag: Excuse me, it is could.

Exam. Albus: The record will so show.

Mr. Wheeler: Do you have the question, Mr. Nelson?

[fol. 1314] The Witness: Yes.

A. Do you mean the total economies from the positions that would be abolished, is that what you mean?

By Mr. Hoag:

Q. At the top of page 18 of your prepared statement?

A. You asked me about compensation.

Q. Yes, I said of the figure of $454,000 how much of that constitutes money for labor?

A. $258,863. That is Peoria only. Now, do you want the off-line?

Q. Yes.

A. $158,169.

Q. Or a combined total of what, sir?

A. I will have to figure it out here. I've got about four hundred forty-four thousand.

Q. Would you please explain what that figure is to represent, the four hundred forty-one thousand?

A. The four hundred forty-four thousand.

Q. You just gave me a combined total of four forty-one.

A. Four hundred forty-four thousand.

Q. Four hundred forty-four thousand, pardon me.

A. That is the economies and compensation.

Q. Direct labor savings?

A. That is the way I understand it.

Q. Would you please explain to me--I believe you heard [fol. 1315] Mr. Heineman's testimony the other day on this assimilation program for employees, how that would work as far as traffic personnel are concerned on these--

A. Did you finish the question?

Q. Yes, I am just doing some figuring here. I will be right with you. According to my calculation, sir, it would be some 45 positions that would be lost.

A. That is right.

Q. Mr. Heineman the other day explain an assimilation program of the M&StL--

Mr. Wheeler: Mr. Examiner, I again just don't want the record confused. Mr. Hoag uses the word would be lost and the testimony of the witness is could, and he goes on to explain that the maximum savings are one thing and the actual program is something else. I just don't think the record ought to be confused on the basis of those two terms.

Exam. Albus: Well, it is straightened out now to that extent.

You may answer, Mr. Nelson.

A. Will you repeat the question, please.

(Thereupon questions and answers were read beginning with the last question on page 1314 and ending with the question which begins on line 9 of page 1315.)

Mr. Hoag: If the question is not clear, I can restate it.

By Mr. Hoag:

Q. To go along with Mr. Wheeler, it appears that that the [fol. 1316] 45 positions could possibly be lost, would you please explain how that might work on Mr. Heineman's assimilation program.

Exam. Albus: So far as the traffic department is concerned?

Mr. Hoag: Yes, I am talking specifically about the traffic department.

Exam. Albus: All right.

A. Well, we can speak about the attrition, resignations and things of that nature. We have approximately 25 employees over 55, and the TP&W probably have proportionately some, and we think that, and with the expansion of new offices or increasing the personnel in some of the offices we will be able to assimilate a substantial number of those employees.

By Mr. Hoag:

Q. The traffic personnel is fairly well spread around the country, are they not?

A. Yes, sir.

Q. Wouldn't it rather ingenious for your assimilation program for you to move them around the country on that basis.

A. Oh, I don't see anything objectionable about that, as long as they are taken care of.

Mr. Hoag: That is all I have.

Exam. Albus: Mr. Davidson.

Mr. Davidson: Just a few questions.

Cross examination.

By Mr. Davidson:

Q. I understand that the proposed schedule of economies [fol. 1317] that could be effected in the traffic department

alone contemplates a maximum of $258,000 in the Peoria area.

A. I'd like to review it again. I am sure that is correct. Yes.

Q. And how much at Chicago?

A. We have it here $29,254.

Q. How many positions would be, could be lost at Chicago?

A. There could be four solicitors and one clerk, could be.

Q. Of course on the other hand if these economies are not made then those figures aren't applicable, is that correct?

A. These are subject to study.

Q. You spoke on page 15 of your testimony of the facilitation of traffic via the TP&W through its junction points with other carriers east of Peoria.

A. That is right.

Q. Now, this testimony, as I understand it, covers the traffic advantage as you see them, is that correct?

A. That's correct.

Q. Now, from the point of view of the M&StL, on the basis of your testimony, there is no advantage in having the western half of the TP&W?

A. I mentioned in my testimony here that we were going to put Nemo, Keokuk and Lomax on a parity.

Q. Where is the advantage to the M&StL of those?

Mr. Wheeler: Of those, you mean what?

[fol. 1318] By Mr. Davidson:

Q. Those three points.

A. Well, there is a tremendous amount of perishable business that moves at the present time through the Lomax gateway and we intend to keep it rolling through the Lomax gateway.

Q. Could that be handled on the M&StL?

A. It could.

Q. It could be handled today on the M&StL, could it not?

A. It could.

Q. So that in effect that branch of the TP&W west of Peoria is a competitor of the M&StL?

A. It is a competitor now with us.

Q. And will cease to be a competitor if you can acquire it?

A. No. We intend to keep the Lomax gateway open.

Q. Well, will it be a competitor of the M&StL if you acquire it?

A. You say it will be a competitor if we acquire it?

Q. I say will it be?

A. No, it would be one of own.

Mr. Davidson: No further questions.

Exam. Albus: Is there any further cross-examination?

Mr. Lucas: Mr. Examiner, would you indulge me on what I hope won't be over two questions.

Cross examination.

By Mr. Lucas:

Q. Under the unification of the traffic agencies would the combined force thereafter on a unified basis solicit for the unified system?

[fol. 1319] A. Yes, sir.

Mr. Wheeler: Mr. Examiner, I just want the record to show that I object to the use of the word "unification" if Mr. Lucas intends by that to use it as having a legal connotation other than the difference that was employed by Mr. Nelson in his direct statement.

By Mr. Lucas:

Q. Would there be separate solicitation for the TP&W—by the TP&W for traffic under your proposal.

A. No, sir.

Mr. Lucas: That is all.

Mr. Broker: I didn't hear the answer.

Exam. Albus: No, sir.

Are there any further questions of Mr. Nelson.

Redirect examination.

By Mr. Wheeler:

Q. Has the TP&W shown any interest in working out the integrated services via the interchange that you testified to in your direct testimony, page 5, Mr. Nelson?

Mr. Thomas: I object. It is a leading question.

Exam. Albus: The objection is overruled. I don't think that is leading.

What is the answer?

A. The answer is this, with the exception of the Effner route, which we have been negotiating, we haven't been approached by the TP&W in connection with this matter, with the other junctions.

[fol. 1320] By Mr. Wheeler:

Q. What advantages would the integrated service via those junctions afford to shippers?

Mr. Thomas: Mr. Examiner, that is certainly a leading question.

Mr. Wheeler: A leading question. I asked him what advantage. If that is leading I will put in with you.

Mr. Thomas: You are telling him the answer.

[fol. 1321] Mr. Cassell: I will object. It has already been answered.

Exam. Albus: I am not so much concerned about it being a leading question as I am proper redirect. On that basis, I will sustain the objection.

Mr. Wheeler: Mr. Examiner, I believe, I think it was either Mr. Lucas asked the witness some questions regarding service shippers received via these routes. If I am incorrect in that, then I withdraw the question, but I believe the record will show and it was for that reason I asked this question of Mr. Nelson.

Exam. Albus: Well, in case the record does so show, you may answer, Mr. Nelson.

The objection is overruled.

Mr. Cassell: Mr. Examiner, previously he said he didn't know what the service was by some roads—

Exam. Albus: Maybe he will say that again. I don't know.

Do you have an answer to the question pending, Mr. Nelson?

A. Well, I was going to say it would be a service advantage to us, but whether that service is better than that offered by our competition it is hard for me to say.

Mr. Cassell: What was the end of that?
Exam. Albus: He can't say.
Is everybody content?

By Mr. Wheeler:

Q. Would these routes afford shippers a faster route in which the M&StL would participate, Mr. Nelson?
[fol. 1322] A. Yes, sir.
Q. Mr. Nelson, do you traffic solicitors move about from time to time?
A. Yes.
Q. That is, from one city to another?
A. Yes, I am making four or five of them right now. Three of them have been completed and two of them are in the process, and I expect to have some more.
Q. Mr. Nelson, when you used the word "unified" in connection with your testimony did you mean to indicate in any way that the corporate status of the TP&W would be changed if the M&StL acquired control of it?
A. I didn't want to indicate that at all.

Mr. Wheeler: I have no further questions.
Exam. Albus: Recross-examination, please.
Mr. Thomas: Nothing.
Mr. Lucas: No, sir.
Exam. Albus: Anyone?
Mr. Cassell: None.
Exam. Albus: You are excused, Mr. Nelson. Thank you, sir.

(Witness excused.)

Exam. Albus: Let the record show that exhibits marked for identification H-38, H-39 and H-40 are received in evidence.

(Applicant M&StL's Exhibits H-38, H-39 and H-40, Witness Nelson, were received in evidence.)

[fol. 1323] Mr. Wheeler: I would like to call Mr. Ernest Peterson.

E. L. Peterson was sworn and testified as follows:

Direct examination.

By Mr. Wheeler:

Q. Mr. Peterson, will you please state your name and address.

A. E. L. Peterson, 164 Grain Exchange Building, Minneapolis, Minnesota.

Q. What is your occupation, Mr. Peterson?

A. I am Director of Traffic and Manager of the Minneapolis Traffic Association.

Q. How long have you held that position?

A. For the past six years.

Q. What positions in the transportation field did you hold prior to that time?

A. Oh, for eight years prior to that time I was assistant traffic manager of the Kansas City Board of Trade, for about ten years prior to that I occupied a similar position in the Sioux City, Iowa, market. Prior to that I was employed by several railroads. So my experience dates back to about 1920 in transportation matters.

Q. Have you occupied any positions on any advisory committees or anything of the kind in connection with transportation?

A. Governmental advisory committees?

Q. Yes, sir.

[fol. 1324] A. No, sir, I have not.

Q. Industry advisory committees?

A. I don't quite understand your question.

Q. Have you served on any industry advisory committees in connection with transportation matters?

A. Well, I am on the Executive Committee of the National Industrial Traffic League, if that is in the nature of what your question led to.

Q. Yes, sir.

What are your duties as director of traffic of the Minneapolis Traffic Association?

A. The Minneapolis Traffic Association, if you may allow me to elaborate a little there—

Q. If you will.

A. (Continuing) —is maintained by the Minneapolis Grain Exchange and the Minneapolis Chamber of Commerce. It was organized in 1906 for the purpose of furthering the transportation position of the Minneapolis market, and it is my duty to as much as possible carry out that policy.

Q. Who make up or what companies make up or are members of the Minneapolis Traffic Association?

A. They are made up of the members of the Minneapolis Grain Exchange and the Minneapolis Chamber of Commerce.

Q. And what is the general nature of the business of the member companies?

[fol. 1325] A. Those engaged in the grain business, those engaged in the grain business, those engaged in the mercantile and manufacturing business, business in general in the Twin Cities.

Q. Is your membership concerned with car supply conditions on the railroads serving the Northwest?

A. Very much so, especially the members of the Minneapolis Grain Exchange.

Q. Would you explain that and describe their interest in further detail?

A. The general trade territory of the Minneapolis Grain Exchange and the membership of that exchange lies in the States of Minnesota, North Dakota, South Dakota, and Montana. We also draw some grain from northern Wyoming, from the States of Oregon and Washington, a little from northern Iowa. The ability to draw that grain, of course, is contingent upon our getting the transportation equipment that will allow it to come into the Minneapolis market. During the harvest period we quite often run into car shortage periods, so it is important to our people to be able to get the boxcars when they need them.

Q. Do your member companies, the companies that you service, own elevators on the lines and railroads in the Northwest?

A. Many of them do, yes.

Q. What service does your association render to the member companies in connection with car supply?

A. In connection with car supply, it is our endeavor to [fol. 1326] try and get an adequate supply of boxcars up into the upper midwestern territory when we need them.

Q. Do your member companies advise you as to their car supply needs?

A. They do not call us as to their day-by-day needs. When we hear from our member companies is when we run into shortage, shortages in different sections of the country, and then we seem to be the first one they contact.

Q. What are the railroads, in general, in the Northwest that serve your member companies?

A. The Milwaukee Railroad, the Northwestern Railroad, the Great Northern, the M&StL, the Northern Pacific, the Soo Line, the Rock Island, the Chicago Great Western and a couple of smaller ones.

Q. On the basis of your experience, do you have an opinion with respect to the car shortage or supply so far as movement of grain was concerned during the 1955 season on those railroads?

A. Yes. Some of those railroads were in very bad shape, in that we were not able to get enough cars on those lines to take care of the grain that wanted to move from stations on those lines. There were one or two lines who did what we consider a very good job in handling the grain. Quite a few of the lines, though, did not do the kind of a job we would like to have had.

Q. Can you give me the experience, your experience, [fol. 1327] with respect to the M&StL during the 1955 grain season?

A. The 1953 movement of the M&StL was one of our bright spots.

Q. By that, you mean what, sir?

A. I mean that we had probably the least trouble and I had the least complaint coming from people who wanted to move grain by the M&StL than I did for any other line.

Q. If there had been complaints and car shortages on the M&StL do you believe they would have come to your attention?

A. I certainly do.

Mr. Wheeler: I have no further questions.

Exam. Albus: Cross-examine, please, Mr. Thomas.

Cross examination.

By Mr. Thomas:

Q. Mr. Peterson, don't you know that there were only six weeks in 1955 when there weren't car shortages on the M&StL?

A. I don't think that's peculiar to the M&StL. That was also true of all of our lines out in there. I don't believe there was a time during 1955 when the M&StL had greater than the average daily shortage of 85 cars.

Q. You didn't answer my question directly. Do you know or don't you know that there were only six weeks when there weren't shortages?

Exam. Albus: Are you talking about grain cars, Mr. Thomas?

Mr. Thomas: I am just talking about cars.

Exam. Albus: About shortages generally?

[fol. 1328] Mr. Thomas: Yes.

Exam. Albus: All right.

A. You say in 1955, Mr. Thomas?

By Mr. Thomas:

Q. Yes.

A. Well, I can't answer your question for this reason, Mr. Thomas, at one time I received from the car service division of the Association of American Railroads various statistical reports, such as CS No. 44-A. However, for some reason I was taken off of the mailing list on that particular report, so I have nothing beyond September 10, 1955. Prior to that time my own figures show there was about 8 weeks, 7 or 8 weeks, when the M&StL did not report shortages.

Q. Would your answer be the same, Mr. Peterson, if I told you I was referring to boxcars when I used the expression "car shortages"?

A. That is what I am talking about here, is boxcars.

Q. Your answer would be understood as applying to that question, boxcar shortages?

A. That is right.

Mr. Thomas: That is all.

Exam. Albus: Mr. Lucas.

Cross examination.

By Mr. Lucas:

Q. Mr. Peterson, you enumerated some six or seven roads competitive with the M&StL in connection with the transportation needs of your membership?

A. No, I didn't.

[fol. 1329] Q. Sir?

A. I did not.

Q. What was your enumeration of the roads—

A. (Interrupting) The various roads bringing grain into Minneapolis was numerous.

Q. In and out of the Twin Cities, are those roads competitive with the M&StL?

A. Not in all cases. The Great Northern and Northern Pacific, for example, do not go east of the Twin Cities, whereas the Burlington, which I did not enumerate, Mr. Lucas, should be included in that category.

Q. What about the Burlington—particularly, you mentioned that, that's all right—the Milwaukee and the Northern Pacific and the Rock Island?

A. I would say to common destinations they are competitive.

Mr. Lucas: That is all.

Exam. Albus: Mr. Cassell.

Mr. Cassell: No cross.

Exam. Albus: Mr. Broker?

Mr. Broker: No questions.

Exam. Albus: Mr. Davis?

Mr. Davis: No questions.

Exam. Albus: Mr. Davidson?

Mr. Davidson: None, Mr. Examiner.

Exam. Albus: Is there any further cross-examination?

[fol. 1330] (No response.)

Exam. Albus: Is there any redirect?

Mr. Wheeler: No, sir.

Exam. Albus: You are excused, Mr. Peterson.

(Witness excused.)

[fol. 1331] Mr. Wheeler: Mr. Schroeder.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

I believe Mr. Lucas has a question concerning the last bit of testimony taken in the case.

Mr. Lucas: Thank you, Mr. Examiner.

May I ask if the reporter would read my last question addressed to Mr. Peterson.

Exam. Albus: Read the question, please.

(Question read.)

Mr. Lucas: I meant in place of the Northern Pacific to say the Chicago and Northwestern.

Exam. Albus: Is there any objection to that correct?

Mr. Wheeler: I can't agree to it because I don't know whether Mr. Peterson would say yes or not if the question were modified.

Exam. Albus: I am awfully sorry, I don't know what to do about it.

Is there any possible way to get Mr. Peterson back here?

Mr. Wheeler: Mr. Examiner, we had a very difficult time of getting Mr. Peterson down here. He was a very difficult man to catch and bring down. He told me that he had to get right back to Chicago, that he had an engagement there, and it was for that reason we really put him on out of order in our case.

[fol. 1331a] Exam. Albus: Do you know whether or not he is driving?

Mr. Lucas: Mr. Examiner, that is all right. I will waive it.

[fol. 1332] ALBERT W. SCHROEDER was sworn and testified as follows:

Direct examination.

By Mr. Wheeler:

Q. Will you please state your name and address?

A. My name is Albert W. Schroeder. My address is 111 Franklin Avenue, Minneapolis, Minnesota.

Mr. Wheeler: Mr. Examiner, at this time I would like to have marked for identification the three exhibits that will be put in through Mr. Schroeder.

The first is a map showing the lines of the Minneapolis and St. Louis Railway in black with the various stations shown along the line.

Exam. Albus: That map may be marked for identification Exhibit H-41.

(Applicant M&StL's Exhibit No. H-41, Witness Schroeder, was marked for identification.)

Mr. Wheeler: The second is another map showing rail and ballasts, having colored lines.

Exam. Albus: H-42 for identification.

(Applicant M&StL's Exhibit No. H-42, Witness Schroeder, was marked for identification.)

Mr. Wheeler: And the third and last is one marked Peoria-East Peoria.

Exam. Albus: H-43 for identification.

[fol. 1333] (Applicant M&StL's Exhibit No. H-43, Witness Schroeder, was marked for identification.)

OFFERS IN EVIDENCE

Mr. Wheeler: Mr. Examiner, I am not sure that I offered in evidence the exhibits put in by and prepared by Mr. Nelson. If I failed to do so, I would now like to offer them.

Exam. Albus: My records indicate they have been received, but if they haven't been, they are received at this time.

By Mr. Wheeler:

Q. Mr. Schroeder, what is your present position with the M&StL?

A. I am Vice-President of Operations of The Minneapolis & St. Louis Railway Company.

Q. Are you also President-Elect of that company?

A. That is correct.

Q. Mr. Schroeder, did you hear the testimony of Mr. Heineman regarding the policy and practices that will be followed by the M&StL in connection with the acquisition of the TP&W?

A. I did.

Q. Did you participate in those decisions?

A. I did.

Q. Do you approve them?

A. Without qualification.

Q. As President of the TP&W will it be your purpose to carry them into effect?

A. That is correct.

Mr. Broker: Excuse me, as President of the—

[fol. 1334] Mr. Wheeler: I beg your pardon. I should have said M&StL.

Exam. Albus: President-Elect.

By Mr. Wheeler:

Q. Have you any comment to make with respect to the proposed price to be paid, that is, of $12,150,000, for the stock of the TP&W?

A. Well, yes, I do have, to this extent, that I was not associated with the M&StL Railroad in any way when the negotiations for the purchase of the TP&W was started or consummated, therefore I will be in a little better position to give an answer after studying what we are proposing in unification. I would say that price would be very satisfactory to the M&StL.

Q. Now, Mr. Schroeder, you used the word unification, and in the light of previous discussion I want to clarify that for the record. Is there any intent, so far as you know, on the part of the M&StL if it is given authority to acquire control of that property to eliminate the corporate entity of the TP&W?

A. No, sir.

Q. So that when you used that word you were using it in its colloquial sense?

A. That is right. I might say this, while it is synonymous with consolidation, we thought it was a better word to illustrate exactly what we were proposing. In fact, it was a word we borrowed from the Kansas City Southern when they did something very similar in this way to what we are proposing with the Louisiana and Arkansas. We [fol. 1335] thought it was a little more expressive and a little more descriptive.

Q. Mr. Schroeder, will you please tell us when you took over your present position with the M&StL and give us a summary of your experience prior to that date?

A. I have held the position of Vice-President of Operations of The Minneapolis & St. Louis Railway Company since November 1, 1955. Prior to that date, I graduated from the University of Nebraska in 1938 with a Bachelor of Science Degree in Civil Engineering. My first railroad employment was with the Burlington Railroad in 1939, where I held various engineering and maintenance positions until 1949 when I resigned as Assistant to Engineer of the Track for the system to accept the position of Chief Engineer with the Chicago & Eastern Illinois Railroad. I also held the positions of Division Superintendent, General Manager, and Vice-President and General Manager on that road before coming to The Minneapolis & St. Louis Railroad.

Q. Before continuing with your prepared statement, Mr. Schroeder, I wonder if you could briefly describe the top personnel and officers who are associated with you in the management of the M&StL.

A. At the present time?

Q. At the present time.

A. The M&StL Railroad, as a good many people know, has had a management as far as the department heads are

concerned, especially in the operating department, that [fol. 1336] hasn't changed too much in a number of years. At the present time our principal problem in management positions appears to be the very fact that the average age of every one except the executive officers, if I recall correctly, runs about 64 years of age. For instance, we have in 1956 nineteen people who will reach that age of retirement or will have already reached it, are now 65, and that continues at quite a rapid rate as far as our railroad is concerned in the number of officers there are on the railroad for the next five or six years.

We have, for instance, a situation where one of our officers happens to be the second oldest employee on the railroad is wanting to retire and we are in the process of setting up a regular retirement program which the railroad has not had in the past. It is similar, I think, to a good many railroads that you are all familiar with, as far as pattern of the retirement program is concerned.

Q. Does that situation on the M&StL personnel situation, have any relation to your desire to acquire the TP&W?

A. The management of the TP&W is a very fine, aggressive, young management, and I believe, as has already been mentioned, the management pool between the needs of the M&StL and the TP&W would very nicely complement one with the other, while I can't think of any right offhand. I think we are all aware of the fact that some companies have actually been purchased for their personnel.

[fol. 1337] Q. Mr. Schroeder, returning to your prepared statement, have you gone over the properties of the TP&W and examined their operation?

A. Yes. I made one trip to study the unification of the property upon acquisition of the TP&W by the M&StL.

Q. On the basis of your inspection and study of the properties and their operations, do you believe that operating economies and improvements will result from the acquisition of the TP&W Railroad by the M&StL?

A. Yes. The present operated mileage of the M&StL is 1,397 miles. The operated mileage of the TP&W is 239.43 miles. The M&StL joins the TP&W with a direct connection at Peoria, Illinois, which is located approximately at the

geographical center of the TP&W. Interchange between the two roads is effected by transfers between the M&StL-Peoria Yard and the TP&W-Peoria Yard, a distance of 5.4 miles. The actual transfer is done at the "PT" tracks at the east end of the M&StL Yard.

The total operated mileage of the two roads combined would be 1636.43 miles, which is comparable to the mileage of operating divisions on larger railroads. It seems to me it is obvious from the mileage and physical connections of the two roads, as shown on the map, Exhibit H-41, that the unification of the two properties will result in economies and efficiency in operation.

The duties of the executive and staff officers of the M&StL [fol. 1338] in the administration, planning and direct supervision of all phases of operation of the road could easily be extended without undue burden to cover the additional same duties in the operation of the TP&W. In my study, the exact duties for various sub-departments, such as maintenance of way, maintenance of equipment, train operation, car service, purchasing, and so forth, were considered as to just how we plan to unify our operation with the TP&W's, and the last part of my study contains a summary in dollars as to the savings to be realized. However, I have not attempted to set up a time table as to when any or all the economies will be effected. I realize that it will take some time to accomplish the over-all program. During this period, a part of the program will be realized through normal attrition on the two roads and as such will have little effect on existing personnel. Furthermore, I want to stress at the outset that in considering savings to be realized through reduction of personnel, I have looked at positions and not at individuals. In other words, certain officers or employees of the TP&W may be retained in lieu of officers and employees of the M&StL holding corresponding positions. Accordingly, all reference in my testimony to positions on the TP&W relates solely to those positions and not to the individuals holding those positions."

[fol. 1339] As an example, there would be required only one Operating Vice President, one General Superintendent, one Chief Engineer, one Mechanical Superintendent, one

Superintendent of Car Service, one Chief of Police, and one Purchasing Agent, together with their present staffs, to adequately cover the additional needs of only 239 operated miles. Of the 24 executive positions listed by the TP&W, a trainmaster and a roadmaster would be retained to continue direct supervision of train operation and track maintenance over what is now the TP&W trackage.

I want to mention right there that that does not mean that there would be 22 executive positions left nor does it mean that there would be none left. When I am speaking of the trainmaster and the roadmaster, I am referring to two that will be retained as far as operations are concerned, and this will be further explained by a following witness who will have the details on not only this, but other personnel, as to cost and how they feather in, not only salarywise, but as accounts are concerned under the ICC basis and how certain savings are applied to certain departments.

Exam. Albus: Next question, please.
Mr. Wheeler: Off the record, Mr. Examiner.
Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

[fol. 1340] By Mr. Wheeler:

Q. Will the acquisition of the TP&W by the M&StL result in economies of maintenance of way?

A Yes. The line of the M&StL railroad between Minneapolis and Peoria is laid with 115 or 100-pound rail, except for 10.25 miles of less than 100-pound rail, and is ballasted with either crushed stone or washed gravel ballast. The TP&W railroad between Effner and Lomax and Keokuk has the same type of track construction, including weights of rail ranging from 70-pound to 115-pound, and is ballasted with crushed stone and or slag, gravel and some cinders. It is my opinion that these two lines are of approximately the same quality, both in construction and maintenance. The ruling grade on the M&StL railroad in both directions is 1.45 per cent between Minneapolis and Peoria, except for Maxwell Hill, and the ruling grade on the TP&W is 1.2 per

cent. Exhibit H-45 is a map showing by color the similarity of rail and ballast sections and ruling grades.

Between Minneapolis and Peoria on the M&StL there are 46 section gangs. On the TP&W there are 11. If the two railroads were to be unified, one Extra Gang would be sufficient. General supervision of the work by one Chief Engineer and one General Roadmaster would be adequate to plan and oversee the maintenance programs to assure the continued level and class of maintenance.

The same is true as far as the condition of buildings and bridges of the two roads. At the present time there are two [fol. 1341] bridge and building gangs on the TP&W and eight on the M&StL. By integrating the work nine gangs could take care of the two roads nicely.

As to signal and communications, it is proposed to retain the present signalmen and maintainers, of which there are seven, on the TP&W, to continue maintenance of interlocking plants, crossing protections and signals on that portion of the unified road. The nine maintainers presently employed by the M&StL could continue to take care of their territories as now assigned. By combining the line gang of the M&StL with that of the TP&W, it is estimated three positions could be saved. General supervision of the work, the planning of the maintenance and material, etc., could be handled by the S&C staff under the Chief Engineer.

I might add there that the extra gang we are speaking of are seasonal laborers and the number of people in the line gang I am talking of are seasonal laborers on the M&StL.

It would be our plan, then, from the track, structures, signals and communications standpoint, to save 35 positions now carried under the present maintenance forces of the two roads. The positions of General Roadmaster; Bridge Engineer and Assistant Chief Engineer in charge of signal and communications, would have direct supervision over the maintenance work of the unified road. They would, in addition to programming the work, arrange for ordering mate- [fol. 1342] rial and supervise progress of work according to standards.

Q. Will additional economies be realized in the consolidation of work equipment?

A. Yes. The use of work equipment presently owned by the two railroads would be built into a program for work equipment so as to get the greatest usage and to operate the equipment seasonally and in such a way as to coincide with delivery of materials and work force over the unified railroad. For example, the TP&W is mofe southerly than any point on the M&StL and ballasting units could be started on the TP&W early in the season and be moved over lines of the M&StL as the summer progresses, being used to Watertown, South Dakota, Fort Dodge, Iowa, or any of the other lines on the latter railroad, and then floated back onto the TP&W. This will result in a longer season of maintenance than can be utilized on the M&StL or can be justified on the short mileage of the TP&W. The same thing would be true in more efficient laying of rail, where individually the two roads, even though mechanized in this operation, do not lay enough rail per year to achieve a high degree of efficiency. By adding the approximately 15 mil of new rail laid on the M&StL to the 10 miles annually laid on the TP&W, to make a 25-mile total, a greater degree of efficiency and supervision could be achieved. The proper organization of such a gang is the most important factor toward their efficiency. The longer they work together, the [fol. 1343] better the "teamwork" smooths out and the more efficient they become. Obviously the same is true in other maintenance of way operations, such as ballasting, tieing, bridge work, et cetera, where great deal of moneys are spent by both roads to maintain proper level of maintenance. By unification, the physical procedures could be greatly improved and higher efficiency attained.

Q. Will the union of these roads result in more efficient utilization of motive power and economies in maintenance of equipment?

A. Yes. The M&StL and the TP&W are fully dieselized with respect to motive power. At the present time on the M&StL we own 73 units, of which 25 were built by Electro-Motive Division of General Motors, 38 were built by American Locomotive Company, and the balance, or 10, are various sizes and types of small switchers manufactured by Electro-Motive Division, General Motors Corporation, Baldwin Locomotive Works, and Caterpillar Company.

The TP&W owns a total of 15 units of motive power, of which three were manufactured by Lima Locomotive, five by Electro-Motive Division of General Motors, and seven by the American Locomotive Company. All of the power of both roads are of approximately the same age.

On the M&StL, of the 73 units, eight are standby units that are not immediately assigned, and, in addition, five of the 73 units are assigned to shop providing for the con- [fol. 1344] tinuance of regular maintenance. Of the 15 units operated by the TP&W, two are standby units to be used as additional units in multiple or power for extra service. It can be seen there are 10 units owned by the two railroads that are unassigned units, and five are assigned for shopping purposes, out of the total of 88 units. With unification, it would be possible to take care of all of the business if four of the unassigned units were disposed of. This would still leave a surplus of six units for extra service and five units for shop assignment. In this way the Lima's of the TP&W and one B.L.W. of the M&StL could be disposed of. This would also reduce parts inventory from seven types of locomotives to five.

I might add here that when I am talking about "units" I am talking generally of any of the types, and it is quite obvious why I state here that the Limas and the one B.L.W. would be the three to be sold probably from strictly an inventory standpoint, but upon investigation we might find there are other units which because of their size or age might fall into that category.

With the further integration of freight service, which will be discussed under transportation, it will be shown that actually, instead of only six units for standby service, there will be generated 10 units of surplus power, which would take care of seasonal increases, extra trains, etc. The effects of the reduction in total number of units of motive power [fol. 1345] can be seen.

The maintenance and heavy repair shop of the M&StL is located at Minneapolis, with a small amount of it also done at Marshalltown. The maintenance and heavy repair point of the TP&W is located at Peoria Yard. By running M&StL freight trains into the TP&W yard, on thru-freight train schedules from Minneapolis to Effner and/or from

Minneapolis to Lomax and Keokuk, and multiplying the units owned by both railroads, it is our intention to discontinue locomotive repair of maintenance, other than servicing the engines, at Peoria. The present force employed in maintenance and heavy locomotive repair work at Cedar Lake at the present time numbers 171 people. At Peoria, presently, the M&StL employs four for the servicing of all locomotives going through Peoria, and the equivalent locomotive force equal to that now employed by the TP&W would be discontinued.

Heavy car repair on the M&StL is now done at Marshalltown Shop. The capacity of this shop is not fully utilized, and all of the heavy car repair work for both railroads would be done at Marshalltown with the present force of 71 employees.

And that, again, is positions I am talking about.

There will be shown, under the car service division of this testimony, the percent bad order situation on the M&StL for the years 1954 and 1955. This railroad has been one of the best in the nation, with respect to a very low bad order [fol. 1346] percentage for a number of years, and I think this points out the fact that with unification the rolling stock on the TP&W would be given the same treatment, in this category, as has been demonstrated with respect to M&StL bad order cars in the past.

On the repair track for light and running repairs at Peoria the M&StL employs 13 people, and the TP&W duplicates this work on their light repair track. It is our intention that the Peoria light repair work, as far as cars are concerned, would be handled by a total of 17 employees. This, in effect, means that the present two mechanical departments, as far as heavy and light locomotive repair, heavy car repair and part of the light car repair forces are concerned, would be reduced by 70 employees.

And I might add here, and I will discuss it a little more in detail a little later, that on the M&StL, the corresponding employees, we have more than 37 who have already reached their sixty-fifth birthday, so you can see how attrition is going to dovetail into our plan.

Exam. Albus: That is a good spot for a 10-minute recess.

(Short recess.)

Exam. Albus: The hearing will be in order.
We will continue with the direct of Mr. Schroeder.

By Mr. Wheeler:

Q. Mr. Schroeder, in your testimony you refer to certain shops, buildings and, I believe, also the yards of the M&StL in Peoria which, on integration of the operation of the [fol. 1347] M&StL and the TP&W might be unnecessary in connection with those operations. Do you have any comment as to the use to which those will be put?

A. Well, our plans are, on the basis of shop buildings and facilities of that kind, that they would be retained. For instance, to try to convert into warehouse use, possibly foundries, that I know, roundhouse and heavy repair facilities have been used in the past for some fertilizer developments and things of that kind, where it would generate not only carload business but development also for fuel and water facilities, of course, and some enginehouse shelter more than anything else would be retained, too. I am thinking mainly in terms of the heavy repair facility, the building itself and the store department facility. In other words, they have been converted on other roads, and we think we could put them to good use here.

Q. What about land that is now occupied by your Peoria yard, have you any plans with respect to that?

A. Well, that land, as I presume a lot of you here know, is subject to flooding and the engineering department the M&StL in years past has studied the proposal for diking to protect the yards from actual flooding and so forth and we think it could be successful. We already have tracks there to some degree. We have a large building there that we would do the same thing with, that we would try to [fol. 1348] convert, perhaps with some expense to ourselves, to keep that as industrial property in Peoria.

Q. Now, Mr. Schroeder, returning to this subject of unification, would the word "integration" be as a synonymous term the way you have used that term throughout your testimony?

A. Yes, it would.

Q. One thing further, you list a number of positions, the duties of which on an integrated basis of operation would

require only one man. Would the man who held that position hold the position for the TP&W as well as the M&StL in the event you acquire control of the M&StL?

A. Right.

Q. Returning to your direct statement, can through freight schedules be integrated and yard time and expense be reduced?

A. Yes. Servicewise, the M&StL and TP&W are very much alike in that they are predominantly freight carriers.

Under present operations, the M&StL operates two eastbound freight trains between Minneapolis and Peoria; they being No. 20, which is operated as a first-class train on a 17 hour schedule, and No. 96, a thru-freight train with pickup and set-out at important points. The TP&W now operates two freight trains between Peoria and Effner, Nos. 20 and 22, having elapsed time of 4 hours and 30 minutes, and 4 hours, respectively. These schedules are based on cutoff times for making connection with Pennsylvania trains at [fol. 1349] the latter station, I have been told. They also operate a local, No. 24, that carries a time freight schedule for use when needed.

Westbound from Effner, the TP&W operates two trains connecting with the Pennsylvania, they being Trains 21 and 23 on a 2-hour 33-minute schedule Effner to Peoria. Westbound from Peoria, the M&StL operates two freight trains: No. 19, a first-class train on a 17-hour schedule to Minneapolis; and No. 95, a pickup and set-out train at important points Peoria to Minneapolis.

West of Peoria the TP&W operates Train No. 121 to Lomax on a 2 hour and 44-minute schedule. This train doubles back to LaHarpe as Third Subdivision No. 120 and lays up at LaHarpe. TP&W Train No. 123 goes to Keokuk but sets out Santa Fe-Lomax cars at LaHarpe, goes to Keokuk and lays up, coming out of there as Second Subdivision No. 120. This train goes to Peoria, picking up Third Subdivision No. 120's cars at LaHarpe enroute.

Third Subdivision No. 120's crew, upon their rest at LaHarpe, runs as No. 123's connection on the Third Subdivision and goes to Lomax. It departs Lomax as No. 122 and goes to Peoria.

We have now covered the existing schedules on the TP&W between Effner and Lomax and Keokuk, and the M&StL from Minneapolis to Peoria. And I might add that these schedules are per time table no. 18 now in effect on the TP&W, and there are no changes in those schedules.
[fol. 1350] At the present time the TP&W has a full set of dispatchers around the clock at Peoria Yard. The M&StL has a similar set of dispatchers at Oskaloosa. By connecting our circuits at the M&StL Peoria Yard to the TP&W Peoria Yard, one set of dispatchers could use either Morse or telephone, with telephone being used as a carrier on our wires between Oskaloosa and Peoria, to dispatch the entire 239 miles of road operated on the TP&W, together with the territory now dispatched from Oskaloosa. If only Morse is used, there would be no cost except the immediate physical hookup, which could be done over leased wire of either Western Union or Bell Telephone at a very minor operating charge. In this way the unification of dispatching would also lend something to handling of business and maintaining service as outlined above on both railroads. The dispatching could be done equally well from either Oskaloosa or Peoria.

I might add in that connection that we have on the M&StL now two chief dispatchers that are—well, one chief dispatcher that is in excess of 65; we have two trick dispatchers that are 65 or older; we have another one that is becoming 65 this year and wants to retire and therefore I think this is a perfect illustration of unification where one road gains to the advantage of the other.

The M&StL enjoys a direct interchange with the TP&W where crews of the respective railroads deliver in two transfer tracks at foot of M&StL Yard. The P&PU, CRI&P [fols. 1351, 1352] and PT—I believe that should be PRT—deliver in our yard. On the other hand, the TP&W enjoys direct interchange with the P&PU, CRI&P, and PT, which we do, and in addition, has direct interchange with the Nickel Plate, Illinois Terminal, and the CB&Q. This is better illustrated on the map, Exhibit H-43. Business moving from M&StL thru-freight trains to all of the lines in Peoria is necessarily somewhat delayed because most of the connections have to be made by the use of the

P&PU Railroad. If unification were to be realized by the two roads, considerable time would be saved by the P&PU, CRI&P and PT, making interchange to only one yard instead of two in Peoria, and two independent switching operations would be reduced to one, thus speeding up business going to both the TP&W and the M&StL.

Necessarily, our freight trains Nos. 19 and 95, westbound, have a departure time set to assure receiving all connections before leaving. By using the TP&W yard, connections with three additional railroads would be direct, and again, the saving in time by the P&PU, CRI&P and PT would be of tremendous value in speeding up M&StL Trains Nos. 19 and 95. The same is true of eastbound M&StL Trains Nos. 20 and 96. It is our intention to integrate the thru service westbound between Effner and Minneapolis by consolidating TP&W Train No. 23 and M&StL No. 19, making direct connection with Pennsylvania Train LD-19 on its present schedule out of Effner at 4:15 P.M., arriving at Peoria at 6:48 P.M. Business from that train going to Lomax would be handled in TP&W [fol. 1353] Train No. 123 on its present schedule, but at the same time departure time of M&StL Train No. 19 would be set up from its present 1:15 A.M. Peoria, to 11:30 P.M., thus allowing, in effect, thru operation of business Effner to Minneapolis, and stepping up the movement of cars received in the present TP&W yard, so that No. 19 would arrive Minneapolis 1 hour 45 minutes in advance of its present schedule. The advantage to shippers for cars moving to the northwest would be greatly enhanced by this saving in terminal time.

This saving would be realized by reduction of a present TP&W transfer, one complete switching operation, and a saving to the P&PU, CRI&P and PT by delivery to one yard instead of two, and would assure the continuance of the handling of the business to Lomax and Keokuk in the same manner as it is now.

Train No. 95 presently departing Peoria at 3:00 A.M. would be changed to coincide with TP&W Train No. 21 out of Effner at 8:15 A.M., PRR LD-11 connection, arriving Peoria 10:40 A.M., and our present No. 95 would be set back from 3:00 A.M. to departure 12:01 P.M., thus again

allowing business moving direct to the northwest to move continuously in our Train No. 95, and also handle business off TP&W No. 122. This would let No. 95 clean out tonnage from all connections at Peoria.

Eastbound M&StL operates No. 20, a thru-freight train as a first-class train with scheduled arrival at Peoria of 9:15 P.M. This train would be projected in conjunction [fol. 1354] with the TP&W's present No. 20, and receiving business from the west off TP&W No. 120 from Lomax and Keokuk, would arrive Effner 6:30 A.M. as at present.

The annual transportation saving by the use of one yard, exclusive of any savings of time in the movement of cars would amount to approximately the cost of present M&StL yard operation, except for retaining three yard clerks. As an example, M&StL has two trick yardmasters at Peoria daily, and the TP&W, three tricks. Obviously only three tricks—one around the clock—would be required. The TP&W works five engines in its yard and the M&StL works three yard assignments. By eliminating yard work with more direct connections into the present TP&W yard and the elimination of transfers by both railroads between their respective yards, it is thought that not only can the five present yard assignments of the TP&W easily take care of the handling of trains as outlined above for both roads, but that there would be an opportunity for the consideration of some yard power reductions by the unified yard.

As to power assignments, by running M&StL power thru as outlined above, power from M&StL-TP&W No. 20 could be turned back on Train No. 21-95, and power from TP&W Train No. 22 could be turned back on Train No. 23-19 at Effner. This would release all of the power now used by the TP&W for its two thru trains, or by M&StL No. 96's power equivalent between Peoria and Effner, with the end [fol. 1355] result being four units surplus. You will recall that disposition of additional power as well as assignments for extra service was discussed in some detail under the mechanical section. It would be expected that local trains Nos. 24 and 25 operated by the TP&W would continue to operate as they are, and as pointed out previously, service now offered by the TP&W between Peoria, Lomax and Keokuk would continue, that is, service, in the same way

as is now being performed, but with the understanding that cars coming from the Minneapolis or northwest area, or any stations on the M&StL or its connections, would be greatly expedited to stations on the TP&W, or for the Lomax or Keokuk gateway.

Following is a proposed schedule showing integration of service as outlined above:

PROPOSED CONSOLIDATED SCHEDULE

Westbound

T #21-M #95	T #121		T #23-M #19	T #123
8:15 A.M.		Lv. Effner	4:15 P.M.	
10:48 A.M.		Ar. Peoria	6:48 P.M.	
12:01 P.M.	1:00 P.M.	Lv. Peoria	11:30 P.M.	9:30 P.M.
6:01 A.M.		Ar. Minneapolis	4:30 P.M.	
	3:44 P.M.	Ar. Lomax— (Keokuk)		4:48 A.M.— (12:44 A.M.)

Eastbound

M #20-T #20	T #120		M #96	T #122-T #22
4:30 A.M.		Lv. Minneapolis	4:00 P.M.	
[fol. 1356]				
	5:15 P.M.	Lv. Lomax		5:45 A.M.
9:15 P.M.	9:57 P.M.	Ar. Peoria	11:00 P.M.	8:40 A.M.
2:00 A.M.		Lv. Peoria		12:01 P.M.
6:30 A.M.		Ar. Effner		4:00 P.M.

Q. Will acquisition of the TP&W by the M&StL permit economies and improvement in car service?

A. Yes. The M&StL Car Service Department is headed by an Assistant to Vice President-Operations, and he has under him a staff of six people, including specialists in routing, tracing and car distribution. A shippers' service is furnished on tracing of cars by this department, which has for its use a teletype system, a mechanized car accounting system handled by the Comptroller's office, and the usual telephone and telegraph facilities. The TP&W has a similar service without the teletype installations.

The M&StL, with its present staff, could easily absorb the duties performed by two people on the TP&W, and we believe, with our extensive mechanization and facilities we

would be able to do a better job in this respect than is being done by the two roads individually. This will be further pointed out in comparing the relative ownership of cars between the two roads, general bad order situations, and periodic shortage in freight car equipment.

In the 1955 Equipment Register is shown the total number of freight cars owned by the M&StL, to be 3907, and by [fol. 1357] the TP&W, 253. Following is a list of the cars, by type, as owned by the two railroads:

M & St L	Type	T P & W
No. Cars		*No. Cars*
2615	Box	49
249	Gondolas	
327	Hopper—Coal	147
100	Hopper—Covered	
329	Flat	37
* 20	Stock	20
* 17	Airslide	
* 250	Refrigerators	
3907		253

* Leased

The M&StL has been a credit per diem road. On the other hand, the TP&W has been a debit per diem road because most of its traffic is bridge. Ownership of equipment on the M&StL not only has proven adequate from the per diem standpoint, but the number of cars substantially complies with the theoretical ownership as set up by the A.A.R. formula for this purpose. Following is shown the per diem payments for the M&StL and the TP&W in the year 1954, as taken from Form A reports:

Q. Mr. Schroeder, let me ask you, in what category are any deviations in the theoretical ownership set up by the A.A.R. formula in so far as M&StL car ownership is concerned?

[fol. 1358] A. Only in coal cars.

Q. Coal cars?

A. Right.

PER DIEM 1954

	M&StL	TP&W
Per Diem Paid	$2,341,326	$ 659,838
Per Diem Received	2,502,348	135,000
Net	$ 161,022	$ 524,838 (minus)

It can be seen from these costs that had the TP&W and M&StL been unified in 1954, the credit per diem of the M&StL would have offset some of the TP&W debit and reduced that debit to $363,816.

Following is a table showing car surplus by types and months for 1954 and 1955 on the M&StL:

DAILY AVERAGE SURPLUS—FREIGHT CARS

1954	Box	Gondola	Coal Hopper	Flat	Stock	Refgr	Total
Jan	13	16	20	52	8	10	119
Feb	44	32	30	11	4	8	129
Mar	97	30	21	25	9	10	192
Apr	24	10	30	15	5	6	90
May	3	0	14	10	3	3	33
June	14	0	0	12	6	1	33
Jul	76	6	19	30	3	5	139
Aug	88	17	12	52	3	10	182
[fol. 1359]							
Sep	66	25	0	26	3	11	131
Oct	11	28	0	26	0	7	72
Nov	0	19	0	36	0	12	67
Dec	49	21	0	37	0	11	118

1955	Box	Gondola	Coal Hopper	Flat	Stock	Refgr	Total
Jan	0	19	8	31	3	2	63
Feb	0	6	7	27	2	8	50
Mar	13	0	0	11	2	7	33
Apr	97	0	0	10	4	10	121

1955	Box	Gondola	Coal Hopper	Flat	Stock	Refgr	Total
May	58	0	15	13	4	8	98
Jun	20	0	0	14	3	7	44
Jul	0	6	7	10	3	22	48
Aug	0	0	0	13	2	35	50
Sep	0	0	0	5	5	20	30
Oct	0	0	0	9	4	25	38
Nov	22	18	42	10	8	20	120
Dec	15	11	33	8	8	22	97

It can be seen from the table that certain months of the year the M&StL enjoys a surplus of all types of cars. While it is not known exactly what the car orders are on the TP&W during these M&StL surplus months, it must be assumed that if car distribution were unified for both railroads, that car surplus would be available in filling orders on the TP&W. This shows how the two roads would strengthen one another by the use of combined car ownership and distribution.

[fol. 1360] With respect to car requirements on the TP&W and the ability of the M&StL to fill car orders as compared to the possibility of either the Santa Fe or the Pennsylvania being more capable of doing the job, following is a table showing the average daily freight car shortage for the years 1953 through 1955 on the M&StL as compared to shortages on the Pennsylvania and Santa Fe.

AVERAGE DAILY FREIGHT CAR SHORTAGE—
AAR CS-44

	AT&SF Ry			Penn RR			M&StL Ry.		
Week	1953	1954	1955	1953	1954	1955	1953	1954	1955
1							20		
2							15		
3					33		55		
4							125		
5					47		180	40	
6							200	45	10
7			86				95	30	15

Week	AT&SF Ry			Penn RR			M&StL Ry		
	1953	1954	1955	1953	1954	1955	1953	1954	1955
8			173				85	20	15
9			225			34	60	20	20
10			218			118	50	15	20
11			227			103	40		40
12			90			139	35		45
13	20		50			154	40		45
14	20		95			315	40		45
15			75			267	35		40
[fol. 1361]									
16	20		105			328	30	40	60
17	25		90			394	30	45	65
18	25		75	37		538	30	30	75
19	25		50	75		609	30	25	75
20	25		25	117		553	30	25	85
21	20		95	110		870	70	35	75
22	25		403	58		690	100	25	65
23	25		701	81		867	85	20	55
24	41	181	809	30		1016	80	20	90
25	393	250	812	11		1123	85	25	90
26	276	250	829	44		901	55	35	70
27	35	75	694	52		608	45	30	85
28			340	84		792	75	25	85
29			278	258		1471	400	20	100
30	8		233	3		1854	35	25	115
31	27		348			1718	25	30	130
32	50		234			1036	35	20	75
33	106		256	13		1150	35		75
34	145		331			1412	45		65
35	158		337	39	26	1215	95		55
36	146		322	49	25	770	70		80
37	159		647	85	32	1445	20		100
38	223	307	672	48	49	1943	20		95
39	233	312	839	144	62	2255	55		105

[fol. 1362]

Week	AT&SF Ry			Penn RR			M&StL Ry.		
	1953	1954	1955	1953	1954	1955	1953	1954	1955
40	395	360	804	272	183	2592	95	25	120
41	361	350	974	244	187	2286	120	20	145
42	267	369	1116	83	121	2234	100	25	150
43	310	457	1197	33	113	2935	80	40	170
44	281	465	1282	21	161	2607	70	45	150
45	312	372	1089		179	2121	60	60	105
46	318	49	852		309	1677	25	35	60
47	205		491		298	830	15	20	30
48			106					25	20
49								20	20
50								25	20
51						125			20
52									20

It will be noted from the table that during 1953; shortages, by the number of weeks, were greater on the M&StL than on the Pennsylvania and Santa Fe, but the actual number was far smaller than the number of cars shown on the other two roads. During 1954 the same trend was true, but during 1955 shortage of cars on the M&StL existed in approximately the same number of weeks, but the shortage in number was far less than on either of the other two roads. I think the table makes it obvious that with the M&StL having integrated car distribution with the TP&W they would at least be equal, and in my opinion superior, in ability to furnish cars efficiently and well on the TP&W. Certainly, the weeks of acute car shortage on [fol. 1363] the Pennsylvania and Santa Fe, as shown above, would yield no cars as compared to what a combined service could give.

Following the same line of thought on ability to furnish cars on order to TP&W, there is entered a table showing per cent of bad order freight cars during the years 1954 and 1955 on the M&StL as compared to similar periods on the Pennsylvania, Santa Fe and TP&W.

First Each Month	AT&SF Ry.		Penn. RR.		TP&W RR.		M&StL Ry.	
	1954	1955	1954	1955	1954	1955	1954	1955
January	3.3	3.8	8.2	16.2	4.5	2.8	2.7	1.6
February	2.8	3.9	8.7	16.3	4.4	3.6	3.2	2.3
March	3.0	4.1	9.5	16.3	1.8	5.6	3.2	2.1
April	3.2	4.1	10.2	16.4	2.6	4.4	3.4	1.6
May	3.2	4.7	10.9	16.1	2.2	3.6	2.2	1.4
June	3.6	4.4	12.0	15.4	1.3	4.0	2.7	2.1
July	3.5	4.0	12.7	15.1	3.1	3.6	2.7	1.1
August	3.9	3.7	11.7	12.6	1.3	4.0	2.7	1.1
September	4.0	3.7	12.6	11.5	3.2	4.3	2.5	1.2
October	4.2	3.5	13.4	10.7	2.8	4.0	2.1	1.1
November	3.8	3.3	14.4	10.0	3.2	3.1	1.2	1.2
December	4.2	3.3	15.7	9.4	4.0	2.8	1.6	2.0

In every case percentage of bad orders have been lower on the M&StL railroad which illustrates utilization of cars is much more efficiently handled on the M&StL as compared to the Santa Fe and Pennsylvania.

[fol. 1364] From this same information it will be noted that the per cent of bad orders on the TP&W is consistently higher than on the M&StL, and it is only logical that with unification, the bad order situation would be as improved on the TP&W as is shown on the M&StL. It might be added that the latter railroad consistently has one of the best performances with respect to low bad order percentage as compared to other railroads in the United States.

There would be some savings in the requirement of work equipment cars. This was pointed out by discontinuance of one bridge gang, as explained under the maintenance of way portion of this testimony. Also, an extra gang would not be required. In this way all of the work equipment cars on the TP&W, or their equivalent on M&StL, of which there are 33, could be scrapped or sold.

Under the transportation section of this testimony was shown the integration of freight service where trains would be run from Minneapolis to Effner, and in that same part was shown the saving in power. There would likewise be a saving in cabooses, and it is estimated that under the

thru-freight service plan, two cabooses out of a total of twenty could be scrapped or sold.

[fol. 1365] Q. Will you explain any economies that would be realized in purchasing?

A. The purchasing and stores department of such railroad is made up of the usual supervisory staff of purchasing agent, chief clerk, buyers, and so forth, and without overburdening the purchases for both roads could easily be handled by one of these staffs.

From the unification of this function, there would be a considerable saving by greater volume buying. As an example: The M&StL purchases approximately 200,000 ties per year; the TP&W 95,000 ties per year. By purchasing the total of these two items, both railroads would enjoy a considerable saving due to additional volume buying. Other examples along this same line are treated bridge material, lubricating oil, et cetera.

I believe you will recall the other day Mr. Gurley expressed similar opinions along these lines.

Similarly, in 1954 the M&StL purchased 6,084,665 gallons of fuel oil for diesel operation at 10.68 cents per gallons, while the TP&W purchased 1,805,842 gallons for 11.08 cents. The difference of 4 mills on 1,805,842 gallons would have saved the TP&W $723.36 and while this is not a big item, it still illustrates that many small economies can be realized along these lines. Further, had the unified railroad purchased the sum total of their individual purchases of [fol. 1366] 7,890,507 gallons, it is probable that the purchase price per gallon, due to the greater volume, would have been considerably lower. The saving by joint purchases of the two roads can conservatively be estimated by using a figure of 2 per cent of the total purchases of both properties, and we have not attempted to fix a dollar value to that.

Q. Would you summarize savings outlined in your testimony?

A. Yes. I might say another witness will follow me, as I described a little earlier, where he takes these positions as I described them and ties them in and describes the po-

sition and the cost and then again feathers them to the various counts. So what I am summarizing here are just the gross figures of which the detail will be packed up entirely.

Previous I have outlined the manner in which department functions would be integrated between the two roads. I have also mentioned number of employees in the various departments as I have gone along. Again, it should be realized that no time table has been set up as to when such positions would be discontinued, and I believe it is obvious and understandable that it might take some time to accomplish the overall program. Also, I would like to again stress the fact that certain officers and employees of the TP&W would be retained in lieu of officers and employees of the M&StL holding corresponding positions. In other words, attempt has not been made to designate by individuals, but rather it has been shown what our ultimate [fol. 1367] unified operation would be as far as savings are concerned.

Taking first, maintenance of way and structures. Reduction of certain supervisory positions, namely, the chief engineer, engineer of maintenance, valuation engineer, superintendent of signals, draftsmen, surveyors, and land agent, will result in savings of $48,381.

I might say along those same lines that we have three officers in our engineering department on the M&StL that have either exceeded, I would say in every case has exceeded, the average of 65.

Savings in track labor and bridge and building force would amount to $125,425, and in the maintenance of way proportion of the purchasing and stores personnel, $23,000. These savings total $196,806. Adding to that other economies such as estimated expense incident to these supervisory positions, would save $8,068 and the decrease in depreciation attributable to sale or other disposition of the TP&W general office building would amount to $6,625.

We think that office building is a very attractive piece of real estate and probably the rental on it would be a very important factor to us. All of these items resulting from unification of maintenance of way, total $211,499.

Savings in certain supervisory positions in maintenance of equipment, as testified to earlier, would include superin- [fol. 1368] tendent of motive power and mechanical department clerks in the amount of $27,378. And I might say again there in the openings of equal jobs, not necessarily superintendent of motive power, but in supervisory jobs in our mechanical department at Cedar Lake we have about eight positions that are at the age of 64 or higher and two clerical positions, as I recall, at the same age or higher.

Labor savings in maintenance of equipment and stores, as testified to earlier, would be $343,118. The maintenance of equipment proportion of purchasing and stores at $33,981, less purchasing department personnel at $34,210, would show a wage and salary economy of a total of $370,267.

Other economies to be added to this would be reduction of expenses of $10,522 incident to savings in supervisory positions. The shop machinery expense reduction is estimated at $1,849; power plant machinery, $1,711; and depreciation on shop and power plant machinery, $1,761. These last three items are related principally to repair operations. Through the unification, it has been testified that 4 locomotives could be sold or otherwise disposed of, and using the basis of $3,000 material per unit, per year, for maintenance would result in a net saving of $12,000. The estimated material used for work equipment repairs would be saved, in the amount of $7,299. Equipment depreciation would be reduced by the locomotives and work equipment to be sold in the amount of $25,631. Stationery [fol. 1369] and printing economies totaling $775 could be effected. The total of all these items is $451,815.

In transportation, $18,939 would be saved by the reduction of certain supervisory positions, namely, the superintendent, special agent, and the superintendent's clerk. It so happens that we have a superintendent at Oskaloosa and you recall I mentioned dispatching could be done equally well at Peoria or Oskaloosa, and I would guess at the latter. The remuneration of the superintendent here and ours at Oskaloosa is about equal.

Avoiding duplicate employees at Peoria Station would amount to $25,708 classified as "Personnel and Clerical", and $25,378 for "Agents, Telegraphers, et cetera." And this

is all Peoria station where we could integrate our freight stations and not out on any other point on the line. Reduction of Peoria yard forces on the basis of M&StL cost would save $146,988; duplicate dispatching forces, which I have already mentioned, would save $27,648, and duplicate services in the way of train attendants; station supervisor, station foreman, et cetera, would save $22,738. The transportation expense proportion of reduction in purchasing and store personnel, is $22,208. Other estimated economies in transportation incident to force reduction, such as superintendence, would amount of $40,000; dispatching $5,404; fuel consumption, $6,360; and 50 per cent in stationery and printing cost, or $5,138—the total being [fol. 1370] $316,749. The total savings from unification in maintenance of way, maintenance of equipment, and transportation is $960,063.

I would like to pause there just for a minute and say that in the transportation saving in personnel it is proposed that there would be 36 jobs saved on unification and on the M&StL at the present time that there are 44 employees in similar or equal or in some way related jobs in excess of the age limit. I bring that out again to point up the importance we have given to this matter of consolidating, not only management people but employees also, contract employees also.

Using the combined 1954 operating revenues of the M&StL and the TP&W and using the combined operating costs of the two roads for that year, the maintenance of way ratio after unification is figured to be 16.0 per cent; the maintenance of equipment, 12.6 per cent; and transportation, 30.6 per cent, and these ratios will be set out for you in detail by the following witnesses. These resulting ratios reflect directly the efficiency with which the two roads could be operated.

Adding in the other items not coming under direct operation would give us an operating ratio at 69.4 per cent, which would compare favorably with those ratios of the most efficiently operated railroads in the United States.

Q. Does that complete your direct testimony at this time?

A. It does.

[fol. 1371] Mr. Wheeler: The witness is available for cross-examination.

Mr. Thomas: Mr. Wheeler, as I understand, you will have an exhibit that will have the supporting detail to which Mr. Schroeder referred.

Mr. Wheeler: That is correct.

Mr. Thomas: May I pass the first round. I may not have any questions.

Exam. Albus: Very well.

Mr. Lucas.

Mr. Lucas: May I join in passing the first round?

Exam. Albus: Mr. Cassell, do you want to pass?

Mr. Cassell: I will get all my questions in right now.

Exam. Albus: Fine.

Cross examination.

By Mr. Cassell:

Q. Are your mileage payments included in the per diem?

A. No, sir, they are not. They are separate.

Q. So that figure doesn't include those?

A. You mean the private car miles?

Q. Yes.

A. That is right, in neither of the railroads did I state the private car mileage rate.

Mr. Cassell: That concludes my cross-examination.

Exam. Albus: Thank you.

[fol. 1372] Mr. Broker.

Mr. Broker: I think I will pass the same as the Santa Fe and Pennsylvania.

Exam. Albus: Very well.

Mr. Davis: No questions.

Exam. Albus: Mr. Hoag.

Mr. Hoag: I am vitally interested in the testimony of Mr. Schroeder but because he has indicated that there is another supporting witness who likewise has supporting exhibits, I would prefer at the present time to defer cross-examination of Mr. Schroeder until I hear the second witness.

Exam. Albus: Is there any objection to that?

Mr. Wheeler: No, sir.

Exam. Albus: Off the record a minute.

(Discussion off the record.)

Exam. Albus: On the record.

You are temporarily excused, Mr. Schroeder, and we will put on Mr. Provo.

(Witness temporarily excused.)

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

The hearing will please come to order.

Mr. Wheeler: Mr. Provo.

[fol. 1373] OFFERS IN EVIDENCE

Mr. Examiner, I should like at this time to offer exhibits marked for identification H-41, 42, and 43.

Exam. Albus: They are received.

(Applicant's Exhibits Nos. H-41, H-42 and H-43, Witness Schroeder, was received in evidence.)

LARRY S. PROVO was sworn and testified as follows:

Direct examination.

By Mr. Wheeler:

Q. Will you state your name and address.

A. My name is Larry S. Provo, my address is 111 East Franklin Avenue, Minneapolis 4, Minnesota.

Q. What is your present occupation?

A. I am vice president and comptroller of the Minneapolis & St. Louis Railway Company.

Q. Will you please state your experience prior to the taking of that job.

A. I graduated from the University of Minnesota with a degree in business administration. Accounting was my major subject. I am a certified public accountant in the

State of Minnesota. I am also a member of the American Institute of Accountants.

Upon graduation from the University of Minnesota I was employed by Arthur Andersen & Co., a nationally known public accounting firm. I remained with that firm in various positions until December 1954, when I was appointed to my present position with the M&StL.

[fol. 1374] Q. While you were employed with Arthur Andersen was that company engaged to make a survey of the accounting functions of the M&StL?

A. In June 1954, Arthur Andersen & Co., was engaged to make a survey of the accounting and reporting system of the M&StL. The purpose of this survey was to develop the accounting requirements of the railroad and the economies to be realized by installing a new system, and I was the manager from Arthur Andersen on the engagement.

Q. Will you continue with your statement.

A. During the time that I have been with the M&StL, we, together with Arthur Andersen & Co., have been engaged in installing the accounting and reporting system recommended by the account-firm. The primary objective of this system is to provide useful and timely information for management at a minimum cost.

The new system eliminates almost all duplication of effort by the use of I.B.M. tabulating cards which are key-punched from source documents (time rolls, inventory usage reports, wheel reports, et cetera) prepared in the field. The punch cards are used to summarize all of the various accounting data required for particular types of transactions. After the data is key-punched into cards, the accounting functions are done mechanically. We have new high speed I.B.M. accounting machines and electronic calculators to make this possible.

[fol. 1375] We have a complete system of responsibility accounting and budgeting on the railroad. Under the responsibility accounting system we will prepare more than 430 financial statements each month. These statements are for the supervisory personnel of the M&StL and cover up to six levels of supervision. The statements are summarized at each level so that all any supervisor has to look at is one statement to determine who is responsible for expense vari-

ations from the budget in his area of supervision. Only those expenses for which he is responsible are reported on his statement. The statements do not include bookkeeping allocations or depreciation or such other cost that he has no responsibility or control over.

A complete budgeting system is a part of our responsibility account system. This method of reporting cannot be adopted without complete and integrated mechanization. Basically complete and integrated mechanization means that the following records are prepared mechanically.

General ledgers, and that comprises all the records of the M&StL. There is no extra set in pen and pencil or a different set for the NICC.

(2) Accounts payable.

(3) Pay rolls.

(4) Property and equipment.

(5) Perpetual inventories.

(6) Car accounting.

[fol. 1376] (7) Revenue divisions.

Our accounting system provides management with a complete perpetual inventory record which enables it to exercise effective control over inventories in all departments. This not only releases cash to be used for other corporate purposes which otherwise would be tied up in inventories, but also reduces the possibility of inventory losses due to obsolescence and overstock.

We are also using the statistical technique of random sampling to obtain an estimate of revenues on a current basis so that management has timely information available.

When this system is completely installed, we feel we will have the most useful and modern railroad accounting system in the country. We provided complete flexibility in modernizing accounting functions, and the system we have designed can accommodate the accounting requirements for a railroad of almost any size.

With this general background in mind, I would like to discuss the effect on the M&StL Accounting Department if we were successful in acquiring the TP&W.

Q. Mr. Provo, before you turn to that did the mechanization of the accounting system for the M&StL which you have described result in a large non-recurring expense during the year 1955?

A. Yes, in the year 1955, which is really our conversion [fol. 1377] year and our programing year, we estimate that out-of-pocket non-recurring costs in connection with the modernization program were a little over $300,000, between three hundred and three hundred twenty-five thousand. I would like to say along that line that the matter was presented to the board of directors of the M&StL to decide whether or not those costs should be amortized over a five-year period or a three-year period. The Board decided in my opinion a very sound business judgment to take all of the expenses in the year 1955 rather than attempt to make a showing by deferring part of the costs into the subsequent years.

Q. Mr. Provo, does Arthur Andersen & Co. conduct a complete audit of the accounts of the M&StL yearly?

A. They do. The first audit was made for the year ended December 31, 1954, and they are about at the end of the audit for the year ended December 31, 1955.

Q. Are such complete audits usual or unusual in the railroad industry?

A. I would say that they are unusual. Some of the railroads have examinations. I am not sure of the scope of those examinations, but as a rule I would say most roads do not have audits.

Q. Have you any comment with respect to such audits?

A. Well, I came from a public accounting firm and I think that audits are required by the S.E.C. and by banks [fol. 1378] for small companies. I think there is a great value to an audit and that an audit, of course, insures that your accounts are properly stated, and in Arthur Andersen's audits if your accounts are not properly stated their certificate is qualified. I mean in many instances they may disagree with the Interstate Commerce Commission, which they do in our case.

(Answer read.)

A. I should state that more properly, that Arthur Andersen will, if they disagree, qualify their certificate. Now,

they have a petition pending before the Interstate Commerce Commission in connection with the matter of accelerated amortization.

Over and above the question of properly stating accounts the auditors will make suggestions for improvements in the system and procedure of the company they are working under.

Q. Have the audits of Arthur Andersen of the M&StL been in any regard qualified, and, if so, would you state in what regard?

A. The only qualification that we receive in our certificate is that Arthur Andersen believes in our income, our net income, is overstated to the extent of the reduction in the provision for federal income taxes by reason of obtaining deductions for tax purposes on equipment that is certified under necessity certificates.

Q. Is that qualification consistent with the I.C.C. provi- [fol. 1379] sions with respect to accounting?

A. The qualification is not consistent with the I.C.C.'s qualifications in that our records are kept in accordance with the requirements of the Interstate Commerce Commission.

Q. I believe you were at the bottom paragraph on page 3 of your prepared statement, Mr. Provo. Could you continue?

A. With the background in mind, I would like to discuss the effect on the M&StL accounting department if we were successful in acquiring the TP&W. To facilitate the determination of what would be necessary to unify the accounting of the TP&W with that of the M&StL, I visited the offices of the TP&W in December 1955, and determined generally their accounting activities and accounting organization. We appraised the accounting requirements by analyzing what the increase in the cost of the M&StL accounting department would be if the revenues of the M&StL were $28,000,000 dollars, which is approximately the combined revenues of the M&StL and the TP&W.

I would like to explain that a little further and say to determine the requirements of a unified operation we looked at it on the one hand as to what our increase in costs would be, if our revenues were to increase by $7,000,000, as a

check on that we visited the offices of the TP&W to find out generally the activities of the TP&W accounting department.

We also reviewed the executive and legal department requirements of the unified operation.

[fol. 1380] As a result of our survey, we estimate that the general expenses of the unified railroads could be reduced by approximately $341,102. These economies would be realized by saving 34 positions at an annual cost of $211,519. In addition, legal expenses would be reduced by $45,176, I.B.M. rentals, stationery and printing, and other expenses would be reduced, with a resulting savings of $45,422. The total of these items is $341,102, which is the amount of general expense economies referred to previously.

Now throughout the M&StL presentation there has been discussion of the effect of a unified operation. Mr. Heineman has testified as to the financing contemplated if our proposed acquisition is approved. Mr. Nelson has testified on the economies to be realized in a unified traffic operation, and Mr. Schroeder has testified on the economies that can be accomplished by unifying the operating departments.

My testimony has indicated the economies that can be made by unifying the executive, legal and accounting departments of the M&StL and the TP&W.

I would now like to have marked for identification an exhibit which summarizes the estimated effect of the acquisition on the net income of the M&StL and the TP&W. This exhibit is entitled "The Minneapolis & St. Louis Railway Company--Combined and Pro Forma Schedules to Reflect Economies from Unified Operations for the year ended December 31, 1954."

[fol. 1381] Mr. Wheeler: Mr. Examiner, I would like to have marked for identification the brown-covered pamphlet entitled "Combined and Pro Forma Schedules to Reflect Economies from Unified Operation for the Year ended December 31, 1954."

Exam. Albus: The exhibit referred to may be marked for identification II-44.

(Applicant's Exhibit No. II-44, Witness Provo, was marked for identification.)

By Mr. Wheeler:

Q. Mr. Provo, just to keep the record straight again on this question of unification, when you use the term unified, you do not mean to indicate that the corporate setup of the TP&W would be changed in any way under the plans that you have indicated in your testimony and in this exhibit, do you?

A. No, sir. When we started working on this I believe we talked about integration at many points and I think to us integration and unification are synonymous. We chose the term unification because I visited the offices of the Kansas City Southern, and they have over the years unified their operations with those of Louisiana and Arkansas, and they refer to their integration as the unification of the two railroads.

I would like to explain Exhibit H-44 as follows. It has three sections and these sections are indicated by a yellow tab on the left, the first is summary, the second is oper- [fol. 1382] ating revenues and expenses, and the third is employees and compensation.

The Employees and Compensation schedules start with Schedule 19. The first three numerical columns of this schedule show the number of employees of the M&StL., the TP&W, and the combined total.

I will explain this schedule, and most of them you will see follow in pretty much the same fashions, but I think if I explain this one schedule the rest will then become self-explanatory.

The first three columns of this schedule show the number of employees on the M&StL. and on the TP&W for the year ended December 31, 1954, and then it shows the combined total.

The next two columns are the compensation plans to the M&StL. employees, the TP&W employees, as reported in the 1954 formula reports to the Interstate Commerce Commission and the combined total.

The next two columns reflect the number of employees and the compensation that we estimate would be required in a unified M&StL.-TP&W operation.

The last two columns show the economies from unification.

Schedule 19 is a summary of this information, and Schedules 20 through 25, inclusive, are the detail schedules in support of Schedule 19.

Schedule 20 shows the detailed data for the executives, [fol. 1383] officials and staff assistants and the professional, clerical and general employees.

Schedule 21 is a departmental classification of the economies from unification shown on Schedule 20.

Schedule 22 reflects the economies from unification of the maintenance of way forces.

Schedule 23 shows the economies from unified maintenance of equipment and stores forces.

Schedules 24 and 25 show economies in forces in a unified transportation operation.

The schedules I have just reviewed summarize our best estimate and appraisal of the personnel requirements of the unified operations, they were based on inspection trips, on my trip to the general office of the TP&W, the estimates were raised on our knowledge of our own operation and the capacity that we have to absorb additional functions.

To determine the total economies from unification, it was necessary to translate from the personnel schedules shown in the section I have just reviewed to the detailed income accounts of the two companies which start on Schedule 4, which is right after the second yellow tab "Operating Revenues and Expenses."

[fol. 1384] Schedule 4 shows the combined operating revenues of the two roads and shows a reduction in the revenue attributable to unification of $11,470. This reduction results from the elimination of the TP&W general office in Peoria. The $11,470 represents 1954 revenue from a cafeteria operation.

In combining the revenues of the two roads in this exhibit, we have not provided for any change in revenues due to the improved service and longer hauls described by Mr. Nelson. We have not anticipated any revenue variation in this exhibit because of the difficult problem of measuring the effect of unified solicitation forces and so forth on the revenue picture.

Schedule 5 is a summary of the operating expenses of the two roads for the year ended December 31, 1954, and also shows the economies from unification and the resulting variations in expense ratios.

By unification, the combined operating expenses could be reduced $1,770,945. This would represent an 8.5 per cent overall expense reduction. The operation ratio is shown as 69.4 per cent as compared to the M&StL operating ratio of 79.2 per cent. The decrease in expenses by primary accounts is as follows:

[fol. 1385]

	Decreases in Expenses	Ratio to Combined Total of M&StL and erating Expenses TP&W Op
Maintenance of Way and Structures	$ 211,499	4.6
Maintenance of Equipment	431,815	11.1
Transportation	316,749	3.7
Traffic	454,471	25.0
General	341,102	19.8
Miscellaneous	15,309	37.8
Total	$1,770,945	8.5

Schedules 6 and 7 show the maintenance of way economies.

Schedules 8 and 9 reflect the economies resulting from unifying equipment maintenance.

Schedules 10 and 11 show economies resulting from the unified transportation departments.

Schedule 12 shows traffic, general expense, and miscellaneous operations economies from unification.

Schedules 13, 14 and 15 show in detail the traffic economies.

And I would like to explain something that was referred to in Mr. Nelson's testimony. I am afraid I did not get a chance to sit down with Mr. Nelson and discuss just exactly how this was summarized, although he was completely aware of the economies as anticipated.

[fol. 1386] Schedule 15 is a detailed schedule of the off-line agencies of the TP&W, and the last column, you will see, represents the compensation economies and totals $185,169. The total compensation economies in the traffic department are shown on Schedule 14 as $258,836, which includes the $185,169 on Schedule 14.

Schedules 16 and 17—

Q. Shouldn't that be "Schedule 15"?

A. Oh, excuse me.

Schedules 16 and 17 show the economies from unification of the executive, legal and accounting departments.

Schedule 18 shows the computation of the adjustment in railway tax accruals resulting from economies from unification, bond interest, et cetera.

At that point I would like to mention that all through the summary this book reflects the interest applicable to the proposed bond issue.

Q. Mr. Provo, when you say "proposed bond issue," you are speaking of the bond issue about which Mr. Heineman testified to finance the purchase of the stock of the TP&W?

A. Yes, sir, the $12,000,000 bond issue that is detailed, the details of which are shown in his testimony.

Q. Will you proceed, please.

A. Railroad retirement and unemployment taxes are reduced by $79,624 because of the reduction in total com-[fol. 1387] pensation paid. The federal income tax provision is adjusted to reflect the net variation in income before Federal income taxes attributable to the operating expense reduction, the interest on the proposed bond issue, the revenue decrease, and the decrease in railroad retirement and unemployment taxes.

The purposes of Schedules 4 through 25 is to show the detail underlying our calculation of the estimated annual value of the TP&W to the M&StL if the TP&W were to be acquired by the M&StL.

Schedule 1 shows the estimated annual value of the TP&W to the M&StL.

In 1954 the M&StL earned $1,647,000. We estimate that the 1954 net income of the M&StL would have been increased if we had owned the TP&W, and the operations had been unified, and the 12 million dollar bond issue

were outstanding, by $1,279,000. The total income under these assumptions would have been $2,926,000.

To us, this is a realistic and fair appraisal of the tremendous importance of the TP&W to the M&StL.

However, even this does not reflect the full picture. The M&StL would be adversely affected if the TP&W were acquired by the Santa Fe and Pennsylvania.

Mr. Swanson has testified to traffic vulnerability. He has indicated that a very significant part of our revenue would be vulnerable if the TP&W were owned by roads other than

[fol. 1388] Mr. Swanson testified that the estimated loss of revenue to the M&StL if the TP&W were owned by the Santa Fe and the Pennsylvania, would be $1,110,000, which represents 5.4 per cent of 1954 M&StL revenues. The revenue lost would represent incremental revenue so that the effect on net income would be very harmful to the M&StL. If we lose $1,110,000 of revenue we estimate that our net income would be decreased $453,000. This amount represents 27 per cent of 1954 net income.

The difference between our estimated net income, assuming M&StL ownership, and our estimated net income, assuming Santa Fe-Pennsylvania ownership, is $1,732,000, or $2.17 per share.

To us this is a fair appraisal of the annual value of the TP&W to the M&StL based on 1954 data of the M&StL and TP&W. The $1,732,000 is 105.2 per cent of our 1954 net income. The annual value to the M&StL would be higher if 1955 data had been used because the TP&W net income increased from $641,000 in 1954 to $790,000 in 1955.

On Schedule 2 we have compared this with the value of the TP&W to the Santa Fe-Pennsylvania. As we mentioned, the estimated annual value to the M&StL is equivalent to 105.2 per cent of its 1954 net income. If the Santa Fe had a 50 per cent ownership in 1954 its net income would have been increased by a half of one per cent. The net income of the Pennsylvania, if it had a 50 per cent ownership of the TP&W in 1954, would have

[fol. 1389] Mr. Wheeler: That concludes the direct testimony of Mr. Provo at this time, Mr. Examiner.

Exam. Albus: At this time we will adjourn until tomorrow morning at 9 o'clock in this room.

(At 5:10 p.m., Thursday, February 9, 1956, the hearing in the above-entitled matter was adjourned till tomorrow, Friday, February 10, 1956, at 9 a.m.)

[fol. 1389A] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1390]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18891

Finance Docket No. 19086

[Title omitted]

The Carrousel Room,
Pere Marquette Hotel,
Peoria, Illinois.

TRANSCRIPT OF HEARING: February 10, 1956

Met, pursuant to adjournment, at 9:00 a.m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 1392] PROCEEDINGS

Exam. Albus: The hearing will please come to order.

According to the agreed schedule for today Mr. Atkinson of the Wabash is the first witness.

Mr. Atkinson, please.

Mr. Davis: Mr. Examiner, may we mark the exhibits for identification?

Exam. Albus: Yes, sir. In what order do you want them marked.

Mr. Davis: Attached to Mr. Atkinson's testimony are letters with suffixes to identify them.

The map, No. A, is the first exhibit.

Exam. Albus: It may be so marked as H-45 for identification.

(Intervenor's Exhibit No. H-45, Witness Atkinson, marked for identification.)

Mr. Davis: The map letter B is the next exhibit.

Exam. Albus: It is marked for identification Exhibit H-46.

(Intervenor's Exhibit No. H-46, Witness Atkinson, marked for identification.)

Mr. Davis: The one page exhibit with the letter C, "Carload Traffic Forwarded or Delivered" is the next exhibit.

Exam. Albus: It is H-47 for identification.

(Intervenor's Exhibit No. H-47, Witness Atkinson, marked for identification.)

Mr. Davis: The next one is the letter E.

[fol. 1393] Exam. Albus: H-48.

(Intervenor's Exhibit No. H-48, Witness Atkinson, marked for identification.)

Mr. Davis: E follows C in that case.

Exam. Albus: Right.

Mr. Davis: D is the next exhibit.

Exam. Albus: H-49.

(Intervenor's Exhibit No. H-49, Witness Atkinson, marked for identification.)

Mr. Davis: "F".

Exam. Albus: H-50 for identification.

(Intervenor's Exhibit No. H-50, Witness Atkinson, marked for identification.)

Mr. Davis: "G".

Exam. Albus: "G" may be marked for identification H-51.

(Intervenor's Exhibit No. H-51, Witness Atkinson, marked for identification.)

Mr. Davis: And "H".

Exam. Albus: That will be H-52.

(Intervenor's Exhibit No. H-52, Witness Atkinson, marked for identification.)

Mr. Wheeler: Mr. Examiner, I believe when I made my previous comments we were off the record. I was not aware of that fact. I would like to note for the record that we have received for the first time just now the testi-

[fol. 1394] mony and the exhibits to be presented by Mr. Atkinson, whereas heretofore we have been following the practice of exchanging the exhibits the night before.

Exam. Albus: Yes, sir.

Mr. Wheeler: I would also like to have marked for identification an exhibit which I have just distributed to counsel which consists of excerpts from the testimony of officials of the Pennsylvania and the Wabash in the Wabash Company Control case.

Exam. Albus: The excerpts may be marked for identification Exhibit H-53.

(Applicant's Exhibit No. H-53, Mr. Wheeler, marked for identification.)

Mr. Wheeler: I should like to state for the record that these were taken from the transcript of the stenographer's notes of the hearing held June 12th and 13th, 1941, at Washington, D. C.

Mr. Lucas: Thank you.

Mr. Wheeler: If anyone cares to examine it I have with me a certified copy certified by the secretary of the Commission.

Mr. Lucas: Mr. Examiner, I think the record ought to show that we have not been following the practice of exchanging exhibits the night before. The Santa Fe and Pennsylvania furnished their first two exhibits, H-4 and H-5, to parties that they could get in touch with, including [fol. 1395] Mr. Wheeler, a couple of days before the hearing commenced. Mr. Wheeler furnished us with Mr. Nelson's and Mr. Schroeder's exhibits, but not with their prepared statements upon our request the night before they appeared, and Mr. Broker has furnished us with the Nickel Plate exhibits and prepared testimony the night before he is to call his witnesses. I think the record ought to show the facts.

Exam. Albus: Very well. That is perfectly all right.

Mr. Broker: We just distributed the prepared testimony of Mr. Phipps, though, not Mr. Witt.

Exam. Albus: Are there any further preliminaries?

(No response.)

Exam. Albus: Let's proceed with the testimony.

ARTHUR K. ATKINSON was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you please state your name and address.

A. I am president of the Wabash Railroad Company, and my office and residence are located in the City of St. Louis, Missouri.

Q. Will you please describe your experience in the railroad field.

A. My railroad experience began when I started to work for the Denver and Rio Grande Railroad Company in the office of the general auditor in 1909. From 1909 to 1919 I held various positions in the accounting department. [fol. 1396] From 1920 to 1922 I was field accountant, supervising accountant and assistant comptroller for the United States Railroad Administration. From 1922 to 1929 I was assistant auditor, Assistant Comptroller for the United States Railroad Administration. From 1922 to 1929 I was Assistant Auditor, Assistant Comptroller and Assistant to vice president in charge of Finance and Accounting for Wabash Railway Company and all of its affiliated companies. From 1930 to 1942 I was vice president, secretary and treasurer of Wabash Railway Company, and from 1931 to 1940 I was treasurer for the Receivers of Wabash Railway. In 1941 and 1942 I was Chief Accounting and Financial Officer of that company. During the receivership of Wabash Railway Company I also served as Secretary of the Stockholders Protective Committee and Secretary of the Reorganization Managers.

[fol. 1397] I have been a Director of Wabash Railroad Company since September 2, 1937; a member of the Finance Committee of Wabash Railroad Company since formation of that committee on June 17, 1943; and a member of the Executive Committee since April 17, 1947. I was Vice President-Finance and Accounting of Wabash Railroad Company from May 15, 1942, until I was elected President of the company on April 17, 1947. I am also President, a Director and a member of the Executive Committee of

various subsidiaries and affiliated companies of Wabash Railroad Company.

I have had extensive experience in connection with reorganization and refinancing of railroad companies. As Treasurer for the Receivers of Wabash Railway Company, I worked actively in bringing about the reorganization of Wabash Railway Company. I have been active in the financial readjustment of the Kansas City Terminal Railway Company and the Terminal Railroad Association of St. Louis. In 1951 and 1952, as Chairman of the Finance Committee of the Chicago and Western Indiana Railroad Company, I supervised the refinancing of that company under its new First Collateral Trust Mortgage.

I am familiar with the applications filed in these proceedings by the Santa Fe, the Pennsylvania Railroad Company and Pennsylvania Company and by the M&StL.

The Wabash and its predecessors have worked very closely with the TP&W and its predecessors for almost one [fol. 1398] hundred years in contractual and operating arrangements which I will describe later in more detail.

Perhaps I should mention here that from May 1880 to 1884 the predecessors of the Wabash leased and operated the entire line of the TP&W, extending from the Indiana-Illinois state line on the east and to Hamilton and Warsaw, Illinois, on the west.

The Wabash has also been keenly interested through the years in the TP&W property and has followed closely the press and public reports that have appeared from time to time concerning any merger or sale of that property with or to other carriers.

The Wabash management has on a number of occasions made studies as to the possible usefulness of the TP&W in extending the Wabash System. It may be of interest to note that the Commission in one of its consolidation plans allocated the TP&W property to the Wabash-Seaboard System. Consolidation of Railroads (1929) 159 I.C.C. 522,532.

Q. Mr. Atkinson, have you prepared certain exhibits for this case which you wish to present at this time?

A. I have.

Q. Will you proceed with that, if you please.

A. My Exhibit A, which has been identified as Exhibit H-45, is a map which I have caused to be prepared, which shows the line of the TP&W, Santa Fe, Pennsylvania, Rock Island, M&StL, Nickel Plate, Illinois Central and Wabash [fol. 1399] in the respective colors shown on the legend. Also shown are the junction points of Wabash with those other lines named. The points at which Wabash interchanges traffic with the TP&W and with the applicant railroads are set out in the box on this map in the upper right-hand corner.

It will be noted from this map that the western termini of the Wabash are at Kansas City and Omaha. At Kansas City, Wabash interchanges a heavy volume of traffic with the Santa Fe and the Rock Island. From Kansas City the Wabash main line runs to Chicago via Hannibal, Missouri, Decatur and Forrest, Illinois; it also runs from Kansas City to St. Louis and from St. Louis to Chicago. From Moberly, Missouri, the Wabash line extends in a northerly direction to Des Moines, Iowa, passing through Albia, Iowa. Wabash interchanges traffic in volume with the M&StL at Albia and at Des Moines. From Bement, Illinois, a main line extends to Detroit, Michigan, serving Fort Wayne and Toledo. At Logansport and Fort Wayne, Indiana, and Toledo, Ohio, on this line, we interchange a heavy volume of traffic with the Pennsylvania. At Toledo, Ohio, Wabash also interchanges a significant volume of traffic with the Nickel Plate. Another segment of our main line connects Chicago and Detroit. From Detroit, Wabash runs eastward through Canada to the Niagara Frontier. At Buffalo we have a heavy interchange with carriers serving the east and New England, it will be noted.

[fol. 1400] Q. Will you proceed.

A. My Exhibit B, which has been identified as H-46, is a railroad map of the portion of the State of Illinois directly involved in this case. There is shown in heavy broken lines the railroad of the Wabash in this area and in dotted lines the TP&W railroad extending from Keokuk, Iowa, on the west, to Effner, Illinois-Indiana, on the east. At Forrest, Illinois, on the Wabash main line from Decatur to Chicago, there is indicated on this map the portion of the TP&W main line between Forrest and Fairbury over which

Wabash has contractual and operating rights to reach its Streator Branch. The line used by the Wabash is 6.22 miles in length. Without this operating arrangement Wabash could not operate its Streator Branch which extends in a northwestwardly direction from Fairbury to Streator, Illinois, a distance of approximately 30 miles, and serves the principal points of Honegger, Fairbury, Pontiac, Cornell and Streator, Illinois.

The original line of railroad that now constitutes the Streator Branch extended from Streator to Effingham, Illinois, via Strawn and Bement. The line between Strawn and Bement is now a part of our main line. That part of the line between Strawn and Fairbury was taken up in 1883, and traffic to or from points between Forrest and Streator was moved in Wabash trains over the main line portion of the TP&W between Forrest and Fairbury. Wabash records show contracts dating back to December [fol. 1401] 18, 1885, between the predecessors of Wabash and TP&W, granting to Wabash the right to use the main line of the TP&W between Forrest and Fairbury for the movement of its trains with its own power. In all of these intervening years this contractual relationship has benefitted both Wabash and TP&W, and operating arrangements necessary to its development have been effected.

Wabash has a substantial investment in the Streator Branch and realizes significant revenues therefrom.

Q Mr. Atkinson, could I interject here just for a moment and ask you whether or not you know what that investment amounts to.

A. The investment on the Streator Branch, according to the valuation section under the inventory of the Interstate Commerce Commission, including land, was $687,031.

Q. Would you proceed with your statement, please.

A. Several communities located on that line are wholly dependent upon Wabash rail service. The Illinois communities of Champlin, Lodemia, McDowell, Rowe and Cornell are served by Wabash exclusively.

I have shown on my Exhibit C, which has been marked as Exhibit No. 47, the volume of busines moving to and from Wabash stations on the Streator Branch. The great preponderance of this traffic moves over the line of the

TP&W between Fairbury and Forrest. It will be noted that the total number of revenue cars handled by Wabash to and from these stations during the 12-month period [fol. 1402] from November 1, 1954, to October 31, 1955, inclusive, was 8,064. Based upon the average revenue per car of the Wabash System for 1954 and taking into consideration the actual movement of traffic, it is estimated the revenue earned by the Wabash was approximately $803,000.

There are 25 industries at stations on the Streator Branch which Wabash serves with its own rails.

At Streator, Illinois—9 industries
At Pontiac, Illinois—5 industries
At McDowell, Illinois—4 industries
At Cornell, Illinois—3 industries
At Champlin, Illinois—1 industry
At Forrest, Illinois—1 industry
At Honegger, Illinois—1 industry
At Lodemia, Illinois—1 industry.

Of course, there are other patrons who use the Wabash team track facilities for the loading or unloading of carload freight at these stations. Through switching arrangements Wabash also serves industries located on the lines of other railroads with whom we connect at Pontiac and Streator, Illinois.

[fol. 1403] Pontiac has an approximate population of 8,200. Wabash, through switching arrangements, serves 17 industries located on the rails of the Illinois Central and the GM&O.

Streator has a population of approximately 17,000. At that point, through switching arrangements, Wabash serves 40 industries that are located on the rails of the Burlington, Santa Fe, GM&O and New York Central.

Wabash interchanges traffic with the Burlington, Santa Fe and New York Central at Streator, Illinois. On such traffic those lines perform roadhaul servic to or from Streator and Wabash performs roadhaul service to or from Streator. During the year 1955 we received 483 carloads of this interchange traffic from the lines mentioned

and delivered to those lines 645 carloads during the same period, making a total of 1,128 carloads interchanged at Streator.

In like manner, at Pontiac during the year 1955 we interchanged with the GM&O and IC 143 cars and delivered to those lines 80 cars, making a total of 223 cars interchanged at Pontiac.

Thus, the interchange traffic on the Streator Branch during 1955 totalled 1,351 cars.

For the purpose of determining the nature of the traffic moving to and from points on the Streator Branch, a study was made of that traffic moving to and from Streator, Illinois, which was considered a representative. My ex-
[fol. 1404] hibit identified as H-48, consisting of four sheets, shows the movement to and from Streator, Illinois, for the months of January, April, July and October, 1955. The first two sheets reflect carload shipments from Streator. Of the 744 carloads shown, 260 were destined to points on the Wabash in the states indicated and 484 carloads to points beyond the Wabash in the states shown. Sheets 3 and 4 show that a total of 660 carloads were delivered at Streator during these months or a total forwarded and delivered of 1,404 carloads.

This exhibit shows clearly that shipments to and from Streator, Illinois, originate in or are delivered to practically every state in the United States. It further shows the importance of this Branch of the Wabash to shippers and consignees at Streator, Illinois, in reaching their markets throughout the country. It also shows the importance of this Branch to the Wabash.

The contract currently in effect between the Wabash and the TP&W for the use of the latter's track between Forrest and Fairbury is dated February 27, 1950, and contains a one-year cancellation provision. At present two trains in each direction are operated daily except Sunday on this Branch. It is quite obvious that the continuance of our contractual right to use this trackage upon reasonable terms is of vital importance not only to Wabash but to the shipping public served by the Streator Branch.

[fol. 1405] I next call your attention again to my map, Exhibit H-46, on which is shown in heavy broken lines that

part of the Wabash known as the Keokuk Branch extending in a northwestwardly direction from Bluffs, Illinois, to Keokuk, Iowa. There is indicated on this map the main line trackage of the TP&W between Elvaston, Illinois, and Hamilton, Illinois, over which Wabash operates its trains under contract for a distance of 6.53 miles. At Hamilton the TP&W main line connects with a track 0.58 miles in length owned jointly by the TP&W and Wabash. This jointly owned trackage connects with the bridge used by the TP&W and Wabash to cross the Mississippi River to Keokuk, Iowa. If it were not for the contractual arrangement with the TP&W for the use of its main line between Elvaston and Hamilton, the Wabash branch line would terminate some seven miles short of Keokuk.

In addition to using the TP&W line at this point, the stations at Elvaston and at Hamilton are operated by the TP&W with Wabash paying half of the maintenance and operation costs and taxes.

The Wabash records show that agreements have been in effect between the predecessors of Wabash and TP&W and that the Wabash has used the TP&W Elvaston-to-Hamilton line since 1859 or nearly 100 years.

I might state here that the Wabash has the right in perpetuity to use the Keokuk-Hamilton Bridge for the pay- [fol. 1406] ment of certain charges based on cars and type of traffic. This bridge property is now owned by the City of Keokuk and is under the supervision of a bridge commission. In the City of Keokuk, Wabash is the owner jointly with the Rock Island, Burlington and TP&W of the Keokuk Union Depot Company whose facilities are used by Wabash. The making up of trains, the switching of freight to industries and other services at Keokuk are provided by the Rock Island under contractual arrangement between Wabash and Rock Island dated July 1, 1904.

The Keokuk Branch of the Wabash is 75.8 miles in length and represents a substantial investment by Wabash to serve the area it traverses.

Q. Could I interject there again to ask you if you have the total investment of the Wabash in the Keokuk branch?

A. Again on the basis of the valuation section our investment in the Keokuk branch is one million eight hundred thirty thousand five hundred thirty-eight.

Q. Thank you.

A. My exhibit H-49 shows the volume of Wabash business to and from points on the Keokuk Branch for the period November 1, 1954 to October 31, 1955, inclusive, including the stations of Hamilton, Illinois, and Keokuk, Iowa. The total number of revenue cars originating or terminating on that branch in Wabash service is 11,051.

Of this 11,051 cars, it will be noted that 1,110 cars orig- [fol. 1407] inated at Keokuk and 12 cars at Hamilton for a total of 1,122 cars. In addition, 1,364 cars were delivered at Keokuk and 73 cars at Hamilton for a total of 1,437 cars. Therefore, of the total of 11,051 cars handled by Wabash on the Keokuk Branch, 2,559 cars or 23 per cent moved to or from Hamilton and Keokuk and would be directly affected by discontinuance of the trackage arrangement with the TP&W that I have described. These figures further demonstrate that in the event the traffic to and from Keokuk and Hamilton were lost from the total business on the Keokuk Branch, there would not be sufficient volume left to and from the stations on that branch north of Meredosia, Illinois, to warrant continued operation of the Keokuk Branch north of that point. It follows that loss of the trackage rights over the TP&W line would definitely require consideration of abandonment of the Keokuk Branch and its consequent adverse effect on the municipalities served by the branch. The Illinois communities of Meredosia, Varsailles, Hersman, Mount Sterling, Timeweli, Clayton, Chatton, Bowen, Denver and Bentley depend upon the Wabash exclusively for rail service.

Wabash also interchanges traffic at Keokuk with the Rock Island, Burlington and TP&W, on which traffic the Wabash and the connecting line have each performed line-haul service to or from Keokuk. For the year 1955 the cars interchanged totalled 63, of which 20 were received [fol. 1408] from connections and 43 were delivered to connections at Keokuk.

The population of Keokuk is approximately 17,000. Through the operating arrangements with the Rock Island which I have mentioned, Wabash serves four industries. Through switching arrangements we also serve 31 industries that are located on the Burlington. There are 55

industries in addition to the four at Keokuk which are served directly by Wabash:

At Mount Sterling, Illinois—15 industries.
At Meredosia, Illinois—six industries.
At Carthage, Illinois—six industries.
At Hamilton, Illinois—five industries.
At Bowen, Illinois—four industries.
At Timewell, Illinois—four industries.
At Clayton, Illinois—four industries.
At Versailles, Illinois—three industries.
At Bentley, Illinois—two industries.
At Denver, Illinois—two industries.
At Golden, Illinois—two industries.
At Chatton, Illinois—one industry.
At Hersman, Illinois—one industry.

[fol. 1409] As in the case of shipments moving to and from Streator, Illinois, an analysis has been made of the shipments handled by Wabash to and from Keokuk, Iowa, for the months of January, April, July and October 1955. This analysis is shown in my exhibit identified as H-50. The first sheet shows that during the period mentioned 110 cars were shipped from Keokuk to destinations beyond the Wabash in the states shown. 244 cars were shipped to destinations beyond the Wabash in the states shown in the first column on sheet 2. Sheets 3 and 4 show that 203 cars originated on the Wabash and 297 cars originated beyond the Wabash and were delivered at Keokuk. It will be noted that the shipments involved moved from or to origins or destinations in every part of the nation.

My Exhibit 51, that is, identified as H-51, shows the carload traffic interchanged between the TP&W and the Wabash for the period January 1, 1951, to December 31, 1955, inclusive. This is traffic on which both the TP&W and Wabash perform linehaul service.

I would like to say now at this point that the decline in the carloads interchanged with the TP&W at Forrest, Illinois, in the last five years has been due to various conditions, such as the unusual influx of traffic in 1951 occasioned by the Korean conflict, an unusual movement of wheat, corn and oats in 1951, changes in the operation

of several industries served thru that junction, formerly served jointly and which are now served exclusively by [fol. 1410] either the TP&W or the Wabash, and the improvement of Wabash service from Kansas City and Chicago to Wabash eastern connections. Adding together the total carloads of traffic that were handled by Wabash and the Streator Branch and on the Keokuk Branch north of Meredosia, together with the carloads interchanged with the TP&W at Elvaston, Forrest and Fairbury, it will be seen that a total of 17,469 cars, revenue cars, per year, would be involved in any disturbance of the Wabash operating and interchange arrangement with the TP&W.

Mr. Wheeler: Mr. Examiner, may I interrupt here just a moment. He made a reference to, as I believe, in his line haul between Kansas City and eastern points. I wonder if I may have that read back.

(The last paragraph in the statement of the witness above was read by the reporter.)

Mr. Davis: He hasn't made that, Mr. Wheeler, any reference to Kansas City.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.
Continue.

A. (Continuing) My Exhibit H-52, consisting of 10 sheets, is compiled to show in some detail the extent to which the route of the TP&W and Wabash is used by shippers as an important channel of trade in moving car- [fol. 1411] load freight to and from all parts of the country. Sheet 1 is a recapitulation of the detailed information contained on the remaining sheets. The exhibit is compiled from records of the Wabash for the months of January, April, July and October 1955, with the exceptions noted. I have shown the origin and destination states, the junction at which the traffic was interchanged between TP&W and Wabash and the haul received by TP&W and Wabash on the traffic shown. It will be noted that carload traffic moves freely via the through routes utilizing the lines of

the TP&W and Wabash from and to practically every state in the Union. It also indicates clearly the availability of joint rates on such traffic as well as the divisional arrangements and working arrangements existing between the TP&W and Wabash and their connections.

It is important to Wabash that the through routes via existing gateways at which traffic is interchanged between Wabash and TP&W be kept open and undisturbed and the channels of trade which have developed through the use of such through routes remain available to the shipping public as in the past. Furthermore, it is important to Wabash that the through routes via the points of interchange between Wabash and the applicants Santa Fe and Pennsylvania be preserved so that Wabash may continue to interchange traffic with applicants at those points and have the opportunity to compete with routes comprised of the lines of the applicants and the TP&W through the [fol. 1412] area involved. For these reasons, Wabash requests that the Commission, in the event it grants the authority sought in the application in Finance Docket No. 18991, require the TP&W and the parties acquiring control thereof, and each of them, to maintain and keep open and in effect as between themselves and Wabash all existing routes and channels of trade via existing junctions and gateways.

It is also vital to Wabash and the continued operation of its Streator Branch and Keokuk Branch that the existing traffic and operation relationships and arrangements in effect between Wabash and TP&W, which involve Wabash use of trackage over the TP&W between Forrest and Fairbury, Illinois, and between Hamilton and Elvaston, Illinois, remain in force without interruption upon fair and reasonable terms. Wabash requests, therefore, that in the event the authority sought in the application in Finance Docket No. 18991 is granted, the TP&W and the parties acquiring control thereof, and each of them, should be required to maintain and keep in effect all existing traffic routes and operating relationships and arrangements now existing between Wabash and TP&W.

Wabash in its petition for leave to intervene in Docket No. 18991 has made a request upon the Commission, in

accordance with Section 5(2)(d) of the Act, to be included in the transaction proposed therein upon equal terms with other parties thereto in the event carriers other than ap- [fol. 1413] plicants are to be authorized to participate therein. At a meeting of the Board of Directors of the Wabash held on January 19, 1956, the Wabash was authorized to intervene in this case, and I was authorized to make such request for inclusion in the transaction and to take such further action in behalf of the Wabash as will permit it to participate equally with other parties in the transaction, including the purchase of shares of the capital stock of TP&W, in the event that carriers other than applicants in Docket 18991 be included. In the eventuality mentioned, I now state that Wabash agrees to purchase for cash to be paid to the applicants, or either of them, or such other appropriate party, the necessary number of shares of the TP&W stock and execute such documents as may be required to effect such purchase so as to make Wabash an equal participant in that transaction with such other carriers other than the applicants as may be included therein.

As will be seen reference to a railroad map, Wabash competes with the Santa Fe from Kansas City to Chicago; with the route of the Santa Fe to Lomax, Illinois, TP&W to Effner, Illinois-Indiana, thence Pennsylvania to the east; and with the route of the Pennsylvania from St. Louis, Missouri, and Decatur, Illinois, Chicago, Illinois, and Detroit, Michigan, to the east. Wabash also competes with the Rock Island from Kansas City to Chicago and elsewhere. Reference to my map Exhibit H-45 shows that Wabash and Nickel Plate compete with each other for [fol. 1414] substantially the entire length of their lines from Buffalo, New York, on the east, to St. Louis, Missouri, on the west.

The Nickel Plate and the Rock Island have made requests under Section 5 (2)(d) of the Act to become equal parties with the applicants in Docket 18991 in acquiring control of the TP&W.

It is my considered judgment that, with conditions imposed that I have requested, the control of TP&W through stock ownership by Santa Fe and the Pennsylvania will

not impair the traffic and operating relationships between the TP&W and Wabash or the opportunity of Wabash to compete with those applicants for traffic, and with the through routes made up of their lines and the TP&W. My judgment is based upon the independence of management exercised by Wabash during the years of its control through stock ownership directly by Pennsylvania Company and indirectly by The Pennsylvania Railroad Company. It is my belief that if the application in Docket 18991 is approved the TP&W will likewise be free to exercise independent judgment in matters which here concern the Wabash.

On the other hand, if the Rock Island, the Nickel Plate and perhaps other carriers are to be authorized by the Commission to become part owners of the TP&W, then the Wabash should be permitted also to become an equal participant in such control, not only in the interest of preserving its opportunity to compete with the contractual, [fol. 1415] traffic and operating arrangements described, but also in the interests of the public which uses its Streator and Keokuk Branches and which has established trade channels in Wabash-TP&W routing.

Wabash has intervened in Finance Docket No. 19086 in opposition to the control by the M&StL of the TP&W through stock ownership.

Through the years the Wabash and the M&StL have had a substantial interchange of through business at Albia, Iowa, and Des Moines, Iowa. In the year 1955 this amounted to 21,041 revenue cars. A substantial part of this business is either destined to or originates in Illinois or the states east thereof.

Q. Mr. Atkinson, could I interject at this point and ask you if you know the approximate percentage of the interchange with the M&StL at Albia and Des Moines which moves through Illinois or points east of the State of Illinois.

A. We will, on investigation of that traffic, say that about 35 per cent originated at or was destined to points in Illinois and the East.

Q. Thank you. Proceed.

A. It is my view that in the event the TP&W is controlled by the M&StL, a large part of this business would be influenced over the M&StL through the Peoria Gateway to our Illinois junctions with the TP&W at Forrest and Elvaston, Illinois. Because the total volume of business [fol. 1416] moving over the Des Moines line of Wabash is not great without the traffic interchanged at Albia and Des Moines with the M&StL, the loss of this traffic is of great concern to the Wabash.

I have previously described the great importance to Wabash of the trackage arrangements of long standing with the TP&W both in reaching its Streator Branch and in reaching Hamilton, Illinois, and Keokuk, Iowa, on its Keokuk Branch and the continuance of such arrangements upon fair and equitable terms. The future of our Keokuk Branch, which is dependent upon continued maintenance of the TP&W trackage between Elvaston and Hamilton, Illinois, and the joint trackage of the TP&W between Hamilton and the Keokuk Bridge, is of concern to the Wabash in this case. The importance of the TP&W line between Keokuk and Peoria to the M&StL is questioned, in view of the obvious fact that the M&StL will be interested primarily in the movement of traffic for the long haul on its own rails to or from Peoria that now moves on the TP&W line to or from Keokuk or to or from Lomax.

At such time as the M&StL has a contract for the purchase of the controlling stock of the TP&W, which is before the Interstate Commerce Commission for approval, then Wabash desires to become an equal participant with the M&StL, and such other carriers as may be parties thereto, in such transaction, and upon approval by the Commission will pay to the appropriate person or party such sum in cash as will make Wabash an equal partici- [fol. 1417] pant in such transaction.

In the event such transaction becomes a reality, it is my opinion that it will be consistent with and serve the public interest for Wabash to be included as a party to the transaction in order to preserve its opportunity to compete for the traffic which it now interchanges with the M&StL and the TP&W and to maintain its operating agreements and

arrangements with the TP&W upon fair and equitable terms.

As some measure of protection of the interests of Wabash which I have described, in the event of the M&StL. is authorized to acquire control of the TP&W and Wabash is not included as an equal participant in the transaction, then the Commission should require as a condition that the TP&W, the M&StL. and any other parties to the transaction, and each of them, maintain and keep open or in effect as between themselves and Wabash all existing routes and channels of trade via existing junctions and gateways and all existing traffic and operating relationships and arrangements.

[fol. 1418] Q. Does that conclude your statement on direct, Mr. Atkinson?

A. It does.

Mr. Davis: That is all.

Exam. Albus: Cross-examination, please.

Mr. Olson: I would like to reserve our right to cross examine until Mr. Wheeler returns.

Exam. Albus: Mr. Thomas.

Mr. Thomas: I have none.

Exam. Albus: Mr. Lucas.

Mr. Lucas: I think I have just a couple of questions.

Cross examination.

By Mr. Lucas:

Q. Mr. Atkinson, the document that Mr. Wheeler has distributed and which has been marked for identification as H-53, he has supplied the information that your testimony there was given at Washington hearing on June 12th and 13th, 1941.

I want to ask you if prior to that date the interchange between the Pennsylvania Railroad and the Wabash at Logansport was in effect.

A. Yes, it was.

Q. That goes back a considerable period of time prior to the acquisition of control of the Wabash by the Pennsylvania?

A. Yes. I think it goes back to at least 1900, beginning of the year 1900.

Q. In the same proceeding, namely, the acquisition of [fol. 1419] control of the Wabash by the Pennsylvania Railroad Company and Pennsylvania Company I quote from the Commission's approval of that acquisition of control with the following condition attached thereto, I now quote, in Item Sub-C in the Commission's report "that the Pennsylvania Railroad Company shall maintain joint rates, joint routes, interchange points and channels of trade through gateways of the Wabash Railroad Company now existing under the present operation of those properties," and then some more and I close the quote. Has that been complied with to your personal knowledge?

Mr. Wheeler: Mr. Examiner, I object to this as a leading question on redirect examination.

Mr. Davis: What do you mean redirect examination?

Exam. Albus: Objection is overruled. Let the witness answer.

Mr. Lucas: I agree with Mr. Davis.

Mr. Davis: I object to the word "redirect" in this case.

Exam. Albus: That was just a statement.

By Mr. Lucas:

Q. I don't know how I could ask you the question without directing your attention to the text. Has that condition been complied with to your personal knowledge?

A. Why, I am sure it was.

Mr. Lucas: That is all.

Exam. Albus: Mr. Cassell.

Mr. Cassell: May Mr. Broker and I reverse our normal [fol. 1420] order?

Exam. Albus: Yes, indeed.

Cross examination.

By Mr. Broker:

Q. If the Wabash is included in this transaction it is quite obvious, isn't it, that there will be multiple ownership?

A. Yes.

Q. Are you familiar with the proposal to acquire the control, stock control, of the Illinois Terminal Railway Company in Finance Docket No. 18572?

A. Yes.

Exam. Albus: I remember a little about that too; it is still very pertinent to me right now.

By Mr. Broker:

Q. Could you describe that railroad generally as a linehaul railroad?

A. The Illinois Terminal?

Q. Please.

Mr. Davis: I will interject an objection to the relevancy and materiality of this questioning in this proceeding.

Exam. Albus: I will permit the witness to answer whether or not in his opinion it is a linehaul carrier.

The Witness? The Illinois Terminal?

Exam. Albus: The Illinois carrier is a carrier upon which we are inquiring.

A. I think the record speaks for itself. The Illinois [fol. 1421] Terminal is an 80 per cent terminal carrier, only 20 per cent of its business roadhaul. 80 per cent of its business is the industrial area in East Alton and Federal, Illinois, across the river from St. Louis.

By Mr. Broker:

Q. Nevertheless it has linehaul revenues?

A. It does.

Q. How many railroads propose to purchase control of that property?

A. Eleven.

Q. And would you say there are any conflicting interests among those owners in respect to that property and the traffic which originates and terminates on it?

A. Is there any conflicting interest?

Q. Yes, among those prospective owners.

A. After they acquire the joint control or do you mean there is a conflicting interest now?

Q. Are there conflicting interest now?

A. Yes.

Q. Will there not be conflicting interests insofar as each desires to obtain traffic from that railroad?

A. Yes.

Q. Now, if the Commission approves that transaction do you think that property will be operated efficiently?

Mr. Davis: I will renew my objection before the answer is given.

[fol. 1422] Exam. Albus: I don't want to get into the trial of that case or the decision of it but I will permit the witness to answer.

Mr. Broker: I am asking his opinion solely.

Exam. Albus: Very well.

A. I do, indeed, I think it can be operated efficiently. It is a matter of ownership rather than management.

Mr. Broker: No other questions.

Exam. Albus: Has that case been determined yet by the Commission?

The Witness: There is a proposed report of the Examiner's but the Commission has not yet issued its final order.

Exam. Albus: Mr. Cassell, please.

Mr. Broker: May I just make it clear, Mr. Examiner, I am simply asking this witness's opinion as to the future.

Exam. Albus: That is the only reason it went into the record.

Proceed, Mr. Cassell.

Mr. Cassell: I think perhaps if Mr. Wheeler examined it might eliminate a number of my questions that will be duplicated.

Exam. Albus: Are you ready, Mr. Wheeler?

Mr. Wheeler: I am not quite ready.

Mr. Cassell: I will proceed.

Exam. Albus: All right.

[fol. 1423] Cross examination.

By Mr. Cassell:

Q. Mr. Atkinson, you have asked to participate in the TP&W if the M&StL is allowed to purchase the property, isn't that right?

A. Yes, sir.

Q. That is because the M&StL is a competitor of yours?

A. In part.

Q. And you want to protect the Wabash Railroad in that case?

A. Yes.

Q. Now, in the Santa Fe-Pennsylvania purchase you haven't asked to participate if the Pennsylvania and Santa Fe are the only purchasers, isn't that right?

A. That's right.

Q. And if any other carriers get in you have asked to get in?

A. That's right.

Q. Is that because you compete with some of those additional carriers that might have asked to come into the case?

A. Yes, I think that they might have an undue advantage if they were in the ownership of that property and we were not.

Mr. Wheeler: May I have the question and answer read.

(Question and answer read.)

By Mr. Cassell:

Q. Mr. Atkinson, on your Exhibit 50 you have shown traffic that originates and is destined to Keokuk and moves over the Wabash, as to all of the cars which move to or from points east of Illinois, and those could have been [fol. 1424] carried by the TP&W as the first carrier, could they not rather than the Wabash?

A. That is possible.

Q. So to that extent you are in competition on those cars with the TP&W, isn't that right?

A. That's right.

Q. The same would be true of cars that moved from or to points south, east and south of Illinois, isn't that right?

A. I don't know about south exactly.

Q. Well, let's say southeast.

A. Southeast and east, yes.

Mr. Cassell: That's all.

Exam. Albus: Mr. Wheeler, please.

Cross examination.

By Mr. Wheeler:

Q. Don't the figures you cited with respect to the size of the interchange between the M&StL and the Wabash at Albia and Des Moines indicate that those two roads are substantially complementary, that is, the M&StL and the Wabash?

A. Do you mean complementary as a lineal extension or complementary as parallel and competing? I don't understand your point.

Q. You don't understand the word complementary to be different from competitive?

A. Whether it is competitive, it may be complementary to natural lineal extension as against parallel line and com- [fol. 1425] petitive. I think it is a natural lineal extension more than a parallel competing line.

Exam. Albus: All right, gentlemen, let's proceed.

Mr. Wheeler: Mr. Examiner, we did not have the benefit of these exhibits.

Exam. Albus: I am very sorry about that.

Mr. Hoag: I have one question I would like to ask. May I interpose now.

Exam. Albus: Yes, go ahead.

Cross examination.

By Mr. Hoag:

Q. Mr. Atkinson, all the applicants in the present two proceedings have heretofore stated on the record that they have no objection to the Commission imposing the Washington job protection agreement for the benefit of employees who may be adversely affected in the event that their respective applications are granted, should this matter be ultimately resolved that the Wabash would become a purchaser or participant of does the Wabash object to the imposing of light conditions for the protection of employees.

A. Not at all.

Mr. Hoag: Thank you, Mr. Atkinson.

Exam. Albus: Are there any further questions before Mr. Wheeler resumes?

(No response.)

Cross examination (continuing).

[fol. 1426] By Mr. Wheeler:

Q. Mr. Atkinson, what are the traffic advantages to the Wabash if the Santa Fe and the Pennsylvania were in control?

A. Why, we compete with them and I don't know that there is any great advantage that they always were governed more or less by the routing of the traffic of which they have nothing to say and the Wabash solicitation is strong enough to participate in the movement with the Pennsylvania, why, we would participate I don't know whether it is a question of the Pennsylvania helping us in getting that business or whether it is our own efforts.

Q. Do you know of any advantages that are derived by the Wabash from control by the Pennsylvania?

A. No, I don't. We compete with them the same as anybody else. We get just as long hauls as we can just the same as they do against us.

Mr. Davis: May I interject here, Mr. Wheeler?

Was your last answer, Mr. Atkinson directed particularly—

Mr. Wheeler (interrupting): I object to any interruptions. I think he is going to have his chance on redirect.

Exam. Albus: All right, proceed.

By Mr. Wheeler:

Q. As I understand it, Mr. Atkinson, you want to participate in the ownership of the TP&W in the event the M&StL application to acquire control is granted but you do not want that right in the event the Pennsylvania-Santa [fol. 1427] Fe application is granted, is that correct?

A. That is correct.

[fol. 1428] Q. And what particular reasons cause you to make that destination?

A. Well, it is a matter that the Santa Fe and the Pennsylvania through this bridge route of the TP&W are already in the business and we are competing against that business now, but if the M&StL comes in we get a new person and that changes the whole status of the thing, and my whole position is that if anybody else comes into this picture that wants to have some voice in the ownership and the management of the TP&W other than those who are now probably working out that we should be a part to it and have equal voice in it.

Q. Don't you think the Pennsylvania will have a greater desire to route traffic via the TP&W as against the Wabash in the event that it obtains control of the TP&W?

A. Well, again I say I don't know; there is very little of that traffic that the Pennsylvania are routing. My experience is that the shipper or the consignee does the routing. Wherever his service is, if he wants the service, he will specify the routing.

Q. Mr. Atkinson, there is a good deal of testimony in this record to the effect that the originating carriers have substantial influence on the routing of traffic. Now, assume with me for the moment that that is the case. First of all, do you agree with that?

A. Why, I think they exercise their influence with the originating shipper in order to get the longest haul possible [fol. 1429] out of the movement, but that has to be predicated on good service.

Q. Now, Mr. Atkinson, there has been a lot of testimony here, too, that there is good service from the Pennsylvania via Effner, and I want you to keep that in mind in answering this question. Don't you believe that the Pennsylvania will have a greater incentive to route traffic via the TP&W through Effner if it acquires control of the TP&W than it has at the present time?

Mr. Thomas: Mr. Examiner, I object to this type of question. The witness says the shipper routes most all the traffic and he keeps coming back, he has all through this hearing, with the assumption in the question that the carrier routes the traffic.

Mr. Wheeler: I will change it to "influence of routing."
Mr. Thomas: Thank you.
Exam. Albus: The witness may answer.

A. Well, I don't know that I can speak for what the Pennsylvania would do, but I still say that we have that situation now and we have been competing with that situation, and I think successfully, and I don't know that this change or this acquisition of control by these two applicants will change the situation any.

By Mr. Wheeler:

Q. You don't think they will have any greater interest, the Pennsylvania will have any greater interest, in the TP&W and the traffic that moves over its lines after [fol. 1430] acquisition than it does now, is that correct?

A. Well, I think they will first consider whether they want to handle this business—I assume you are talking business from the east to the west?

Q. Yes, sir.

A. I would think if I was running the Pennsylvania that I'd want to try to get the longest haul on it, and that means St. Louis or Chicago over their own railroad first, and then second, when they would favor the Effner interchange as against the Wabash-Logansport interchange would be a matter of determining the best service and from where the traffic originated. I don't think they would have any influence on traffic that originates from Detroit or that area up there because it wouldn't be possible for the Pennsylvania to work through Effner on that traffic which the Wabash predominates in now.

Mr. Wheeler: Now, will you read him my question.

(Mr. Wheeler's last question on page 1429, starting with line 23, was read.)

A. If you want a yes or no to it, I can't answer it.

By Mr. Wheeler:

Q. You cannot answer it?

A. I would have to qualify it as to my judgment and my thinking.

Q. Did you have any discussions with officers or directors of the Pennsylvania regarding their proposed acquisition of the TP&W, Mr. Atkinson?

A. With an officer or a director of the Pennsylvania?

[fol. 1431] Q. Yes, sir.

A. Well, it so happens that I have Mr. Symes and two others formerly Pennsylvania officers and directors and, as I say, Mr. Symes, who is now President and Director of the Pennsylvania, is the Wabash Board. I talked to Mr. Symes about the Wabash intervening in this case, or in these cases, as a Director of the Wabash, not as a Pennsylvania officer or a director, because I had been advised that he was not going to be present at the board meeting on January 20, at which time I proposed to present to my board the position of the Wabash in these cases and to secure their judgment and their approval if they agreed with me intervening, and for the benefit and to protect the interests of the Wabash, and I therefor did talk to Mr. Symes, and told him what I was going to do, and that it would come up before the board. I think it was the day before the board meeting.

Q. My question related to the acquisition of control. You did have a discussion with respect to that, is that correct, with respect to the Pennsylvania's acquisition of control of the TP&W. Do I understand your answer to be that you did have such discussion?

A. I had a discussion with him as a director of the Wabash, with respect to the Wabash taking a position and intervening in this case.

Q. What I want to know, though, apart from the inter-

[fol. 1432] vention, did you have any discussion with Mr. Symes with respect to the Pennsylvania's acquistion of the TP&W?

A. No.

Q. Did you have any such discussion with any other director or officer or employee of the Pennsylvania?

A. I want to get exactly clear your question.

The Witness: Could you read the question again.

(The last question was read.)

A. No, sir.

By Mr. Wheeler:

Q. On the basis of your experience as President of the Wabash, do you think that ownership of the Wabash by the Pennsylvania causes them to seek to influence the movement of traffic over the Wabash because of that control, because of their stock control of that company?

A. No, I don't.

Q. You do not?

A. No.

Q. Now, Mr. Atkinson, did you discuss with any officer or employee or director of the Pennsylvania—and by mentioning "Pennsylvania" I include the Pennsylvania Company—your petition to intervene in this proceeding?

Mr. Davis: That question has been asked and answered once.

Exam. Albus: No, it hasn't.

Mr. Davis: I object to it.

Exam. Albus: The objection is overruled.

[fol. 1433] A. Could I have the question, please.

Exam. Albus: Read the question.

(The last question was read.)

Exam. Albus: Now, it will be understood that it will be any conversation or any discussion other than with Mr. Symes, as a director of the Wabash?

Mr. Wheeler: No, sir, I didn't want it so excluded. This is the first time I have asked this question, Mr. Examiner.

Exam. Albus: All right, do you have the question, Mr. Witness?

The Witness: I thought that he had asked a similar question before, but I will try to answer the question.

Exam. Albus: Very well.

A. I had no discussion with any officer or director of the Pennsylvania Company or Pennsylvania Railroad, as such, with respect to the Wabash intervening. I did have a discussion with Mr. Symes to inform him that at the board meeting of the Wabash, of which he is a director, that I proposed to discuss the matter of intervention by

the Wabash in these cases, and that at that time I knew he was not going to be present at the board meeting and I felt it was the courteous thing to do to acquaint him with this important matter that was going to be before the board.

By Mr. Wheeler:

Q. Did you have a draft of the petition at that time?

[fol. 1434] A. No, sir.

Q. I believe you indicated previously that Mr. Symes was the only officer or director of the Pennsylvania that is an officer or director of the Wabash.

A. At the present time.

Q. Are you correct, sir? Who are the former—

A. (Interrupting) Probably I should clarify that. Mr. Clement, former President of the Pennsylvania, and I believe he still is a director of the Pennsylvania Railroad, he is on my board.

Q. Yes, sir.

A. Mr. Walter S. Franklin, who was formerly a President, and I still understand he is a director of the Pennsylvania, is on my board, and Mr. Symes, the President presently of the Pennsylvania, and a director, is on my board. My answer is that I did so with the idea that we currently had the President of the Pennsylvania on the board, and when Mr. Clement and Mr. Franklin went off, I assumed that they had severed connections, but I now recall that they are directors of the Pennsylvania Railroad, but I had no discussion with them whatsoever.

Q. In that connection, Mr. Atkinson, do you recall when their applications to serve as directors of the Wabash while at the same time serving as directors of the Pennsylvania were approved by the Commission?

A. Well, as they were elected President—well, originally [fol. 1435] there were two directors in the Pennsylvania, in the reorganization plan, that sought authority from the Commission to serve as directors in the Wabash, so that would probably be around 1942.

Q. Do you know whether or not or does counsel know whether those decisions are reported?

Mr. Davis: I do not know whether they are.

A. Yes—do you mean is there an order issued to them?

By Mr. Wheeler:

Q. No, sir, I mean whether they are reported.

Mr. Davis: I do not know whether they are reported in the official reports.

Mr. Broker: I do not think they are.

The Witness: I don't think they are, either.

Mr. Wheeler: I would like to request that counsel furnish me copies of those, if he will.

Mr. Davis: I don't know that I have them available. Of course, they are public records which you could obtain as easily as I from the Commission. If I have them in our files, I would be most happy to reproduce them and send them to you, Mr. Wheeler.

Mr. Wheeler: I would appreciate it, if you would. As I recall, they are not readily available at the Commission. The files have been taken out of the Commission office and sent to a storage place and they are a little difficult to obtain.

Mr. Davis: Those are the finance dockets in which Mr. [fol. 1436] Clement and Mr. Franklin were—

Mr. Wheeler: And Mr. Symes.

Mr. Davis (continuing): —were authorized to serve on the Wabash board?

Mr. Wheeler: There were no other interlocking directors, I take it?

The Witness: No.

By Mr. Wheeler:

Q. Did you discuss with Mr. Symes the question of your being a joint purchaser with the Santa Fe and the Pennsylvania of the TP&W?

A. Yes.

Q. What was that discussion?

A. Well, the discussion was simply, this discussion I had with him was as a director, as I say, because he wasn't going to be at the Board meeting, and this was

a matter that was going to come up before the board, that I felt the Wabash position was just as we have stated it in our petition, namely, that we should see that the usual conditions are imposed, and furthermore that the trackage arrangements, contracts covering the use of these tracks, jointly or exclusively, or by right of use, that they should be preserved, that they were long-standing, and it was something that the interests of the Wabash required.

And, then, furthermore, I touched on the fact that the Nickel Plate and the Rock Island had already indicated [fol. 1437] that they wanted to participate in the ownership: therefore, if the Wabash position should be that if they did intervene, if the Commission held that these roads were entitled to participation, that we should seek a similar participation.

By Mr. Wheeler:

Q. Did you discuss with him participating, though, sir, participation by the Wabash independent of the participation of the Nickel Plate and the Rock Island, that is to say, did you discuss with him the question of whether or not you should be a one-third owner with the Santa Fe and the Pennsylvania?

A. No, I did not.

Q. Why not?

A. Simply because, as I stated earlier, that as far as the applicants acquiring this control, I think that we have been confronted with that situation now. And my whole concern was that in the event somebody else came in and got in the picture that we wanted to be sure that we weren't crowded out of that picture.

Q. The only thing I don't understand, Mr. Atkinson, is why there should be a difference in your estimate of the situation as between ownership by the Santa Fe and Pennsylvania and yourself and ownership by the Santa Fe, Pennsylvania, Rock Island and yourself, why does the introduction of the Rock Island or the Wabash change your position in this case?

A. Well, I am trying to make it clear that the present [fol. 1438] situation, our competition and so on, that this

matter of the Santa Fe, on the one hand, of that railroad and the Pennsylvania, on the other, acquiring control of it and having a voice in the management, it wouldn't have any different effect than what we are already dealing with or we are under competition with now, but if somebody else that doesn't have that relationship comes in, such as these other roads that we compete with on a different type of traffic and different movements, that if they come in, then, I felt, that the Wabash could best preserve their rights and have their interests protected by an equal participation.

Q. Mr. Atkinson, I would like to pursue that just a little farther. As I understand your testimony, you do compete with the Santa Fe, is that correct?

A. Yes.

Q. And you do compete with the Pennsylvania?

A. Right.

Q. And you compete with the Rock Island?

A. Yes.

Q. Which would you say of those three would you say was your greatest competitor?

A. I don't think they are the greatest competitor. If you bring the Nickel Plate in, then I can talk about—

Q. (Interrupting) I would rather not bring the Nickel Plate in yet.

Exam. Albus: Just those three.

[fol. 1439] A. Well, I think the competition with the Pennsylvania is greater than either of the other two.

By Mr. Wheeler:

Q. Is your competition with the Santa Fe your second of the three from the standpoint of competition and the Rock Island third?

A. Yes, I would say that.

Q. Mr. Atkinson, you understand, do you not, that the Rock Island proposes as part of its intervention to maintain the TP&W as a so-called independent operation, do you not?

A. Yes.

Q. Now, having that in mind and having in mind the fact that the Rock Island is the third competitor as against the Pennsylvania and the Santa Fe, why would you need protection, the protection of ownership in the TP&W, if the Rock Island is introduced into the ownership to a greater degree, than you would—and not need protection when the Santa Fe and the Pennsylvania are the acquiring parties?

A. Simply because the Santa Fe and the Pennsylvania have established this route and are using it and I am in competition with it now. But if the Rock Island and some Nickel Plate—or you mention only the Rock Island, I will stick with the Rock Island—if they came into the thing to the extent that we are competitive, whether it is greater competition with the Santa Fe or lesser competition, it is going to be new competition, they are going to have a new field to work on, and that's why I say that. [fols. 1440, 1441] Q. Mr. Atkinson, don't you know that the Rock Island now interchanges with the TP&W?

A. Yes.

Q. And has a substantial interchange with it?

A. Yes.

Q. Do you expect that its interchange with the TP&W is going to change in the event it acquires a third ownership with the Santa Fe and the Pennsylvania in the TP&W?

A. I don't know. It might.

Q. Well, do you think that the Pennsylvania interchange with the TP&W will change if it acquires control?

A. I don't think they can do any more than what they have been doing.

Q. And you think the same thing is true with respect to the Santa Fe, is that correct?

A. That's right.

Q. But that doesn't apply to the Rock Island, is that correct?

A. No, sir.

Q. Now, will you tell me why.

A. Simply because to the extent that we do have competition with the Rock Island, if they have some other arrangement and have some interest in the TP&W, they

might be able to divert traffic or to influence traffic for movement over the TP&W or they might be able to some of the traffic that I get from the TP&W that goes [fol. 1442] to common points are in areas where we both serve, they might be able to work that, although I again go back to say that the routing is a lot in the hands of the shipper, but it is the influence that might be brought to bear.

Q. And you think that influence is important?

A. I think it is, yes, to this extent, when somebody new comes into the picture.

Q. And you think this diversion would take place that the Rock Island would engage in diversion of traffic from its lines to the TP&W or from—but the Pennsylvania would not, is that correct?

A. Well, I say to the extent the Pennsylvania is now operating and have been for years that their position or their field is more or less established. What would happen with a new party coming into the picture is something that you just can't foresee.

Q. And you regard the Rock Island, then, as a new party here, insofar as the TP&W is concerned, but not the Pennsylvania or the Santa Fe?

A. That's right, on business that I would compete for.

Q. Do you have a substantial interchange with the Pennsylvania at St. Louis?

Q. Yes, we have an interchange there.

Q. And I believe you previously stated you had a substantial interchange with the Pennsylvania at Logansport? [fol. 1443] A. That's right.

Q. Is your line running west of Logansport directly or substantially parallel to the line of the TP&W, and I make reference now to your Exhibit H-45?

A. Well, there is a segment of the TP&W that might be construed as parallel to our line from Logansport through Springfield and the Hannibal gateway to Kansas City.

Q. Aren't the lines, your lines and those of the TP&W, in Illinois about as parallel as railroad lines can be running in an east-and-westerly direction?

A. I have seen a lot of them run side by side.

Q. Even if they ran side by side, they couldn't be much more parallel than these, could they?

A. Well, a small segment in there.

Q. I am talking solely about Illinois now, sir. You would agree as to that segment, would you not?

A. Yes, plus the fact, of course, we have a north and south line that bisects it.

Q. It bisects both your line and the TP&W line?

A. That is right.

Q. With respect to Streator, you said the Wabash serves 40 industries located on the Burlington, GM&O, and the New York Central, page 6 of your statement. Are those industries on the lines of these other carriers mentioned rather than on your line or are they jointly served by [fol. 1444] you and those other lines?

A. They are located on the rails of the other lines.

Q. Could those industries ship or receive shipments from all over the United States via these other lines without the Wabash?

A. Oh, they could by circuitous routes for an indirect rail move.

Q. Do you regard the New York Central east as being a circuitous route?

A. New York Central?

Q. Yes, sir.

A. The New York Central is not shown on this map.

Q. You are not familiar with their lines east of Streator?

A. Yes, I am more or less familiar with it. I think that at certain points in the east they are circuitous as against the Wabash route.

Q. Certain points?

A. Yes.

Q. But as to most points, would you not agree that they are not circuitous as compared with the Wabash?

Q. I think there are a number of points where they wouldn't be circuitous.

Q. Where they would not be?

A. Would not be.

Q. Wouldn't they be a majority of points?

A. They might be a majority of points, but not with [fol. 1445] respect to where the traffic is moving in that

particular area. I have in mind, for instance, Detroit. I don't think they would be as direct as the Wabash serves.

Q. Do they have a competitive service with you into Detroit and the New York Central out of Streator?

A. Yes, by getting into the Chicago congested area.

Q. By getting into the Chicago congested area—and that is your testimony with respect to them. Do you believe that is the only way they can get to Detroit, the New York Central?

A. They can get there other ways, but I think it would be circuitous.

Q. You do?

A. Yes, sir.

Q. Are the arrangements which you have with the TP&W, these trackage arrangements that you have testified to, beneficial to the TP&W?

A. Well, I would say so, yes, as long as the capacity is not consumed, a little help and maintenance and expenses for the use of their tracks is always helpful.

Q. So that they benefit the TP&W economically?

A. To some extent.

Q. And that would be true regardless of who owned the property, would it not?

A. That is true.

Q. What makes you think that you would lose those [fol. 1446] trackage and other arrangements you now have in the event that somebody else acquired the property?

A. Well, there might be abandonment proceedings for part of the line—of course, those abandonment proceedings have to go before the Commission and we would probably have the protection or the right before the Commission to reserve these rights.

Q. You don't regard this as an abandonment proceeding, do you?

A. No, except—while I wasn't at the hearings, I heard there was some discussion about abandoning the west end of the TP&W in connection with the M&StL.

Q. Was that one of the things you had in mind in intervening in this proceeding, Mr. Atkinson?

A. Why, yes, for protection of the west end there where

we have this trackage and the right to enter into Keokuk, but not solely because of that.

Q. What was the other?

A. The other is that the M&StL is a new factor coming into the picture and we are working all right through Albia and I don't know to what extent we would suffer from that new arrangement.

Q. I am speaking for the moment of these trackage arrangements now, Mr. Atkinson.

A. Well, trackage arrangements are always—these contracts, like others, all come up for renewal or for renegotiation, and we did have a case in the TP&W where certain [fol. 1447] trackage rights in jeopardy when the former management was there and we were given five days' notice to get off.

Q. Why do you think you would be in better shape with respect to those trackage arrangements if the Santa Fe-Pennsylvania acquired the property than if someone else did?

A. I didn't say that we would. I apply that with equal force to both cases.

Q. So that was not a factor in determining your position with respect to wanting to buy in with any other carriers other than the Pennsylvania-Santa Fe, is that correct?

A. No, I think regardless, if anybody else bought in other than the applicants, your men in the M&StL, as an applicant in your case or the others, that the trackage rights might be in jeopardy, if there are some of my competitors in there. They might squeeze me a little bit and want to get a better deal out of it or get me off and they might say, "I am the landlord and you are the tenant and it is time you pay some more rent or you get off."

Exam. Albus: We will take a short recess.

(Short recess.)

[fol. 1448] Exam. Albus: The hearing will please come to order.

We will continue with the cross-examination of Mr. Atkinson.

By Mr. Wheeler:

Q. Mr. Atkinson, you referred on page 14 of your direct testimony to the movement via Albia and Des Moines in conjunction with the M&StL, amounting to 21,041 revenue cars in 1955. Are you familiar with the fact that that includes a large non-recurring movement from Detroit?

A. For that particular year, you mean?

Q. For that particular year.

A. I am not familiar with it. I know there was a movement. Was this in the war year you refer to?

Q. 1955.

A. In that year?

Q. Yes, sir.

A. Well, there may have been some in there because the interchange from '54, the previous year, was 18,477, as compared with 4,021, an increase of some 2,500-odd cars.

Q. Mr. Atkinson, what per cent of the part that you referred to as originating in Illinois or states east thereof originated west of Decatur, Illinois?

A. I think I referred to the fact that from a study we made on the interchange of the Wabash and M&StL that 35 per cent of the cars originated at or were destined to points in Illinois or east, so I don't have a figure as to west of Decatur.

Q. You don't know what percentage originated west of Decatur, Illinois?

[fol. 1449] A. No, I do not.

Q. Do you have the figure for west of Bement?

A. No, I don't know that we'd have a breakdown at that point.

Q. Would it not be at Bement that this diversion that you talk about that might possibly come about in the event the M&StL acquired the TP&W would take place from your lines?

A. You mean on traffic originating or destined to the M&StL?

Q. Yes, sir.

A. It would have to be Forrest, wouldn't it?

Q. It would be Bement up to Forrest, would it not?

A. Yes, that is right.

Q. Do you receive substantial interchange at Decatur from the southeast, Mr. Atkinson?

A. Oh, some, but not a great deal there. That would be with the Illinois Central.

Q. And that is not a big interchange point with you with the I.C.?

A. Is a big interchange point, but it is largely for the soy beans and grains which originate in Illinois on points not from the southeast.

Q. What about lay traffic?

A. There may be some of it, but that's not the big interchange.

Q. With the Wabash?

A. Between the Illinois Central and Wabash.

[fol. 1450] Q. Where else would you interchange on traffic coming from the south and southeast with the I.C., the Illinois Central?

A. Well, I think that might—the real interchange point is at Talona, I think, where the main line crosses the Illinois Central.

Q. Talona?

A. Yes, that is the real interchange.

Q. I see. And that traffic going to the Northwest might well move over your lines to Albia and there be picked up by the M&StL?

A. Coming from the Illinois Central to the Wabash?

Q. Yes.

A. Yes, it could move out.

Q. That would be the normal movement, would it not be, of those three roads?

A. I would think so.

Q. In connection with Exhibit H-51, you made an explanation of the decline in traffic interchanged at Forrest, Illinois, with the TP&W and made reference therein to an improvement of service on your lines. Would please explain that?

A. Well, the one I wanted to illustrate was that in this Exhibit H-51 it shows the total carloads delivered to and received from the TP&W or the Wabash for the first year was '51, and it showed a total of 5,128 cars and then the next year, '52, it went to forty-five twelve, the year '53 was

[fol. 1451] thirty-eight sixty-eight, and finally when you get down to '55 it was thirty-four thirty-eight. I generally explained that that was due to a number of causes, and one of the causes I said was the fact that we had improved our service from Kansas City to Chicago and to Wabash eastern connections. That came about by the dieselization and the use of diesel power and the modernization of yards and everything that merited us to handle business out of Kansas City via the Hannibal gateway through Decatur to Chicago and against probably the movement of it from Santa Fe to TP&W thence or from Santa Fe direct to Chicago.

Q. In other words—

A. (Interrupting) In other words, the traffic went, to some extent went that way instead of coming off the TP&W.

Q. Due to the improved service on the Wabash?

A. That is right.

Q. In comparison with the alternative service offered in connection with the TP&W?

A. That is right.

Q. Do you have a copy of Exhibit H-53?

A. Yes, sir.

Q. Refer to page 2 of that exhibit, Mr. Atkinson. Do you see the second paragraph there?

A. Yes.

Q. You stated at that time that the Pennsylvania will be [fol. 1452] in a position to lend a guiding and helping hand. Has it lent you such a guiding and helping hand?

Mr. Davis: I will put an objection on the record as to the line of questioning in connection with this case.

Exam. Albus: The objection is overruled.

A. Yes, they have, and I probably in order to clarify my position I think you asked me before whether there have been any traffic benefits derived from this, and my answer was that I didn't know of any traffic benefits, but to the extent that there are directors on my board that have had the experience and the training on the Pennsylvania they have helped as counsel in our policy matters and in our deliberations before the Board. That is to the extent of the helping hand.

By Mr. Wheeler:

Q. In that same hearing Mr. Wilkinson for the Pennsylvania—what office did Mr. Wilkinson hold, Mr. Atkinson, if you remember?

A. I think he was a superintendent.

Mr. Lucas: That is correct. It is stated at the bottom of page 2.

A. Yes, it is stated their superintendent, special duty, chief engineer's office.

Mr. Davis: I will renew my objection as to questions dealing with the testimony of Mr. Wilkinson in that proceeding for the same reasons stated before.

[fol. 1453] Exam. Albus: I will sustain the objection with respect to Mr. Wilkinson's testimony in that case.

By Mr. Wheeler:

Q. Does the Pennsylvania control of the Wabash result in a favoring of the Wabash by the Pennsylvania on the establishment of routes?

A. Favor us by establishing routes?

Q. Yes.

A. Why, if we had a route that we wanted to work out with them I think they would be at least amenable to working it out with us. I don't know that they have ever proposed, and I don't know of any new routes that have been issued, well, there was one change in the routes after the control, but that was at our insistence or on our basis because of the better service through Detroit running through Toledo that was the only change in routes that I know of and there has never been anything else come up.

Q. Does the Pennsylvania's control of the Wabash influence the establishment of that route in your opinion?

A. No, we established it because we could do better through Detroit than we could through Toledo.

Q. Is that a route established in connection with the Pennsylvania?

A. Yes.

Q. Well, I don't think we are clear, then. Do you think the establishment of that route with the Pennsylvania would

[fol. 1454] have been established in the absence of control of the Wabash by the Pennsylvania?

A. Yes, I think we could have done it without somebody else but I think it might have helped if the Pennsylvania had the controlling position in the Wabash, that we were able to talk to them.

Q. Why do you think that?

A. Well, simply that there is some relationship as against —even though you are competing in policy matters, as I said they are directors on the board, when we seek their counsel and advice in order to develop something for the benefit of the Wabash, why, I think they are susceptible to that matter rather more pertinently than they would be if they were not in that position. This route that I refer to, well, which might be construed as opening a new route with the Pennsylvania was in lieu of another route that we had at Toledo and Toledo is sort of an off-the-main-line operation for us and we could better go into Detroit and do the job than we could through Toledo.

Q. What about train schedules? Does the Pennsylvania's control influence those arrangements insofar as the Wabash?

A. I don't say they control them, but I say so far as working out connecting schedules that will permit of the business making of their trains or their trains making our business, why, we have always done that the same as we do [fol. 1455] with any other railroad that we have connections with.

Q. You don't think their control has affected that in one way or another?

A. I do not.

Q. And I believe you stated that—well, let me ask you this question: Mr. Atkinson, in soliciting traffic for the Wabash, do your people have in mind the fact that the Wabash is controlled by the Pennsylvania?

A. Why, I assume they have knowledge of it but it is not a factor in their solicitation. They are out to solicit for the Wabash.

Q. All things being equal would the Wabash seek to influence a movement over the Pennsylvania as against another carrier?

A. Well, I think they'd first make sure that the Wabash was entitled to it and would get it and then after that if it was up in the air they might say the Pennsylvania is a good route or they might say somebody else had a good route. It would be largely dependent on giving advice to the shipper as to the best service in what they felt was the best way for him to get his rail transportation.

Q. Assume that the services were equivalent services.

A. Well, there might be a tendency. I would say there would be a tendency to think about the Pennsylvania.

Q. Do you have a joint rate and a joint route with the Pennsylvania between Logansport and Kansas City?

[fol. 1456] A. Yes.

Q. And that's one of the services to which you previously referred that has been improved in recent years? You remember we were discussing a moment ago in connection with H-51—

A. (Interrupting) So far as the Wabash service is concerned?

Q. Yes.

A. Yes. Of course I think it is appropriate to say that we have similar through routes with the Erie at Huntington which is just on the other side.

Q. Does that route that I have referred to with the Pennsylvania at Logansport, Kansas City, Logansport, was that in existence at the time of the control application?

A. Yes, sir.

[fol. 1457] Q. In connection with your discussions with Mr. Symes, did he indicate to you why the Pennsylvania was seeking control through stock ownership of the TP&W?

A. Why he was?

Q. Yes.

A. No, he never said.

Q. Did any other officer or employee officer, director or employee of the Pennsylvania indicate to you?

A. No, sir.

Q. On traffic originating on the Wabash, do you seek to have it routed so as to give the Wabash the longest haul?

A. Yes, sir.

Q. Mr. Atkinson, we earlier discussed the relationship of Mr. Symes as president of the Pennsylvania and in his

capacity as a director of the Wabash. Now, in his capacity as a director of the Wabash, didn't he ask your opinion as to whether he should join, whether the Wabash should join, the Santa Fe-Pennsylvania application, ask for a third interest?

A. Ask me if we should join?

Q. Yes, sir.

A. No.

Q. He did not?

A. No.

Q. He was not present at the board meeting when that came up?

A. No.

[fol. 1458] Q. Was any officer or director of the Pennsylvania at the Board meeting when that came up?

A. No, all three were absent.

Q. The only one you discussed this matter with was Mr. Symes?

A. That is right.

Mr. Wheeler: Mr. Examiner, it would shorten my examination of this witness and also of witnesses who are to follow if it could be agreed that the annual reports for the last five years, that is, form A reports to the Commission for 55 and the five preceding years would be considered as a part of the record and could be referred to by counsel on brief.

Exam. Albus: What part of the annual report?

Mr. Wheeler: I had just general reference to the annual report, and I had in mind those for the M&StL, Santa Fe, Pennsylvania, Rock Island, Nickel Plate, Wabash, Burlington.

Exam. Albus: And any other road—

Mr. Wheeler: TP&W.

Exam. Albus: And any other road. Is that agreeable to everyone?

Mr. Thomas: Yes, sir.

Mr. Broker: Yes, sir.

Exam. Albus: Absolutely.

Mr. Wheeler: Mr. Examiner, subject to checking to see if I can find one last paper in my briefcase that completes my examination.

[fol. 1459] Mr. Cassell: Mr. Examiner, may we go off the record, please?

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.
Proceed, Mr. Wheeler.
Mr. Wheeler: I have no further questions.
Exam. Albus: Thank you very much.
Is there any further cross-examination?

(No response.)

Exam. Albus: Is there any redirect?
Mr. Davis: I have no redirect.
Exam. Albus: Thank you very much.
Mr. Atkinson is excused.

(Witness excused.)

Mr. Broker: Mr. Witt, please.
Exam. Albus: The exhibits marked for identification H-45 including H-52 are received at this time.

(Intervenor's Exhibits Nos. H-45 to H-52, inclusive, Witness Atkinson, were received in evidence.)

S. J. Witt was sworn and testified as follows:

Exam. Albus: Mr. Davis has a statement.
Mr. Davis: First of all, may Exhibits H-45 through H-52 be received in evidence?
Exam. Albus: They are in the record.
[fol. 1460] Mr. Davis: I have to file with the Commission the information required by the Commission's Order for 5 (2) matters in both dockets, and in No. 19086 I asked leave of 45 days to supply the certified copies of the solutions of the Board.
Exam. Albus: When is the meeting?
Mr. Davis: It will be next month, the third Thursday.
Exam. Albus: Very well, you may have that leave.
Mr. Davis: How many copies, do you desire of these?

(The documents described to be furnished by intervenor.)

Exam. Albus: Let the record show that the supporting supplemental application supporting the Wabash participation in 18991 is marked for identification H-54 and for Finance Docket 19086 will be H-55. Both of those exhibits are received in evidence at this time.

(Intervenor's Exhibits Nos. H-54 and H-55, Mr. Davis, were marked for identification and received in evidence.)

Mr. Broker: Shall we mark these exhibits for identification, Mr. Examiner?

Mr. Wheeler: Mr. Examiner, before we proceed with this I would like to ask Mr. Davis a question.

I wasn't clear from your statement, Mr. Davis, whether or not the board of directors of the Wabash had acted on the intervention of the Wabash in either of these proceedings.

[fol. 1461] Mr. Davis: The board of directors has acted in the intervention of Wabash in 18991 specifically, and it is my view that they have also in the same action, at least indirectly, acted on our participation in the other case, too. However, I expect, in order to be doubly sure of that fact, to furnish specific action with respect to 19086, Mr. Wheeler, and I would ask leave for that purpose for 45 days to furnish you with that supplemental resolutions.

Exam. Albus: Mr. Broker, please.

Mr. Broker: Mr. Examiner, I request that the map marked "W-1" in the upper right-hand corner be marked for identification.

Exam. Albus: That will be marked for identification H-56.

(Intervenor's Exhibit No. H-56, Witness Witt, was marked for identification.)

Mr. Broker: And the one-page statement bearing the designation "W-2", would that be H-57?

Exam. Albus: Correct.

(Intervenor's Exhibit No. H-57, Witness Witt, was marked for identification.)

Mr. Broker: The eight-page statement bearing the designation "W-3", would that be H-58?

Exam. Albus: That is correct.

(Intervenor's Exhibit No. H-58, Witness Witt, was marked for identification.)

[fol. 1462] Mr. Broker: The two-page statement—

Exam. Albus: It is a single page, isn't it?

Mr. Broker: The next statement, one page, marked "W-4", would that be H-59?

Exam. Albus: That is correct.

(Intervenor's Exhibit No. H-59, Witness Witt, was marked for identification.)

Mr. Broker: The one-page statement, "W-5", would that be 60?

Exam. Albus: It may be so marked.

(Intervenor's Exhibit No. H-60, Witness Witt, was marked for identification.)

Mr. Broker: The one-page statement marked "W-6", would that be H-61?

Exam. Albus: That is correct.

(Intervenor's Exhibit No. H-61, Witness Witt, was marked for identification.)

Mr. Broker: The map bearing the designation "W-7", would that be H-62?

Exam. Aibus: Correct.

(Intervenor's Exhibit No. H-62, Witness Witt, was marked for identification.)

Mr. Broker: The one-page statement marked "W-8", would that be H-63?

Exam. Albus: Correct.

[fol. 1463] (Intervenor's Exhibit No. H-63, Witness Witt, was marked for identification.)

Mr. Broker: The one-page statement bearing the designation "W-9", would that be H-64?

Exam. Albus: That is right.

(Intervenor's Exhibit No. H-64, Witness Witt, was marked for identification.)

Mr. Broker: The two-page statement marked "Toledo, Peoria and Western Railroad Company Summary of Income and Financial Position"—

Exam. Albus: What about this map, W-10?

Mr. Broker: I am sorry, that would be the next one. Would that be H-65?

Exam. Albus: That is correct.

(Intervenor's Exhibit No. H-65, Witness Witt, was marked for identification.)

Exam. Albus: The two-page statement marked "Toledo, Peoria and Western Railroad Company Summary of Income and Financial Position", would that be 66?

Mr. Wheeler: What about W-11?

Mr. Broker: This one precedes W-11.

Exam. Albus: Summary of Income and Financial Position, T?

Mr. [illegible]ker: It may not be the next one in your group but it is in there.

Mr. Bagge: What number is that?

[fol. 1464] Mr. Broker: It would be H-66.

(Intervenor's Exhibit No. H-66, Witness Witt, was marked for identification.)

Mr. Broker: I request this W-11 be marked H-67 for identification.

Exam. Albus: It may be so marked.

(Intervenor's Exhibit No. H-67, Witness Witt, was marked for identification.)

Mr. Broker: The one-page statement "Summary of Income and Financial Position, Richmond, Fredericksburg and Potomac Railroad Company", I request that that be marked H-68.

Exam. Albus: It may be so marked.

(Intervenor's Exhibit No. H-68, Witness Witt, was marked for identification.)

Mr. Broker: We are ready to proceed, Mr. Examiner.

Exam. Albus: Very well, you may do so.

Mr. Broker: Has Mr. Witt been sworn?

Exam. Albus: Yes.

Direct examination.

By Mr. Broker:

Q. Please state your name and qualifications.

A. My name is S. J. Witt. I am vice-president-traffic of the New York, Chicago and St. Louis Railroad Company, with headquarters at 800 Terminal Tower, Cleveland, Ohio.

My railroad service began in September 1906 with the Baltimore and Ohio on Southwestern Railway in Cincinnati, [fol. 1465] Ohio. I went to the Akron, Canton and Youngstown Railroad in December 1911 and served with that company in the position of chief clerk in that traffic department ranging up to traffic manager until November 1955. At that time I accepted the position of freight traffic manager in charge of rates with the New York, Chicago and St. Louis Railroad Company. On June 1, 1947, I was appointed assistant vice-president traffic in charge of rates, and on January 1, 1954, to my present position. The New York, Chicago and St. Louis Railroad will be referred to hereafter as the "Nickel Plate".

Q. Please describe your present duties.

A. I have jurisdiction over all traffic matters such as rates, routes, service and relations with the public and other railroads.

Q. What is Nickel Plate's position in Finance Docket No. 18991?

A. It is Nickel Plate's position in Finance Docket No. 18991 that the Commission should impose a condition requiring the allotment to Nickel Plate of a share of ownership of the stock of the Toledo, Peoria and Western Railroad Company equal to that of the Santa Fe and Pennsylvania Railroads. The Toledo, Peoria and Western Railroad Company will be referred to hereafter as the TP&W. Stated concisely, the Nickel Plate seeks a one-third interest in the TP&W if only the Santa Fe, Pennsylvania, and Nickel Plate are permitted to acquire control, or a one-fourth [fol. 1466] interest if the Rock Island is also permitted to participate. If Nickel Plate is not admitted to a share of ownership, either voluntary by the applicants or by condition imposed by the Commission, then the application should be denied.

Q. Mr. Witt, if additional railroads are authorized to intervene there would be change in your share, would there not?

A. Yes, sir.

Q. Please describe the Nickel Plate road, referring to the exhibit marked for identification as H-56.

A. Nickel Plate operates approximately 2,179 miles of railroad, including 464 miles under lease from the Wheeling and Lake Erie Railway Company. Nickel Plate is divided into four districts as shown in my Exhibit H-56. Each of the districts is shown in a different color as follows: Nickel Plate district blue; Lake Erie and Western District red; Clover Leaf District green; and Wheeling District yellow. The district which connects with the TP&W is the Lake Erie and Western District.

Q. Have you prepared an exhibit marked for identification as H-57 which shows the number of loaded cars interchanged with the TP&W for the years 1945 to 1954, inclusive?

A. Yes. My Exhibit H-57 shows loaded cars received from and delivered to the TP&W by the Nickel Plate from the years 1945 to 1954, inclusive.

[fol. 1467] The exhibit shows that prior to 1949 the Nickel Plate delivered all of the cars it interchanged with the TP&W at Peoria Illinois. In this interchange service the Peoria & Pekin Union Railway (hereinafter called the P&PU) was used as the intermediate carrier between the two railroads. In respect of cars received from the TP&W, perishable traffic consisting of fresh fruit, fresh vegetables, fresh meats and packing house products, was delivered direct to the Nickel Plate through the Farmdale interchange. Other traffic was delivered through the P&PU at Peoria. The reason for this situation was that there was only one interchange track at Farmdale which was capable of handling only eastbound perishable traffic. This situation existed until July 1, 1949, when new interchange tracks with adequate capacity for handling eastbound and westbound traffic were put into operation at Farmdale.

The exhibit shows that beginning with 1950 substantially all of the traffic interchanged between the Nickel Plate and the TP&W was interchanged at Farmdale, Illinois. Atten-

tion is also directed to the continued year-by-year increase in the number of loaded cars interchanged. This increase in traffic interchanged was accomplished as the result of cooperation between the two railroads and of Nickel Plate solicitation efforts to have traffic move via the Peoria gateway.

Q. Do you have the number of cars interchanged during 1955?

A. Yes, in 1955 the Nickel Plate—yes, we delivered to [fol. 1468] the TP&W in 1955 at Farmdale and Peoria 4,901 cars and received 10,634 cars or a total of 14,535 cars.

Mr. Broker: I request that that figure of 4,901 be changed to 3,901.

The Witness: I am sorry.

By Mr. Broker:

Q. Have you prepared an exhibit marked for identification as No. H-58 analyzing the traffic interchanged between the TP&W and Nickel Plate? If so, please explain the exhibit.

A. I had a complete study made of such traffic for the months of March through September 1955, which is presented as Exhibit H-58. This Exhibit consists of 8 pages, one for each month indicated and a summary sheet. Dealing with the month of March (page 1), the exhibit shows the total cars received from the TP&W at Farmdale and Peoria (Line 1) and the total cars delivered to the TP&W (Line 9). Line 4 shows the number of cars received from the TP&W which were delivered to that line by the Santa Fe Railway at Lomax, Illinois. These cars amounted to 70.8 per cent of the total cars received by Nickel Plate from the TP&W. Line 12 shows the number of cars delivered by Nickel Plate to the TP&W, which that line in turn delivered to the Santa Fe at Lomax. The percentage of cars so delivered to the Santa Fe was 82.2 per cent. The total number of cars which the Nickel Plate received from or delivered to the TP&W and which had a prior or subsequent move- [fol. 1469] ment via the Santa Fe is shown in Line 18. The number of cars in March was 794 cars or 73.9 per cent of the total cars interchanged.

Pages 2 through 7 show similar information for the later months of the study.

Page 8 is a composite of the first seven pages. The seven months' study shows that of the cars interchanged with the TP&W, 77.4 per cent had a prior or subsequent movement via the Santa Fe. Based on my experience and knowledge of the traffic handled through the Peoria gateway, these exhibits are representative of our traffic interchanged with the TP&W.

Q. Does the Santa Fe interchange traffic with Nickel Plate at any place other than through the TP&W at Farmdale and Peoria?

A. In addition to Crandall, Illinois, which I shall discuss later, the Nickel Plate interchanges traffic with the Santa Fe at Chicago. At Chicago all perishable traffic is interchanged thru the Indiana Harbor Belt Railway. Other traffic is interchanged through the Illinois Northern Railway, the Belt Railway of Chicago, the Elgin, Joliet and Eastern, the Indiana Harbor Belt Railroad, and other switching lines in the Chicago District. In this connection, the Pennsylvania also connects and interchanges traffic with the Santa Fe at Chicago.

Q. How does the volume of Nickel Plate interchange with the Santa Fe at Chicago compare with the volume of Santa Fe traffic handled via the TP&W through Farmdale?

A. The interchange of traffic at Chicago is somewhat [fol. 1470] greater both eastbound and westbound than through Farmdale.

Q. Has the Nickel Plate any other connection with the Santa Fe?

A. The Nickel Plate has a connection and interchanges traffic with the Santa Fe at Crandall, Illinois, which is located on the branch line of the Santa Fe extending from Streator Junction, Illinois, to Pekin, Illinois. My Exhibit H-59 shows the number of cars interchanged at this point. Because there are no competitive through schedules maintained via Crandall, no perishable traffic is interchanged at this point and traffic is limited. Traffic interchanged at Crandall is principally freight originating at or destined to stations on the Lake Erie and Western District of the Nickel Plate in Illinois and Western Indiana, and Santa

Fe stations in Illinois. The schedules via Crandall are not now and never have been competitive with the service via Farmdale or Peoria, and interchange at Crandall could not be substituted for Farmdale and Peoria on traffic between the west and the east.

Q. Do you have the volume of interchange at Crandall between Nickel Plate and Santa Fe for 1955?

A. I don't think I have that. Wait a minute. What is that exhibit?

Mr. Broker: May I furnish it for the record?

Exam. Albus: Yes.

Mr. Broker: That was 229 cars received, 610 cars delivered, a total of 839.

[fol. 1471] Exam. Albus: Very well.

By Mr. Broker:

Q. Have you any information as to the volume of traffic interchanged by the Santa Fe and the TP&W at Lomax?

A. In Finance Docket No. 18752, Illinois-Missouri Terminal Railway Company Control, the TP&W presented in evidence a statement (marked as Exhibit H-52) showing its interchange of loaded cars with more important connections. This exhibit is here offered as Exhibit H-60. This exhibit shows that the interchange with the Santa Fe at Lomax was 32,323 cars for the year 1954, consisting of 20,650 cars received by the TP&W for eastbound movement and 11,673 cars delivered by the TP&W for westbound movement. The 32,323 cars interchanged by the Santa Fe and the TP&W include Peoria District originated and terminated traffic, as well as for all connections of the TP&W, including Nickel Plate and the Pennsylvania Railroad.

Q. Have you made a study to show what proportion of the Santa Fe-TP&W interchange moves in connection with Nickel Plate?

A. My Exhibit H-57 shows that the Nickel Plate interchanged 14,497 cars with the TP&W in 1954. Page 8 of my Exhibit H-58 shows that the Santa Fe participated in the haul on 77.4 per cent of the traffic interchanged by the

Nickel Plate and TP&W. On the basis of this percentage Nickel Plate-Santa Fe traffic during 1954 moving via TP&W amounted to 11,221 cars or 34.7 per cent of the traffic interchanged by the Santa Fe and TP&W.

[fol. 1472] Since the foregoing compilation was made, I have been given the volume of carload traffic interchanged between the TP&W and Nickel Plate at Farmdale for the entire year of 1955. These figures show that 3,861 cars were delivered to the TP&W and 10,618 cars were received from the TP&W, for a total of 14,479 cars. Applying the percentage of 77.4 per cent as developed from the information contained in my Exhibit H-58 would indicate that 11,206 cars were interchanged between the Santa Fe and the TP&W at Lomax. Stated otherwise, the TP&W served as a bridge or intermediate carrier between the Nickel Plate and Santa Fe on 11,206 cars.

Q. Have you made a further breakdown of Exhibit H-60 between eastbound and westbound traffic?

A. Exhibit H-60 shows that the Santa Fe interchanged 20,650 cars east bound to the TP&W and the TP&W delivered 10,387 cars eastbound to the Nickel Plate in 1954. Unfortunately, I do not have the number of cars interchanged between the Santa Fe and TP&W for the calendar year 1955, consequently I could only apply the percentage against the 1954 figures. Exhibit H-58, page 8, line 4, shows that of the eastbound cars delivered to the Nickel Plate by TP&W, 77.3 per cent were received from the Santa Fe. Applying this percentage against the 10,387 cars delivered to Nickel Plate by TP&W produces 8,029 cars as having had a previous movement on the Santa Fe, or 38.9 per cent of the total eastbound loaded cars delivered by the Santa [fol. 1473] Fe to the TP&W at Lomax. This leaves a total of 12,621 cars delivered by the Santa Fe to the TP&W for termination on the TP&W and for delivery to all connections of the TP&W other than the Nickel Plate.

Exhibit H-60 also shows that the TP&W delivered 11,673 cars to the Santa Fe at Lomax for westbound movement and that the Nickel Plate delivered 4,019 cars to the TP&W at Farmdale. My Exhibit H-58, page 8, line 12, shows that for the seven months of 1955, 77.7 per cent of the westbound cars delivered to the TP&W by Nickel Plate were

delivered to the Santa Fe at Lomax. Applying this percentage to the total of 4,019 cars delivered by Nickel Plate to TP&W produces 3,123 cars which subsequently moved via Santa Fe beyond the TP&W or 26.8 per cent of the total westbound interchanged from the TP&W to the Santa Fe. Thus, of the cars delivered by TP&W to the Santa Fe at Lomax, 8,550 were originated by the TP&W or were received from all connections of the TP&W other than the Nickel Plate.

It is evident from this exhibit that Nickel Plate's traffic forms a substantial portion of the overhead traffic of the TP&W interchanged with the Santa Fe at Lomax.

Q. Will you please state the percentage of cars handled jointly by the TP&W and Nickel Plate which originated or terminated on the TP&W and also the percentage of loaded cars that moved via connections of the TP&W other than the Santa Fe.

A. Page 8 of Exhibit H-58 shows this information. For [fol. 1474] the seven months of 1955 shown, it was 6.3 per cent. The exhibit also shows the percentage of cars that moved beyond the TP&W via connections other than the Santa Fe is 16.3 per cent of the total number of cars interchanged between Nickel Plate and the TP&W.

Q. Can you state the amount of revenue the Nickel Plate receives from traffic which it interchanges with the TP&W?

A. Yes. Studies were made for the months of April and September, 1955, of all cars interchanged. This information was taken from our auditor's abstracts on which settlements of revenue were made. This study developed average revenue per car of $153.57. Applied against the 14,497 cars interchanged with the TP&W in 1954, our annual revenue from this traffic is $2,226,304.29.

Q. Have you made a separation as to Santa Fe traffic alone?

A. Yes. In the months of April and September 1955 the average revenue per car for the Nickel Plate on the shipments handled via the TP&W between Nickel Plate and Santa Fe was $162.41. Applied to 11,221 cars for 1954, Nickel Plate total revenue on an annual basis is $1,822,402.61 on this traffic.

Q. Are you familiar with the character of the Santa Fe traffic which is interchanged between the TP&W and Nickel Plate?

A. Yes. The majority of the eastbound traffic consists of fresh meat and fresh fruits and vegetables; however, a substantial proportion of the traffic consist of miscellaneous [fol. 1475] commodities such as flour, lumber, chemicals, etc. Westbound, the traffic consists principally of manufactured commodities such as auto parts, machinery, radio tubes, appliances, pipe, merchandise, et cetera.

Q. Is the TP&W one of the principal connections of the Nickel Plate on perishable traffic from the west?

A. Receipts of perishable traffic from the TP&W are larger than from any other connection at Peoria and are comparable with our receipts from any single railroad at other gateway points.

Q. Can you state the importance of the TP&W traffic to the Nickel Plate in relation to the percentage such traffic constitutes of the number of cars handled in Nickel Plate trains?

A. Yes. The number of cars interchanged with the TP&W in the Peoria District represented 26.4 per cent of the total cars handled in our trains into and out of Peoria in 1954. Eastbound TP&W traffic amounted to 29.4 per cent of cars in Nickel Plate trains and 21 per cent westbound. This is set forth in my Exhibit H-61.

[fol. 1476] Q. What would be the effect on Nickel Plate of the loss of any of this traffic?

A. Nickel Plate operates three scheduled trains into Peoria and three scheduled trains out of Peoria daily, which also handle traffic to and from the TP&W at Farmdale. In addition, extra trains are operated when needed to handle any additional traffic that is beyond the practicable capacity of the scheduled trains. We have always maintained competitive schedules to, from and through Farmdale and Peoria with the service to, from and through Chicago, St. Louis and the other gateways with western lines. Nickel Plate's traffic via Farmdale has been built up on that kind of service. We could not reduce the number of trains that we operate to and from Peoria, and there are no operating economies that we could effect to compensate

for any traffic that we may lose through a change in the status of the TP&W as a wholly independent carrier and in the present neutrality of the Santa Fe. With a financial interest in the TP&W the Santa Fe would have a very important interest in having the traffic move via the TP&W's long haul routes to the detriment of our route via Farmdale. The importance of Santa Fe traffic to the Nickel Plate has been shown, but the proposal also affects the Nickel Plate in its ability to serve the Peoria district in which it has held a foremost position on traffic to and from the east. Any impairment of our ability to solicit and participate in Santa Fe traffic on an equal basis via the TP&W [fol. 1477] would affect our ability to maintain and improve our present service to and from the Peoria district and our other connections at Peoria.

Q. Please describe the major working routes on eastbound and westbound traffic in connection with the TP&W.

A. The Nickel Plate has through rates and routes to and from Farmdale and Peoria as local points and as gateways to and from all points in Eastern Territory, including the New England and Pocahontas regions. Exhibit H-58 shows the volume of traffic which originated and terminated on the Nickel Plate and also which the Nickel Plate handled as a bridge line to and from its connections beyond. Of the traffic that moved overhead via the Nickel Plate, practically all of the eastbound terminated in Trunk Line and New England Territories after movement via Nickel Plate to Buffalo and thence Lackawanna, Lehigh Valley or Erie, or after movement via Nickel Plate to Lima, Ohio and thence Erie.

Page 7 of Exhibit H-4 in this proceeding is a map showing the TP&W in relation to the Nickel Plate. I gather from this exhibit the inference that the Nickel Plate-TP&W relations are restricted to the area served directly by the Nickel Plate. To properly reflect the traffic movement, the map should show connections of the Nickel Plate in Eastern Territory via which fast coordinate schedules are operated daily.

Nickel Plate's schedules to and from Peoria and at [fol. 1478] Farmdale are coordinated with the Lackawanna, Lehigh Valley and Erie to and from points in New York

State and New England, and with the route of the Pittsburgh & West Virginia, Western Maryland and Reading to and from points on those lines and on perishable traffic to Philadelphia, Pennsylvania. The Nickel Plate provides for these lines their only competitive schedules to, from and through Peoria. These Nickel Plate schedules from Peoria are further coordinated back of the Nickel Plate with the schedules of the TP&W and the Santa Fe and other connections of the TP&W from and to Trans-Continental Territory and Western Territory generally, and also from and to other connections of the Nickel Plate at Peoria on traffic from and to Trans-Continental Territory and Western Territory generally.

On August 1, 1955 terminal facilities of the Pennsylvania and Erie at New York for handling perishables were consolidated. This, of course, makes the fruit and vegetable traffic for New York more competitive with the Pennsylvania insofar as the Nickel Plate is concerned, because the only railroad connection with which it can work on Pacific Coast fresh fruits and vegetables traffic for the New York market is the Erie Railroad.

Q. Please describe how rates on traffic moving overhead via the TP&W are divided among eastern and western railroads.

A. Rates on TP&W overhead traffic moving between all points in Eastern Territory and points in Western Trunk Line, Trans-Continental and Inter-Mountain Territories [fol. 1479] divide over Peoria, Illinois and other Peoria group junctions including Farmdale; that is to say, the eastern lines receive a lump proportion for the service east of the Peoria break point, and the western lines receive a lump proportion west of Peoria. The territorial proportions in turn are dividend among the lines participating in the haul on established per cents applicable to the individual roads over which the shipment travels. The same division which applies to and from Peoria is also applicable on traffic interchanged at Farmdale which is specified as a division break point between the TP&W and Nickel Plate. To clarify the point, the TP&W, in respect of the division of revenue on interterritorial traffic, is an eastern

line east of Peoria and Farmdale, and a western line west thereof.

Q. Please describe the TP&W.

A. Exhibit H-62 is a map of the TP&W Railroad. The TP&W operates from Keokuk, Iowa, and Lomax, Illinois, on the west to Effner, Indiana, on the east. The Nickel Plate interchange at Farmdale is shown circled in red. Interchanges of the TP&W with the Pennsylvania Railroad at Effner and at Peoria are shown in blue, and with the Wabash, a wholly owned subsidiary of the PRR, at Elvaston, Fairbury and Forrest, Illinois, circled in green. Interchanges with the Santa Fe at Eureka (Streator Junction) and Lomax are shown circled in yellow. The TP&W operates by trackage rights from Peoria to Iowa Junction over the Chicago, Burlington & Quincy a distance of 2.8 miles, [fol. 1480] and over the Peoria Terminal Company from Iowa Junction to Hollis, a distance of 4.3 miles.

The TP&W serves very few industries with its own rails. In the Peoria-Pekin District it draws its traffic from industries on other railroad such as the P&PU Railway which is a terminal railroad owned by the Illinois Central, New York Central, Nickel Plate, Chicago & North Western Chicago & Illinois Midland, and Pennsylvania Railroads, and also from industries on other lines in the district.

Its facilities in the Peoria District consist of a yard, shops, a scale, and the only icing facility in the district which, plus good service, is of tremendous importance in the handling of perishable traffic from the west, in respect of which traffic it is an important connecting link between its western connections and its eastern connections. My Exhibit No. H-63 shows how the TP&W effects interchange with other carriers at Peoria.

Q. Do you have a breakdown as between traffic originating and terminating locally on the TP&W and traffic which it handles as a bridge line?

A. I.C.C. Freight Commodity Statistics Report for the year 1954, Statement No. 55100, contains the following information concerning the TP&W at pages 239 and 240:

[fol. 1481] Carload Traffic

	Tons	*% of Total*
Originated and terminated at lines	354,200	10.8
Originated and delivered to connections	387,271	11.8
Received from connections—Terminated on line	426,481	13.0
Received from connections—Delivered to connections	2,102,667	64.4
Total —	3,270,619	100.0

These figures show the importance of the TP&W Railroad as a bridge carrier. Previous exhibits show its importance to the Nickel Plate as a bridge carrier on traffic which it handles between the Nickel Plate and the Santa Fe.

I have another Exhibit H-64 which is taken from page 11 of the TP&W report to stockholders for 1954. It shows the breakdown between traffic originated on line and received from connections and percentages of traffic by commodity groups.

Q. Please describe the Pennsylvania Railroad system.

A. I have prepared a map, Exhibit H-65, which shows the lines of the railroads comprising the Pennsylvania system.

The Pennsylvania Railroad is shown in red. It extends from the western gateways of East St. Louis, Peoria, and Chicago, Illinois, to the north Atlantic Ports of New York, New York; Philadelphia, Pennsylvania, Baltimore, Maryland, and Norfolk, Virginia. It reaches with its own rails [fol. 1482] practically all of the important cities in the states of Ohio, Indiana, Illinois, Pennsylvania, Delaware, and New Jersey. In Michigan it reaches the important cities of Detroit, Grand Rapids, Kalamazoo, and Muskegon. In western New York it reaches Buffalo, Rochester, and Sodus Point on Lake Ontario.

Its wholly owned subsidiary the Wabash Railroad is shown in blue. The Wabash Railroad extends from Kansas City, Missouri, Omaha, Nebraska, and Des Moines, Iowa, on the west through the gateways of St. Louis, Missouri,

and Hannibal, Missouri-Illinois to Toledo, Ohio. It has a line extending east from Keokuk to its line from Kansas City. It also has lines from St. Louis, Missouri, to Chicago, Illinois, and from Chicago, Illinois to Detroit, Michigan, and through Detroit to Buffalo, New York.

The Ann Arbor, a wholly owned subsidiary of the Wabash Railroad, is colored in tan. The Ann Arbor Railroad extends from Toledo, Ohio to Frankfort, Michigan, and by car ferry across Lake Michigan to the west bank of Lake Michigan ports of Kewaunee, Wisconsin, Manitowoc, Wisconsin, Menominee, Michigan, Marinette, Wisconsin, and Manistique, Michigan, where it connects with all of the important northwestern railroads.

The Lehigh Valley Railroad in which the Pennsylvania and the Wabash have a substantial and possible majority interest is shown in green. The Lehigh Valley extends from Niagara Falls and Buffalo, New York to Jersey City, New Jersey and New York City, serving important cities [fol. 1483] in Pennsylvania, New Jersey, and New York.

Q. Is the stock of the Lehigh Valley trustee pursuant to order of the Commission?

A. It is.

Q. Would you proceed, please.

A. The Norfolk and Western Railway in which the Pennsylvania Company owns a substantial interest and is the largest stockholder is colored in orange. The Norfolk and Western Railway extends from Cincinnati and Columbus, Ohio through southern Ohio, West Virginia and Virginia to Norfolk, Virginia, Bristol, Virginia, Winston-Salem, North Carolina and Durham, North Carolina.

The Detroit, Toledo & Ironton Railroad Company, of which the Pennsylvania and Wabash own all of the capital stock, is shown in dashed black and operates from Detroit south through Springfield, Ohio, to Ironton, Ohio.

The Long Island Railroad Company is also shown in red.

The TP&W has been included on this map to show the further extension of Pennsylvania interests as contemplated by this application.

This map shows that Pennsylvania Railroad interests extend from Kansas City, Missouri, Omaha, Nebraska, and

Des Moines, Iowa, on the west to practically all of the important industrial cities and ports in eastern United States north of the Ohio and Potomac Rivers except New England. It is the only eastern system extending into the [fol. 1484] west and with acquisition of control of TP&W without Nickel Plate participation it would have two such railroad subsidiaries extending into the west.

Q. Please describe the extent of the competition between the Pennsylvania Railroad and system, on the one hand, and the TP&W, on the other.

A. The Pennsylvania Railroad reaches Peoria over its line which extends from Farington, Illinois, on its St. Louis-Indianapolis line just west of Terre Haute through Decatur, Illinois, to Peoria. On traffic to or from the east the Pennsylvania Railroad has a similar competitive situation with that of the Nickel Plate in that it is competitive over its own line east of Peoria. The Pennsylvania serves all of the other gateways between the east and the west with a complete line of rates and routes, and in addition it is a part owner of the P&PU.

In addition to the competition provided by the Pennsylvania Railroad east of Peoria, the Pennsylvania system is competitive with the TP&W west of Peoria. The line of the Wabash extends west to Kansas City and it has a line to Keokuk, the western terminus of the TP&W, so that traffic can be handled east from Keokuk entirely by lines of the Pennsylvania System. Together the Wabash and Pennsylvania form a direct service route from Kansas City to the eastern seaboard so as to avoid the St. Louis and Chicago gateways. The Commission relied on this consideration in approving control of the Wabash by the Penn- [fol. 1485] sylvania in Wabash Railroad Company Control, 247 I.C.C. 365 (1941).

Mr. Lucas: Excuse me—

Mr. Davis: I was going to ask, Mr. Examiner, that that be stricken as a conclusion of this witness. The report will speak for itself.

Mr. Broker: We are willing to let the report speak for itself.

Exam. Albus: Very well.

Mr. Lucas: Mr. Examiner, may I object to the next sentence. I object to it going into the record.

Exam. Albus: On what ground?

Mr. Lucas: On the grounds that the way it is stated obviously shows that the witness does not have personal knowledge and it is very remote and has no evidentiary value to this proceeding or any issue here involved.

Mr. Broker: Are you willing to agree, Mr. Lucas, that the Pennsylvania Railroad had a 50 per cent interest in the TP&W prior to the time the McNear interest took it over?

Mr. Lucas: Subject to objection I am willing to—

Mr. Broker: I am asking whether you are willing to agree to that as a fact to go into the record.

Mr. Lucas: No, I think I shall not agree to it, Mr. Examiner.

Exam. Albus: Very well. The objection is overruled.

[fol. 1486] You may proceed, Mr. Witt.

A. The Pennsylvania Railroad formerly had a 50 per cent stock interest in the TP&W and it is common knowledge that the TP&W did not prosper during such period of control.

Mr. Lucas: I move to strike the sentence and particularly the part based on common knowledge that the TP&W did not prosper during such period of control.

Exam. Albus: The motion is overruled.

Proceed, Mr. Witt.

By Mr. Broker:

Q. Do you have a two-page exhibit, Mr. Witt, marked for identification as H-66, summarizing income and financial position of the TP&W 1893 up through 11 months of 1955?

A. Yes, sir.

Mr. Lucas: Mr. Examiner, may my objections go to those as well as the other?

Exam. Albus: Everything from now on pertaining to the remote control of the TP&W or before the McNear interest obtained it?

Mr. Lucas: Very good, and an exception, I take it, for the record.

Exam. Albus: Surely.

Mr. Broker: Do you include in that an objection for such information that indicates that you had a 50 per cent interest?

Mr. Lucas: Yes.

[fol. 1487] Exam. Albus: Absolutely. That is what started it all.

Q. Please describe the extent of the competition, if any, between the TP&W and Nickel Plate.

A. The TP&W in connection with the PRR via Effner and the NYC via Sheldon may be said to be competitive with the Nickel Plate as an eastbound carrier on traffic to, from and via Peoria, to and from the East. As a line operating west of Peoria, the TP&W is complementary to the Nickel Plate in its haul to and from Peoria.

Q. Have you made a study of the comparative size of the Pennsylvania system in relation to the other railroad systems in the eastern region operating in the territory competitive with the Pennsylvania system?

A. I have prepared Exhibit H-67 which shows this information. Column 2 shows the mileages of the Pennsylvania Railroad, of lines of railroads wholly owned by the Pennsylvania Railroad or Pennsylvania Company, and the lines of railroads in which they have a substantial ownership, as a group. It also shows the mileages of the New York Central System, Baltimore & Ohio Railroad, Chesapeake & Ohio Railway, Erie Railroad, and the Nickel Plate Road. The total mileage of the railroads shown which constitute the principal railroad mileage in the competitive eastern territory is 43,492 miles. The mileage of the Pennsylvania group is 16,857 miles or 38.76 per cent of the total.

[fol. 1488] Q. That is of the total shown here, isn't it?

A. That is right.

Q. Please continue.

[fol. 1489] A. TP&W mileage, which is 239 miles, is also shown. While TP&W mileage is small, it would add another strategic finger between the east and the west and would bring another line into the Pennsylvania orbit.

Column 3 of this exhibit shows the freight revenue of the same railroads as shown in Column 3 and in the same

manner. The total freight revenues of all of the lines in the eastern region in 1954 were $3,179,883,000. Earnings of the Pennsylvania group were $979,084,000 or 30.8 per cent of the total freight revenue of all lines in eastern territory.

TP&W freight revenues as shown were $6,703,000. The only possible reason for the Pennsylvania's desire to acquire a one-half interest could be to strengthen its competitive position at the expense of the Nickel Plate and its connections and the other eastern connections of the TP&W.

Column 5 shows the total number of tons transported by the same railroads shown in Columns 1 and 3 and in the same manner, and the total tons handled by all lines in the eastern district.

Total tons handled in the eastern district in 1954 were 1,117,105,926. The Pennsylvania group handled 284,931,576 tons or 25.5 per cent. The TP&W handled 3,273,630 tons.

Summarizing the information, contained in this exhibit, it shows the already dominant position of the Pennsylvania System in the eastern district and that control of the TP&W with exclusion of other eastern lines will serve to [fol. 1490] increase that dominance.

Q. You have heard Mr. Gurley's testimony in which he said that there would be no economic incentive to the Nickel Plate to develop the line of the TP&W between Effner and Peoria. Would you comment.

A. That is not correct. The TP&W presently owns property at Farmdale which it has been holding for industrial development purposes. Part of this property lies north of the Nickel Plate and is adjacent to its tracks. To reach it, the TP&W requires a crossing and, depending on how the property is developed, some trackage rights over the Nickel Plate for switching service to reach the property. The Nickel Plate and TP&W have agreed to an arrangement whereby the TP&W will be permitted to cross the line of the Nickel Plate and give such trackage rights as are necessary to develop the property on a mutually beneficial basis with the TP&W performing the switching service. With respect to the incentive to develop the eastern end of the TP&W, I think it is fair to say that all railroads

including the applicants, would first make the effort to locate an industry on their own railroad. Failing to do this, they would naturally endeavor to locate the industry on a subsidiary line such as the TP&W would become, and in this respect the Nickel Plate would certainly lend all the assistance it possibly could to the TP&W in this direction if it had no locations on its own railroad that were satisfactory. The Nickel Plate maintains a large Industrial [fol. 1491] Development Department which would be of material assistance to the TP&W in the location of industries.

[fol. 1492] Q. Would the Nickel Plate be satisfied with imposition of conditions as earlier proposed in this proceeding, including the maintenance of all existing routes and channels of trade without discrimination between connecting lines of railroads?

A. Those conditions would not satisfy and protect the Nickel Plate. Service is of equal importance with rates and routes to the individual lines as well as to preservation of Peoria as an important gateway between the west and east. At present the Santa Fe's only direct connection to and from the east is via Chicago. Car icing facilities at Chicago are located on the Indiana Harbor Belt and interchange of perishable traffic is via that line. The Santa Fe cost for this switching service is $10.96 per car. I do not mean to say that Peoria will replace Chicago as the Santa Fe's principal interchange on perishable traffic but with equal or better service via Peoria it is a reasonable assumption that more traffic may move via the Peoria gateway using the TP&W icing facilities at East Peoria. Based on Mr. Gurley's testimony that their Lomax interchange with the TP&W would be placed on an equal footing with Chicago, and his statements that the volume of traffic would increase via Lomax and the TP&W, and decrease via Chicago, the assumption I have just made becomes a fact. This then poses a dual disadvantage in that, first, the traffic interchanged between the Santa Fe and Nickel Plate at Chicago will diminish, and, secondly, the diversion of traffic to the TP&W long haul will diminish [fol. 1493] our present volume of interchange with the TP&W at Farmdale. The present TP&W management is

independent and its western connections, including the Santa Fe, are neutral in respect of the eastern connections of the TP&W, which permits and accounts for the free flow of traffic via short haul as well as long haul routes of the TP&W, based on the service given to the public who use the Peoria gateway. The proposal in the application would not insure to the Nickel Plate the neutrality which is essential to the protection of the traffic which we have built up in connection with the TP&W, nor would there be strict neutrality without an equal ownership by the Nickel Plate in the TP&W with the Santa Fe and the PRR.

Exam. Albus: At this time we will take a recess until 1:30.

(Whereupon, at 12:25 p.m., a recess was taken until 1:30 p.m. of the same day.)

[fol. 1494] AFTERNOON SESSION 1:30 p.m.

Exam. Albus: The hearing will please come to order. We will continue with the direct testimony of Mr. Witt.

S. J. WITT resumed his testimony as follows:

Direct examination (continued):

By Mr. Broker:

Q. Would the Nickel Plate accept, as a condition of its acquiring equal ownership in the TP&W, the obligations referred to in the second full paragraph on page 14 of the Application filed in Finance Docket No. 18991, reading as follows:

"The agreement also provides for the future operation of TP&W as a separate and independent carrier, soliciting traffic in its own interests and with a majority of its board of directors composed of prominent citizens not connected with applicants; for the maintenance and improvement of its properties, including line and equipment, in keeping

with the requirements of a railroad of its character and importance; and for the maintenance of all existing routes and channels of trade without discrimination between connecting lines of railroad."

A. Yes, with the qualification that the obligations stated in the Application would be reworded in such manner as to clearly include the Nickel Plate and all other connections of the TP&W. We feel strongly that equal ownership by the Nickel Plate in the TP&W is the only way in which the [fol. 1495] neutrality and independence of the TP&W can be preserved and at the same time assure the public of good transportation service. This would not only protect the Nickel Plate as a direct connection of the TP&W but its other connections as well. In fact, if the applicants intend true independence and neutrality, they should have no objection to the admission of other lines to ownership. The support through ownership of another strong railroad such as the Nickel Plate will add to the stability of the TP&W, will provide added assurance for industry to locate along the line of the TP&W, aad will insure its continuance as an important link between the east and the west. Every public interest consideration advanced by the applicants is more likely of accomplishment if the Nickel Plate is admitted to a share of control.

Q. Do you have any comments in respect of Mr. Coulter's testimony (Tr. 975) concerning cooperation between Nickel Plate and TP&W in developing industrial property at East Peoria?

A. I have read Mr. Coulter's testimony. His statement that the Nickel Plate had declined to give TP&W a crossing over our main tracks to reach the property in 1952 is correct. This subject was reactivated by the TP&W with me one year after I became Vice President, or to be exact, on January 4, 1955. I had the matter investigated promptly. Subsequently Mr. Gaiennie mentioned the matter to me personally and at that time stated that they were obtaining options for a right-of-way to reach the property. He stated that the cost of the property would be between $90,000 [fol. 1496] and $100,000 and before taking up the options he was making another approach to us to work the matter out. I told him that the matter was being actively progressed.

On May 16 I wrote Mr. Gaiennie stating that we were prepared to negotiate an arrangement to serve the property and suggested a conference at either Cleveland or Peoria to work out the details. On June 14 I heard from Mr. Miller, who succeeded Mr. Gaiennig, asking if it would be convenient for me to meet with him in Peoria during the week of June 20. A conference was arranged with Mr. Miller on June 23, at his office in Peoria. The arrangement to serve the property was worked out on that date and subsequently confirmed in writing. I had no knowledge at any time that the TP&W had purchased the property until Mr. Coulter so testified at this hearing. There certainly was no lack of cooperation on my part when the matter was handled with me.

Q. Previous witnesses have referred to alleged benefits to be derived in the way of car supply to TP&W if it were owned by Santa Fe and PRR. Do you have any comments in this connection?

A. The Nickel Plate's ownership of cars meets the Association of American Railroads' quota and our ratio of bad order cars to serviceable cars is less than most of the large eastern lines. The Nickel Plate will obligate itself to provide the additional cars necessary to take care of its proportion of ownership in the TP&W provided it would be the policy of the owners to fulfill the car requirements [fol. 1497] in that way. However, we would prefer that the TP&W provide its own equipment in order to enable it to draw from the national car pool because there are times when the owning lines will find it extremely difficult to supply cars to the TP&W due to an inadequate supply of cars on their own railroads to take care of their own industries.

In respect of car supply and its relation to the location of industries, there are quite a number of industries which require special types of equipment. The general practice is for the industry to work out its car requirements with the originating line, which, in turn either agrees to furnish the full supply, or it agrees to furnish its quota of cars and obtain the balance of the cars from the connections which are to handle the traffic from the shipping point to destination. It would only be natural for the TP&W, in the case of

an industry which requires special equipment, to contact its owner lines to provide their share of the cars to the extent that those lines could participate in the movement of the traffic. Once the car supply is set up, the traffic is channeled to move via the lines which furnish the equipment. The Nickel Plate, through ownership in the TP&W would have an equal opportunity to offer its service to the industry by providing its share of the necessary special equipment. Without an equal ownership in the TP&W, the Nickel Plate would be at a serious disadvantage in connection with the growth potentials of the TP&W.

[fol. 1498] Q. What is the position of the Nickel Plate on the application of the M&StL to acquire ownership of the TP&W?

A. The M&StL application seeks complete ownership and joint operation of the TP&W. This in effect would integrate the TP&W into the M&StL. On this basis the Nickel Plate is opposed to the proposal and application of the M&StL. If, however, the M&StL application is approved, Nickel Plate seeks an equal share of control on the same basis as the M&StL and any other railroad authorized to participate in control.

Q. Will you please state the reason for your position?

A. The M&StL is an important connection of the Nickel Plate at Peoria. Traffic interchanged, divided between received and delivered loaded cars for the years 1953, 1954, and 1955, is as follows:

	Received from M&StL	*Delivered to M&StL*	*Total*
1953	7,815	6,960	14,775
1954	6,618	5,881	12,499
1955 (11 mos.)	6,649	5,517	12,166

The Nickel Plate presently has the status of an eastern connection of the M&StL, and in that respect its situation is identical with that of other eastern connections at Peoria, including the TP&W—that is, it is free to solicit traffic for its haul to and from Peoria independent of the line or lines west of Peoria. In so doing, the Nickel Plate does not meet with the opposition of the M&StL as an originating, ter-

[fol. 1499] minating or intermediate carrier. In other words, at the present time there is no conflict of interest between the M&StL and Nickel Plate in reference to traffic in the territory east of Peoria. Should the M&StL be permitted to acquire the TP&W it would project its line into eastern territory and solicit for the long haul to Effner, Sheldon and other points at which the present TP&W connects with eastern carriers in order to obtain the TP&W proportion of the revenue east of Peoria.

Q. Can the M&StL now send its traffic via the TP&W east of Peoria?

A. Yes. The M&StL is able to use any line east of Peoria to and from all of eastern territory, including the Nickel Plate, TP&W, NYC and PRR.

Q. Does the M&StL have a direct connection with the TP&W through which it interchanges traffic?

A. Yes. It has a direct interchange at Peoria.

Q. Have you developed the volume of loaded cars interchanged between the TP&W and M&StL at Peoria for the years 1953 and 1954?

A. Yes. The figures which I have were taken from TP&W Exhibit H-52 in Finance Docket No. 18752—Illinois-Missouri Terminal Railway Company Control. The exhibit shows that the interchange for the years 1953 and 1954 was as follows:

	1953	1954
TP&W delivered to M&StL —	5,779	4,826
M&StL delivered to TP&W —	8,359	7,173
Total —	14,138	11,999

[fol. 1500] It will be noted that the interchange of loaded cars closely approximates the number of cars interchanged between the M&StL and Nickel Plate. The number of cars susceptible of diversion from the Nickel Plate represents a substantial part of the traffic the Nickel Plate handles through Peoria.

Q. Would the Nickel Plate object to the M&StL acquiring an equal interest with the other lines in the TP&W?

A. The Nickel Plate would not have any objection. However, the application of the M&StL seeks complete ownership, control and joint operation which we oppose as being contrary to the best interest of Peoria as an industrial district and as a primary gateway between the east and west in that its service will be directed to preferring one line rather than to giving equally good service to all of its connections. The future development of the TP&W depends on retaining close relationship with its many connections with which it presently works and which need the TP&W as much as the TP&W needs them to provide a fluid and flexible transportation system to and from the Peoria district and via Peoria as a primary gateway.

[fol. 1501] Q. Do you have a one-page exhibit marked for identification as No. 68?

A. I do.

Q. Which summarizes income and financial position of the RF&P and Lehigh and Hudson River Railway?

A. Yes, I do.

Mr. Broker: Subject to cross examination, Mr. Examiner, I offer Exhibits H-56 to H-68, inclusive, for receipt in evidence.

Exam. Albus: We will wait until after the cross-examination, please.

We are ready for cross-examination, I assume, is that correct?

Mr. Broker: Yes, sir.

Exam. Albus: Who is going to lead off?

Mr. Davis, do you have any questions?

Mr. Davis: No, sir.

Exam. Albus: Mr. Cassell?

Mr. Cassell: No, sir.

Exam. Albus: Mr. Lucas.

Mr. Lucas: I hope only one or two, Mr. Examiner.

Exam. Albus: Thank you.

Cross examination.

By Mr. Lucas:

Q. Mr. Witt, will you turn to page 2 of your prepared statement, please, the paragraph that appears at the top

[fol. 1502] and the second sentence, if the Nickel Plate is not admitted to share of ownership then the application should be denied, is if your understanding that the McNear estate intends to sell the stock to somebody, the stock of the TP&W to some purchaser?

A. I understand, Mr. Lucas, that the Santa Fe at the present time has purchased the stock subject to approval by the Interstate Commerce Commission. If in case the Commission does not approve the transaction I wouldn't know. I am not in the finance department and wouldn't know what would happen to the stock or what might occur in respect to its ownership.

Q. I wonder if you share the understanding or know of the testimony of record that the trustees consider they must diversify the portfolio, the investment portfolio, in the McNear estate?

Mr. Broker: I object. There is no such testimony.

Exam. Albus: The record will speak for itself.

If that was the testimony, what would your answer be?

A. I would say I heard that or had that impression.

By Mr. Lucas:

Q. Will you turn, please, to page 18 of your prepared statement.

A. I have it.

Q. The second full paragraph there, the fourth line, I see the use of the word earnings of the Pennsylvania group. Are you referring there to gross revenues?

[fol. 1503] A. Freight revenues.

Q. Gross freight revenues?

A. That's right.

Q. Are you familiar with how the Pennsylvania System is set up on the form A reports to the Interstate Commerce Commission?

A. I believe, Mr. Lucas, the form A shows all railroads that I have shown with the exception of the N&W and the Lehigh Valley.

Q. Do you know whether there is any differential in the Commission reports between the system and certain railroads such as the Long Island, the Wabash, the DT&I?

A. I do not know that, Mr. Lucas.

Mr. Lucas: That is all, Mr. Examiner.

Exam. Albus: Mr. Thomas.

Cross examination.

Q. The Nickel Plate connects with a large number of western lines at St. Louis, does it not?

A. Yes, sir.

Q. And at Chicago?

A. Yes, sir.

Q. Do you treat those lines in a neutral manner, in respect one to another?

A. Yes, sir.

Q. Why do you do that.

A. Well, the Nickel Plate has a very liberal policy in [fol. 1504] respect of its interchange and routing of traffic via connections. I believe I can say this—

Q. (Interrupting) Mr. Witt, could we tie it down just to St. Louis first?

A. Yes, go ahead. What is the question.

Q. Would you answer the question?

A. I will answer it as soon as I get it.

(Questions and answers read as follows:

"Question: Do you treat those lines in a neutral manner, in respect one to another?

"Answer: Yes, sir.

"Question: Why do you do that?")

A. Well, Mr. Thomas—

Mr. Broker (interrupting): Excuse me, what is the question, is it about St. Louis?

Mr. Thomas: Yes, I asked him to—

Mr. Broker: Could you reframe it, please?

By Mr. Thomas:

Q. Suppose, Mr. Witt, that we confine ourselves to St. Louis.

A. All right.

Q. Why do you treat the lines connecting with you at St. Louis on a equal basis?

A. Well, Mr. Lucas we do that because of our relations with each of those railroads. They are friendly, and we have set up our service in such a manner that all are treated [fol. 1505] equally in respect of deliveries to those lines so as to make connections into the southwest and specifically it is a policy with us to do so.

Q. Is that a policy confined to the Nickel Plate?

A. Well, I don't know the policy of any other railroad, Mr. Thomas, I can only speak for the Nickel Plate, for which I shape the policy.

Q. Let's take the Missouri Pacific at St Louis. Do they treat you as well as they treat the other railroads?

A. I don't know. Expressing an opinion of my own I think so but I have no definite information that they do. They will have to speak for themselves in that respect.

Q. On Page 11 of your prepared statement, Mr. Witt, you spoke of your schedules to and through Peoria and at Farmdale are coordinated with the Lackawanna and other railroads named there.

A. That is right.

Q. Is that so called the Alphabet route?

A. No, the Alphabet route is the Nickel Plate, Pittsburgh and West Virginia, Western Maryland and Reading Railroads.

Q. Is good service provided on that route?

A. Very good service.

Q. Does it get a substantial part of the business moving between the points it serves?

[fol. 1506] A. Mr Thomas, you are asking a substantial part of the business between the points that it serves. That would mean Philadelphia, Baltimore, Hagerstown, York, and those places. I don't know what the total business of those places are. Consequently I can't say whether our traffic is substantial or not in relation to the total but it is substantial.

Q. Do you consider it a competitive route with the route of the Pennsylvania between the same general territory?

A. Yes.

Q. You referred to your interchange, I think, the interchange in 1953-1954 and 11 months of 1955 between the M&StL and the Nickel Plate at Peoria?

A. Yes, sir.

Q. That's effected through the Peoria and Pekin Union, isn't it?

A. That's correct.

Q. Do the figures you show which were copied into the record include cars on which there was a local switch move in Peoria, that is, originated and terminated cars in this area?

A. No, sir, they are all roadhaul cars.

Q. Roadhaul cars for both lines?

A. That's correct.

Q. Now, you also quoted some figures of TP&W-M&StL interchange they were taken from Finance Docket 18752, Exhibit H-52. Do you know whether or not those cars in-
[fol. 1507] cluded only interchange where both lines had a roadhaul?

A. I do not.

Q. Yesterday Mr. Nelson of the M&StL when testifying about the solicitation policy of the M&StL, if it should acquire the TP&W, stated that he would, or that he had absolutely no intention of disturbing the present flow of tonnage now moving in connection with the Nickel Plate. He mentioned no other line connecting with the TP&W. Have you ever discussed that subject with the M&StL people?

A. I have not, Mr. Thomas. I am very happy to hear the statement.

Q. On page 22 of your prepared statement you discussed the agreement between the Nickel Plate and the TP&W with respect to certain property in East Peoria.

A. Yes, sir.

Q. You state that the negotiations, that is, after they were resumed when you dealt with the subject, were carried on at least through June of 1955, and I think you said the arrangement was worked out on June 23, and subsequently confirmed in writing. That was after the Santa Fe had entered into its contract for the purchase of the TP&W stock with the trustees of the McNear estate, was it not?

A. I don't know, Mr. Thomas. The first I heard of the Santa Fe-Pennsylvania negotiation for TP&W stock was in the latter part of May. I happened to be at White Sul- [fol. 1508] phur Springs at the time and Mr. Carpi come down there and the newspapers reported of the acquisition of the TP&W by the Santa Fe and Pennsylvania, and I asked Mr. Carpi about it and he says that was correct. Now, that's the first I ever heard of it.

Q. Will you refer to your Exhibit 67?

A. Now, which is that?

Q. That deals with the RF&P.

A. Oh, yes.

Mr. Broker: That would be 68.

Mr. Thomas: Somebody wrote the wrong number on this.

By Mr. Thomas:

Q. Are you familiar in a general way, Mr. Witt, with the geographical setup between the RF&P and the owning lines?

A. I am to this extent, Mr. Thomas, I have been over the RF&P many times.

Q. Would you describe—I am not interested in any precise description, but in a general way—how the owning lines reach the RF&P?

A. Well, the Baltimore and Ohio and the Pennsylvania Railroad reached the RF&P at Potomac yards Virginia.

Q. Pardon me, is that the northern—

A. (Interrupting) That is the northern terminus.

Q. Of the RF&P?

A. And the southern terminus so far as my recollection goes is at Richmond, Virginia, where the Coast Line and [fol. 1509] the Seaboard, I think the Seaboard and the Atlantic Coast Line connect with it.

I think the Southern also delivers traffic to them, whether it is Richmond or some place in that vicinity, and they also have their own line into Washington, let me say.

Q. Who?

A. The Southern.

Q. The Southern?

A. Yes. And the C&O interchange in the vicinity of Richmond, that's my recollection.

Q. Does the Pennsylvania have any lines extending south of the northern terminus of the RF&P?

A. It has a line into Norfolk, Virginia.

Q. Norfolk?

A. That's correct.

Q. Does it have any line serving the territory with which the RF&P connects to the south?

A. No. To my knowledge it does not.

Q. Does the B&O?

A. No, sir.

Q. Does the Coast Line have any line extending north to serve the territory reached by the northern end of the RF&P?

A. No.

Q. Does the Seaboard?

A. No.

[fol. 1510] Q. The exhibit shows, I think, that 73.79 per cent of RF&P common stock is owned by the Richmond Washington Company. Do you know how the rest of the stock is held?

A. I think it is owned—I say I think—there is ownership, the rest of the ownership is in the State of Virginia, either directly by the state or some part of the commonwealth. It is state owned, in any event.

Mr. Thomas: That is all I have.

Exam. Albus: Mr. Wheeler, please.

Cross examination.

By Mr. Wheeler:

Q. The C&O doesn't come north of Washington, does it, Mr. Witt?

A. Mr. Wheeler, I cannot answer that specifically. They do have a line north of Richmond. It doesn't go into Washington directly, as I understand it, but they do have a line north of Richmond.

lines of the RF&P?

Q. Mr. Witt, do you know whether or not any or all of the railroads in question run their own power through the

A. My understanding is that on freight equipment they do not. Passenger equipment I think they do. I won't be too sure of that either, Mr. Wheeler. I won't be too sure of that.

Q. You wouldn't be sure, for instance, whether or not the Chesapeake & Ohio ran its own power into Washington on freight equipment as well as passenger?

[fol. 1511] A. No, I couldn't say positively.

Q. When I say Washington I mean the Potomac Yard.

A. I couldn't say positively, Mr. Wheeler.

Q. Mr. Witt, does the RF&P do much independent traffic solicitation?

A. I would say they are quite active in their own territory around Richmond and places of that sort, yes, sir.

Q. But I am speaking now, do they on a national basis?

A. I don't think so.

Q. Is the same thing true with respect to the Lehigh and Hudson?

A. The Lehigh and Hudson River, I think, are more active in the solicitation of traffic via the Lehigh and Hudson River Railroad. They have a traffic department which does solicit traffic.

Q. But neither railroad has extensive offices throughout the country, do they?

A. No, they do not.

Q. Is there another gateway paralleling the RF&P to the south along the Atlantic Coast?

A. Well, you have the line of the Pennsylvania through Norfolk that makes connections with the Southern Lines. You have the routes down through Hagerstown, down through Winston, Salem, through the Central Railroad in New Jersey, and the Reading Railroad, and the B&O Railroad with the N&W and down through Hagerstown, down [fol. 1512] through the South, southeast, N&W is in there, too, through Winston and Salem.

Q. Mr. Witt, is there any figure on this exhibit or is there any way of concluding from this exhibit how much better the financial and physical condition of the RF&P or the Lehigh and Hudson River Railway Companies would have been if they were operated under individual ownership?

A. There isn't any figure on here that shows that, Mr. Wheeler.

[fol. 1513] Q. Is there an ownership line in Lehigh and Hudson River Railway Company that is competitive with the whole line of that company?

A. No, that is a bridge line.

Q. Refer to Exhibit H-65, Mr. Witt.

A. What is that?

Q. That is your colored map.

A. All right.

Q. Is there any line of the Pennsylvania Railroad extending south as far as Richmond on that map?

A. No.

Q. When you spoke of the Pennsylvania having a competitive route there, were you speaking of the Cape Charles, I believe it is, route of the Pennsylvania on the east side of the Chesapeake Bay?

A. Did you say a competitive route before? I thought you said did they have a line that was parallel, and I said that the Pennsylvania did have a line down to Norfolk.

By Mr. Wheeler:

Q. Well, is the Pennsylvania's line to Norfolk parallel with the RF&P?

A. Oh, no. No, it is not parallel.

Q. Is it competitive?

A. Servicewise I would say not, because I would say 90 per cent of the traffic going into the south, maybe 95 that goes through the Potomac Yards are RF&P, it could be a hundred.

[fol. 1514] Q. Well, the route down the eastern shore there is not competitive, either, is it?

A. No, servicewise, I will speak that way.

Q. Servicewise?

A. Yes.

Q. Mr. Witt, would it be a fair summary of your statement that the principal reason you want to have an ownership in the TP&W is to preserve not only the present routes and interchanges that you have, but the service connections that you now have with the TP&W and through the TP&W with the other carriers?

A. We want that, to be sure, Mr. Wheeler. We want more. We want the opportunity to see that they are continued, and strict neutrality on the part of the TP&W.

Q. What you primarily want, though, is the maintenance of the present service, do you not?

A. I will go further than that. We want the TP&W to be strictly neutral as to records, as to contacts, everything, so that business that we are now handling is not the property and does not become the property of any of the other railroads.

Q. Mr. Witt, I am asking you the question whether or not your primary consideration—and I am not interested in the others for the moment, we will get to those—but isn't your primary consideration a continuation of the service that you now receive from the TP&W in connection with your interchange business with them and through them your interchange with other lines?

[fol. 1515] A. Well, let's say that is a reason.

Q. Is it the predominant reason?

A. I think, Mr. Wheeler, I have to expand the question, as I did before, to make it primary and a complete answer.

Q. Can you answer yes or no?

A. No.

Mr. Broker: The witness has answered the question, Mr. Examiner.

Exam. Albus: I think he has.

May we have the next question.

By Mr. Wheeler:

Q. The answer is no?

A. Mr. Wheeler, you can't ask a question that you can answer yes or no if it has a meaning differently than what I am trying to imply by my answer, and the answer must be complete, and I propose to make it complete, and I think it is in the record.

Exam. Albus: The next question, please.

By Mr. Wheeler:

Q. Mr. Witt, if the applicants in this proceeding would agree to a condition in any order of approval by the Com-

mission which would require the continuation of the present service that you are now receiving from the TP&W, would that satisfy your primary requirements insofar as this proceeding is concerned?

A. I would want to see that condition first before I would answer that in the affirmative or negative.

Q. Can you tell me what kind of a condition with respect [fol. 1516] to service would satisfy you?

A. I cannot at this time, Mr. Wheeler; I have given it no thought.

Q. You do not believe you can indicate to the Examiner, in general, the type of condition which might be provided with respect to service in addition to the other condition which you testified to in your direct?

Mr. Broker: Now, I object, Mr. Examiner. This question makes it appear and tries to twist the answer around as though Mr. Witt had said that the sole thing that we were after or the primary thing we were after was service. He specifically gave a broader answer than that, and he testified on direct that he wouldn't be satisfied with just conditions.

Mr. Wheeler: Mr. Examiner, he testified on direct that he would not be satisfied with the specific set of conditions, none of which, so far as I can tell, related to service. I believe he also testified on direct that he was very much interested in preserving service. All I am interested in knowing from him is whether or not insofar as he so testified, that is, with respect to service, that could be met, that requirement of the Nickel Plate or that interest of the Nickel Plate could be met, at least so far as the M&StL is concerned, by our agreeing to a condition, because I propose on the record to state that the M&StL will agree to such a condition in order to satisfy the Nickel Plate. [fol. 1517] Exam. Albus: But I understood Mr. Witt to say that he is not in a position at this time to state what that condition would be.

By Mr. Wheeler:

Q. Is that correct, Mr. Witt?

A. That is correct.

Q. Mr. Witt, do you believe it would be possible for you and representatives of the M&StL to work out such a condition that would meet your requirements with respect to service?

A. Mr. Wheeler, I couldn't answer that. That would be a matter for my superior executives to shape the policy and possibly to the extent of going to the board. I don't, I couldn't state.

Exam. Albus: Then, let's not have any more questions about conditions to Mr. Witt.

Mr. Wheeler: Mr. Examiner, I wish to state on the record, on behalf of the M&StL, that the M&StL is prepared to accept as a condition of the approval of its application a condition which would guarantee to the Nickel Plate the type of service they are now receiving from the TP&W.

Exam. Albus: Thank you very much.

Let's go on to something else.

By Mr. Wheeler:

Q. Mr. Witt, at the bottom of the first page of the second section of your prepared statement, you state that should the M&StL be permitted to acquire the TP&W it would project its line into eastern territory and solicit for the long haul to Effner. Mr. Witt, have you discussed [fol. 1518] the solicitation, the proposed solicitation, policies of the M&StL with any of its officers or directors?

A. I have not, Mr. Wheeler.

Q. Can you tell me the source of the statement which you have made?

A. My information is based on deduction and what has happened in the past in cases of carrier consolidation or joint operation?

Q. Mr. Witt, did you hear the testimony of Mr. Nelson?

A. I did.

Q. Did you believe that his testimony was contrary to the statement that you have made here with respect to the future policy of the M&StL?

A. N I don't believe it is contrary and I have the utmost confidence in the word of Mr. Nelson, but manage

ments change as time goes on, policies change as time goes on, and I have observed change in policies as the years go by and have experienced them in many cases, Mr. Wheeler.

Q. Well, Mr. Witt, such ancient adages as avoiding being pennywise and pound foolish don't change with time or management, do they?

A. Well, there is such a thing as an adage, "A child once burnt don't go back to the fire."

Q. Now, Mr. Witt, that has no particular application to the M&StL, does it?

[fol. 1519] A. None whatsoever, Mr. Wheeler.

Q. Mr. Witt, you stated at page 11 of your testimony, at the bottom of the page, the "Nickel Plate's schedules from and to Peoria are coordinated with the Lackawanna, Lehigh Valley & Erie to and from points in New York State and New England."

A. I think there are added there, Mr. Wheeler, Pennsylvania and New Jersey. I could have gone on and on, but I did add Pennsylvania and New Jersey.

Q. "And with the route of the Pittsburgh & West Virginia, Western Maryland and Reading to and from points on those lines and on perishable traffic to Philadelphia, Pa." Then you added: "The Nickel Plate provides for these lines their only competitive schedules to, from and through Peoria." As to the traffic originating on those lines, would the M&StL have any choice but to use the Nickel Plate?

A. Yes.

Q. As its eastern connection?

A. Yes.

Q. Will you please tell me how?

A. Well, the Pennsylvania Railroad and the New York Central Railroad reach many of those destinations, and they also connect with the Erie, with the Lackawanna, the Lehigh and our other connections by simply stepping up service that can be accomplished.

Q. Why did you say, then, that the Nickel Plate provides [fol. 1520] these lines their only competitive schedules?

A. I think it does at the present time, Mr. Wheeler, on perishable traffic through Peoria.

Q. Is it limited to perishable traffic?

A. No. No. But perishables form a large part of the interchange at Peoria.

Q. With the M&StL?

A. No.

Q. I speak now of the M&StL traffic.

A. No.

Q. Isn't it a fact, as you have indicated it there, that this interchange traffic between the Nickel Plate and the M&StL is the only truly competitive route to the points that you have mentioned, schedulewise?

Mr. Broker: Would you read the question.

(The last question was read.)

Mr. Wheeler: Mr. Examiner, I would like to withdraw the question and restate it again.

Exam. Albus: Thank you.

By Mr. Wheeler:

Q. How does your service, Mr. Witt, compare with that of the other lines to the points and the railroads which you have mentioned and which I have just read?

A. How does Nickel Plate service—you mean compared with competing lines?

Q. Your schedules.

[fol. 1521] A. How do our schedules compare with lines competitive with the Nickel Plate?

Q. Yes, sir.

A. Our schedules are competitive with the schedules of the other lines from Peoria, from the Peoria gateway.

Q. That is your statement?

A. That is correct.

Q. Now, tonwise how do they compare, for instance, how does your schedule compare with the Pennsylvania's to Cleveland? I am speaking now of the traffic off of the M&StL?

A. Our schedules are superior.

Q. To Buffalo?

A. Superior.

Q. To Baltimore?

A. I would say that they are no more than competitive.
Q. To Boston?
A. Competitive.
Q. To points served by the Lehigh Valley?
A. Superior.
Q. Lackawanna?
A. Superior.
Q. Erie?
A. Mr. Wheeler, I will say superior, but I wouldn't take an oath that that's one hundred per cent correct.
Q. Would your answer be that it would be superior to the [fol. 1522] additional railroads that are shown and that you have named in your direct testimony at the bottom of page 11?
A. Yes.
Q. Does your superiority run as high as 24 hours, Mr. Witt?
A. I couldn't say, Mr. Wheeler, I couldn't say that.

Exam. Albus: Let's go, gentlemen.

By Mr. Wheeler:

Q. Does the TP&W solicit for its Peoria-to-Effner route against the Nickel Plate now?
A. I can't state definitely on that point, Mr. Wheeler, at all.
Q. Irrespective of who owns the TP&W, would ownership in and of itself have anything to do with whether the TP&W solicited its long or its short haul?
A. I think that it might, Mr. Wheeler. Today the TP&W undertakes to get a haul for itself on all railroads. In connection with the Nickel Plate, I would say that where they find that the Nickel Plate is in a reasonably favorable position, they would solicit or wouldn't object to the Nickel Plate, let's say that. On the other hand, if they get away from our railroad, they probably would solicit for the long haul if the service was reasonably competitive.
Q. Does the M&StL work with you in the solicitation of traffic?
A. Very closely, Mr. Wheeler.

Q. Mr. Witt, you said at one point in your testimony that all of the public interest factors could be achieved by joint ownership. Do you believe that the economies in [fol. 1523] operation that were testified to yesterday by, Mr. Schroeder and Mr. Nelson and Mr. Provo for the M&StL could be achieved in a multiple ownership, under multiple ownership?

A. That's a large question. I think possibly in time they might be, except for the physical operation—the economies that might come from the physical operation of the trains, of one line over that railroad, I think many economies might be effected if there was cooperation among the carriers.

Q. What economies do you have in mind?

A. Oh, Mr. Wheeler, I have made no detailed study of the questions asked me. That's not a five-minute answer.

Q. You are not an operating man?

A. No, sir.

Q. Mr. Witt, would you have a preference as between the sole ownership of the TP&W by the M&StL as against ownership of the TP&W by the Santa Fe-Pennsylvania?

A. I'd prefer not to answer that, Mr. Wheeler.

Q. Have just one last question, Mr. Witt. Did you enjoy your stay at White Sulphur?

A. Very much indeed, sir.

Mr. Wheeler: Thank you.

Exam. Albus: Is there anything further?

Mr. Hoag: I have one question.

Cross examination.

By Mr. Hoag:

Q. Mr. Witt, I don't know whether the question is prop- [fol. 1524] erly addressed to you or not; if not, counsel can correct me. In this proceeding so far the applicants in both finance dockets, likewise the intervenor the Wabash, have agreed or they have stated for the record, I should state, that in the event the decision is rendered in their particular favor, that they have no objection to the Com-

mission imposing the Washington Job Protection Agreement.

A. We would expect it, Mr. Hoag.

Q. You have no objection?

A. None whatsoever.

Mr. Hoag: Very well, thank you.

Exam. Albus: Are there any further questions?

Mr. Broker: May I just comment on that. Mr. Witt and I are both authorized to agree to that.

Exam. Albus: Thank you very much.

Mr. Thomas: I have just one more question.

Exam. Albus: Yes, Mr. Thomas.

Further cross examination.

By Mr. Thomas:

Q. You show a direct connection, as I understand it, in one of your exhibits or your testimony between the Rock Island and the Nickel Plate at Peoria.

A. No, I don't recall that. Our interchange with the Rock Island, I am sure, is through the P&PU.

Q. Through the P&PU?

A. That is correct.

[fol. 1525] Q. Do you interchange a substantial volume of traffic with the Rock Island at Peoria?

A. No, it isn't too substantial, Mr. Thomas, at Peoria.

Q. How does it compare with that which you have shown for the M&StL?

A. Very much less, substantially less.

Q. Would you agree to furnish it for the record for the same period?

A. Yes.

The Witness: Do you have the figures, Mr. Broker?

Mr. Broker: We may be able to give it to you right now.

A. If we have it, I will be glad to read them into the record, Mr. Thomas.

By Mr. Thomas:

Q. Thank you. Are those figures of the same type as the ones shown here, that is, road haul for—

A. (interrupting) No, no, no, the Rock Island would not all be road haul. I'd have to furnish that, Mr. Thomas, and we would do that. These would include switch traffic, Mr. Thomas, and, if you will permit me, we will furnish these figures for, what do you want, '51 through '55?

Mr. Thomas: I would suggest the period as for the M&StL, '53, '54 and 11 months of '55.

Mr. Broker: We will supply the three years.

The Witness: Yes, we will be glad to do that.

Mr. Broker: You will give us a period of time to do that? [fol. 1526] I don't think it will be before the conclusion of this hearing.

Exam. Albus: I will state on the record you will have 15 days to supply that. Is that sufficient?

The Witness: Yes, sir.

Mr. Broker: Yes, it is sufficient, Mr. Examiner.

Exam. Albus: All right.

(The document described to be furnished by intervenor Nickel Plate.)

Mr. Thomas: My attention has been called to Exhibit H-63, and it may be there is some misunderstanding—oh, that deals with the TP&W. Strike that.

Exam. Albus: Are there any further questions of Mr. Witt?

Do you have anything else, Mr. Thomas?

Mr. Thomas: No.

Exam. Albus: Is there any redirect?

Mr. Broker: Just one thing, yes, that arose on cross.

Redirect examination.

By Mr. Broker:

Q. About the Alphabet Route, will you describe the carriers in that route before the Wheeling lease became effective?

A. The carriers before the effective date of the lease between the Wheeling—the lease of the Wheeling, Lake Erie and Nickel Plate, was the Nickel Plate, Wheeling and Lake Erie Railroad, Pittsburgh and West Virginia Railroad, Western Maryland Railroad, and Reading Railroad. [fol. 1527] Q. And since the lease the name "Wheeling" has been dropped out because that's part of the Nickel Plate operation?

A. That is correct.

Mr. Broker: No other questions.

OFFERS IN EVIDENCE

At this time I offer in evidence, Mr. Examiner, Exhibits H-56 to H-68, inclusive.

Mr. Lucas: Mr. Examiner, may I make a short statement in connection with an objection to part of Exhibit H-66?

Exam. Albus: Yes.

Mr. Lucas: Sheet 2, which shows certain statistics starting with the year ending December 31, 1927, and from there on through 1955, is in my opinion relevant to the issues.

The similar data on Sheet 1 relates to a time period which seems to me to be entirely too remote in respect to any issue and the statistics have no materiality or any relevancy to any issue here involved. I object on those grounds.

Exam. Albus: Is there any objection to these exhibits?

The objection is overruled. Let the record show that all exhibits presented through Mr. Witt, H-56 through H-68, are received at this time.

(Intervenor Nickel Plate's Exhibits Nos. H-56 through H-68, inclusive, Witness Witt, were received in evidence.)

Mr. Broker: May I call Mr. Phipps.

Exam. Albus: You are excused, Mr. Witt. Thank you very much.

(Witness excused.)

[fol. 1528] Mr. Broker: Mr. Phipps, please.

At this time, Mr. Examiner, I request that Mr. Phipps' exhibits be marked for identification.

The first one showing the connection between the TP&W and the Nickel Plate at Farmdale as H-69.

Exam. Albus: It may be so marked.

(Intervenor's Exhibit No. H-69, Witness Phipps, was marked for identification.)

Mr. Broker: The next one showing schedule connections of TP&W freight trains with Nickel Plate and Pennsylvania freight trains as H-70?

Exam. Albus: That is correct.

(Intervenor's Exhibit No. H-70, Witness Phipps, was marked for identification.)

Mr. Broker: The next exhibit schedules connections of M&StL and Nickel Plate freight trains as H-71.

Exam. Albus: Very well.

(Intervenor's Exhibit No. H-71, Witness Phipps, was marked for identification.)

Mr. Broker: May I say, Mr. Examiner, that this testimony was distributed and available for anyone last night who wanted it and it was distributed to the others this morning, and if no one has any objection we would like to copy it in and proceed with cross-examination.

Exam. Albus: Is there any objection to that?

[fol. 1529] Mr. Lucas: No objection, Mr. Examiner.

Exam. Albus: That may be done.

M. B. Phipps was sworn and testified as follows:

Direct examination.

By Mr. Broker:

Q. Please state your name, title and address.

A. M. B. Phipps, General Manager, the New York, Chicago and St. Louis Railroad Company, Room 744, Terminal Tower Building, Cleveland, Ohio.

Q. Please outline your railroad experience.

A. I entered railroad service in 1917 and have held numerous positions in the operating department including train dispatcher, yardmaster, trainmaster, superintendent, general superintendent and since 1952, general manager.

Q. Please outline your duties as general manager.

A. My duties include supervision of all transportation operations of the Nickel Plate.

Q. Please describe the facilities for interchange between Nickel Plate and TP&W.

A. Interchange between Nickel Plate and TP&W is performed primarily at a location known as Farmdale in East Peoria, Illinois. These facilities, which provide the only direct connection between Nickel Plate and TP&W, were placed in operation on July 1, 1949. As shown on my Exhibit H-69, the facilities consist of two tracks, each with [fol. 1530] a clear length of 1,341 feet, lying just south of the Nickel Plate main track and just north of the TP&W terminal yard. Interchange is also made between TP&W and Nickel Plate through the Peoria and Pekin Union.

Q. How is the interchange made at Farmdale?

A. At this location, westbound traffic is delivered by Nickel Plate road crews direct from road trains, ordinarily filling the No. 2 track first. The westbound traffic is then handled by TP&W yard crews to the TP&W yard, where the cars are incorporated and dispatched in TP&W road trains.

Eastbound traffic is delivered by TP&W yard crews to the Nickel Plate at this facility, ordinarily using the No. 1 track first. These cars are picked up by Nickel Plate road crews and incorporated directly into Nickel Plate's eastbound road trains.

Q. What is the schedule of operations of the TP&W in connection with the Nickel Plate and Pennsylvania Railroads?

A. As shown on my Exhibit H-70, TP&W operates two through scheduled trains between Lonax, Peoria, (including Farmdale) and Effner daily in each direction. Each of these trains is scheduled to stop in the Peoria territory to set off and pick cars to and from the Nickel Plate.

Q. Please describe the method of interchange between

the Minneapolis & St. Louis Railway Company and the Nickel Plate.

A. There is no direct connection between the M&StL and [fol. 1531] the Nickel Plate, and cars are handled in interchange service between those railroads at Peoria by the Peoria & Pekin Union. My Exhibit H-71 shows the connecting schedules of the M&StL in connection with the Nickel Plate.

Q. If traffic interchanged between the Nickel Plate and the TP&W should be diverted from the Nickel Plate, would there be any operational savings which could be made to offset the loss of revenues?

A. We could not reduce the number of scheduled trains either eastbound or westbound in order to remain competitive on the other traffic which we handle. No operational savings would result from the loss of this traffic.

Q. If traffic interchanged between the M&StL and the Nickel Plate should be diverted from the Nickel Plate, would there be any operational savings which could be made to offset the loss of revenues?

A. The answer to this question is the same as that given to the previous question.

Q. If both the TP&W and M&StL interchange of the Nickel Plate should be diverted from the Nickel Plate, what would be the effect on Nickel Plate's operations into and out of Peoria?

A. We could not reduce the number of trains without seriously affecting other traffic. No operational savings could offset the loss of such revenues.

Q. What has been the attitude of the TP&W in connec- [fol. 1532] tion with cooperating and setting up schedules by the Nickel Plate?

A. The TP&W has cooperated in meeting any changes in schedules of the Eastern Roads. They have set up train schedules to meet those via other gateways. The cars for Nickel Plate are delivered promptly by the TP&W, including cars iced by the TP&W when necessary. This has permitted traffic routed TP&W NKP to meet the second and third morning schedules of our competitors. Thus, fast and dependable competitive service is rendered cars routed TP&W NKP on coordinated schedules applying via

Lima, Ohio with the Erie, via Pittsburgh Junction, Ohio with the P&WVa, Western Maryland and Reading to Philadelphia and Baltimore, and via Buffalo to the Lehigh Valley, Delaware, Lackawanna & Western, Erie and New York Central. Through schedules are set up via all of these routes.

Through schedules from Atlantic Seaboard and intermediate points via Nickel Plate-TP&W have been provided and offer a route competitive with other gateways.

Mr. Broker: The witness is tendered for cross-examination.

Exam. Albus: Mr. Davis?

Mr. Davis: I have none.

Exam. Albus: Mr. Cassell.

Mr. Cassell: No questions.

Exam. Albus: Mr. Lucas.

Mr. Lucas: None.

[fol. 1533] Exam. Albus: Mr. Thomas.

Mr. Thomas: No, sir.

Exam. Albus: Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. Do you have any reason to believe the traffic now interchanged between the M&StL and the Nickel Plate would be diverted from the Nickel Plate?

Mr. Broker: Excuse me, this man was not tendered in connection with the subject of diversion. His testimony relates only to existing service.

Mr. Wheeler: I practically read the question out of his own testimony on page 3

Mr. Broker: I am sorry.

Exam. Albus: The witness may answer.

A. Under what circumstances, Mr. Wheeler?

By Mr. Wheeler:

Q. Under acquisition of the TP&W by the M&StL?

A. Read the question again, please, will you.

(Question read.)

A. Only after acquisition, solicitation may be by the long haul.

By Mr. Wheeler:

Q. By the long haul of the Nickel Plate or—

A. (Interrupting) The road who acquired the TP&W.

Q. When you speak of the Longhaul, to what are you referring?

[fol. 1534] A. East of Peoria to Effner.

Q. East of Peoria to Effner?

A. Yes, sir.

Q. And your assumption is based on what facts?

Mr. Broker: Mr. Examiner, this witness—

Exam. Albus: That's an opinion.

A. Human nature in the railroad business.

Mr. Broker: Mr. Examiner, this witness did not say it would be diverted. He said if it is diverted there would be no operational savings. Now, that's just all that he said.

By Mr. Wheeler:

Q. Is your answer to the last question on page 3 of your prepared statement based on an assumption that or does it contain an inference that the present service being afforded the Nickel Plate by the TP&W would be changed?

A. That question and answer, or the answer is set up to indicate the cooperation existing on schedules, both those existing now and the general changes in the past where additional trains or services were added, that the Nickel Plate was given the advantage of such change in schedules.

By Mr. Wheeler:

Q. You have gotten cooperation from the M&StL, have you not, in connection with your schedules?

A. Yes, sir, Mr. Wheeler.

Q. And do you think that cooperation has been in their strike that.

Mr. Wheeler: I have no further questions.

[fol. 1535] Exam. Albus: Mr. Hoag.

Mr. Hoag: No questions.

Exam. Albus: Anyone else?

Mr. Broker: I just want to say no inference was intended in that answer, to the best of my knowledge.

Exam. Albus: Very well.

Are there any further questions of Mr. Phipps?

(No response.)

Exam. Albus: You are excused. Thank you very much.

(Offers in Evidence)

Mr. Broker: I offer in evidence at this time exhibits H-69 to 71, inclusive.

Exam. Albus: They are received.

(Intervenor's Exhibits H-69 to H-71, Witness Phipps, were received in evidence.)

(Witness excused.)

Mr. Broker: Now may I ask a question, Mr. Examiner?

Exam. Albus: Yes.

Mr. Broker: Will the Commission take judicial notice of statements in its reports published?

Exam. Albus: Yes, indeed, that's my understanding.

I would like to suggest, though, that anything of that kind be included in the brief, not in this record. I am only out here to get the facts. I don't want to have any argument included in it. I mean that would be the ideal record, but this isn't an ideal record. I will guarantee you that.

[fol. 1536] Mr. Broker: Thank you very much, sir. That concludes the presentation of the Nickel Plate.

Exam. Albus: You are very welcome, sir.

May I inquire if there is anyone else who would like to testify this afternoon and be excused so they will not have to come back after the weekend.

(No response.)

Exam. Albus: Apparently not.

We will take a 10-minute recess.

[fol. 1537] Exam. Albus: The hearing will please come to order.

I think we will hear from Mr. Wheeler now.

Mr. Wheeler: Mr. Examiner, I would like to have Mr. Mahoney, the general superintendent of transportation of the Santa Fe returned to the stand for a few questions.

Exam. Albus: Is Mr. Mahoney present?

J. J. MAHONEY was sworn and testified as follows:

Direct examination.

By Mr. Wheeler:

Q. Mr. Mahoney, you are the same gentleman who appeared here earlier as a witness in this case for the Santa Fe, are you?

A. Yes, sir, I am.

Q. Mr. Mahoney, there has been a great deal of talk here about the possibility of the M&StL abandoning the west end of the TP&W if it should acquire that property. Now, the policy of the Santa Fe is in favor of keeping the west end of the TP&W open, is it not?

A. That is correct.

Q. Isn't it a fact, Mr. Mahoney, that the Santa Fe could pretty well determine whether the M&StL could close the Lomax gateway in favor of Nemo by the service that the Santa Fe would agree to give at those two interchange points?

Mr. Thomas: I wonder if this is within the scope of Mr. Mahoney's knowledge. Mr. Mahoney was offered as an [fol. 1538] operating man not a man who has knowledge of solicitation of traffic or routing of traffic or not any of those items which seem to be involved in the kind of conclusion that Mr. Wheeler is asking for.

Mr. Wheeler: Mr. Examiner, I want only operating testimony here. I am not asking him for anything to consider traffic or any other aspect, I am talking solely about his own department.

Mr. Thomas: Then I object to that question because it is too broad to be narrowed down to that subject.

Mr. Wheeler: Mr. Examiner, I don't believe that is true. I said by the service and attempted to relate it strictly to Mr. Mahoney's competence.

Exam. Albus: Mr. Mahoney may answer as to the service that would be afforded.

A. Would you read that question, please.

Exam. Albus: Reframe the question, please, or restate the question.

By Mr. Wheeler:

Q. Isn't it a fact, Mr. Mahoney, that the Santa Fe could pretty well determine whether the M&StL could close the Lomax gateway in favor of Nemo by the service that the Santa Fe agreed to give at those two interchange points.

Mr. Thomas: That seems to me to involve how shippers route traffic and all the considerations that go into that.

Exam. Albus: It is limited to service only.

[fol. 1539] Mr. Wheeler: Correct.

A. Well, as I testified, Mr. Wheeler, in my direct testimony in the early part of these proceedings, I stated that one of the duties of my office was to supervise the interchange of all traffic with all carriers. That includes the establishment of the cutoff times for the delivery of traffic on guaranteed schedules, and what I mean by guaranteed schedules is primarily the handling of perishable traffic. Now, in negotiating the cutoff times with the M&StL and the TP&W and other carriers, I set up the time at which my trains will arrive at those junction points. I asked those carriers to provide a connection with me at those junction points to establish a continuity of service in transcontinental service. So it takes two, like my negotiations with Mr. Rux of the M&StL, he negotiates with me, and he agrees that he will cut off, accept traffic from me at a certain time, and it is my obligation to meet that cutoff time that he establishes. Now, if we don't agree, the question that you are asking, I think, and we can't get together on a common meeting time to establish this traffic, then we have no interchange or guaranteed schedul .

By Mr. Wheeler:

Q. So that if you did not agree with Mr. Rux with respect to the interchange at Nemo assuming that the M&StL had control of the TP&W, the only interchange it would have with the Santa Fe would be at Lomax, would it not? [fol. 1540] A. That would be correct insofar as the guaranteed schedules is concerned, Mr. Wheeler, but the common run of ordered freight traffic we'd interchange at any time we got there with it, but on a guaranteed schedule we'd have to meet a common time.

Q. You could take Nemo out of your service routes, could you not, if you thought that was necessary to insure that the Lomax gateway would be kept open?

A. No, I don't think I could insofar as the interchange of traffic is concerned, if a shipper or a consignee elected to route the traffic through that gateway, I'd have to route it that way.

Q. Well, I understand that, sir, but I am speaking of service now, couldn't you make the service by the scheduling of your trains so much more desirable via Lomax than at Nemo that shippers would naturally route via Lomax?

A. I doubt that, Mr. Wheeler, because the distance, they are too close together.

Q. Well, supposing you in effect discontinued service at Nemo—supposing you did discontinue service and didn't stop any of your trains at Nemo, what effect would that have on Lomax?

A. I'd say to you, in answer to your question, if we were privileged to close the Nemo gateway, the answer is obvious that you'd close that in favor of Lomax, but I don't believe we'd be privileged to do that. The Commission [fol. 1541] wouldn't let us do it.

Q. When you say the Commission wouldn't let you do it, Mr. Mahoney, to what do you refer?

A. I refer to this fact, that we have had this established interchange point with the M&StL, I'd say for 50 years at Nemo, and that's an established service through that gateway, and I am convinced in my own mind, but I could be wrong, that we just couldn't tear up our tracks and discontinue that connection without authority from the Commission.

Q. No, but supposing, couldn't you just cease stopping your trains at Nemo?

A. No, I doubt that.

Q. You don't think you could do that?

A. No, I think we'd be compelled, Mr. Wheeler, to interchange traffic, perishable and all, if the consignee and consignor elected to use that gateway, but on a guaranteed schedule we've got to agree on the time we make the delivery.

Q. And if you don't agree, if you don't agree, then you can run your train at such hours as to preclude the use of the Nemo gateway?

A. That's right, and that's what took place from 1941 to 1950. We couldn't agree on the cutoff time on perishable traffic.

Q. Mr. Mahoney, assume that the Commission has no jurisdiction over whether you stop your trains, your freight trains at Nemo for interchange with the M&StL., could you [fol. 1542] not by stopping that, by refusing to stop your trains there, effectively close the Nemo gateway?

A. Yes, if we were permitted to do that. That's obvious.

Q. And then the M&StL. if it owned the TP&W would have no recourse but to use the Lomax gateway for interchange with the Santa Fe?

A. That's correct.

Q. Mr. Mahoney, can't you in practical effect by changes in service connections take Nemo out of the transcontinental traffic and insure that the M&StL would have to keep the Lomax gateway open?

A. You are asking that question providing the M&Stl. controlled both gateways?

Q. Yes, sir. Supposing you felt that it was the interest of the Santa Fe to keep the Lomax gateway open, couldn't you by the scheduling of your trains effectively force the retention of the Lomax gateway?

Mr. Thomas: I want to clarify this and maybe a couple of other questions.

When you say-you felt, I suppose you refer to Santa Fe Company policy? You are not asking Mr. Mahoney questions dealing with Santa Fe policy, are you?

Mr. Wheeler: I previously asked him if it wasn't the Santa Fe Policy to keep the Lomax gateway open, yes.

Mr. Thomas: But I mean in your question now, when [fol. 1543] you say you felt you mean the Santa Fe?

Mr. Wheeler: Correct.

Mr. Thomas: Good.

A. In dealing with that question it is just about an hour's difference between the two junction points, and it would be quite difficult to say to me, no that you wouldn't stop there and stop over here at Lomax to make an interchange. As long as we had the facilities there, Mr. Wheeler, to interchange traffic, now, there is just the one thing that I could say to that, if your people on the M&StL and I couldn't agree with a cutoff time or an interchange of traffic to provide a continuity of service, then we'd break that connection.

By Mr. Wheeler:

Q. That would be the Nemo connection?

A. Yes, sir.

Q. And the result of that would be that the M&StL would have only one connection left with the Santa Fe and that would be at Lomax, would it not?

A. That would be right.

Mr. Wheeler: I have no further questions.

Exam. Albus. Are there any further questions of Mr. Mahoney?

Mr. Davidson: I have a couple of questions, if I may.

Exam. Albus: All right, sir.

Cross examination.

By Mr. Davidson:

Q. Mr. Mahoney, now, this question about the Santa Fe [fol. 1544] being able to close Lomax or close Nemo, doesn't that work both ways, in other words, if the M&StL should be successful in its application and be granted control of the TP&W, if it gives inferior service at Lomax and superior service at Nemo, which will you use?

A. We will use the superior service.

Q. And as a matter of fact, on traffic bound from west to east, which is longer haul from point of view of the Santa Fe, Lomax or Nemo?

A. Nemo from the west.

Mr. Davidson: No further questions.

Exam. Albus: You are excused, Mr. Mahoney. Thank you very much, sir.

(Witness excused.)

[fol. 1345] Exam. Albus: May we have the next witness, please.

Mr. Wheeler: I will call Mr. David Hill.

Mr. Thomas: Mr. Examiner, before you proceed with Mr. Hill, Mr. Wheeler has furnished me a copy of the data that Mr. Swanson used in computing his estimate of revenue losses to the M&StL, and if Mr. Wheeler has no objection I suggest that it simply be copied into the record.

Mr. Wheeler: I have no objection. I want to make just one reservation. I have not personally been able myself to check that to make certain it is accurate, but I have no reason to believe it is not. If I find any inaccuracies I will supply them for the record.

Mr. Thomas: May I furnish it to the reporter?

Exam. Albus: Yes, if you will, please.

Category	Description	1954 Revenue	Loss Range (%)	Percentage Applied	Loss
1	Eastbound Nemo-Peoria Bridge	$ 201,830	70-80	75	$ 151,372
2	Westbound Nemo-Peoria Bridge	462,567	70-80	75	346,925
3	Eastbound via Nemo to Peoria	4,939	70-80	75	3,702
4	Westbound from Peoria via Nemo	22,213	70-80	75	16,660
5	Other comparable bridge traffic via Peoria-Kansas City-Omaha (Eastbound)	218,592	45-55	50	109,296

[fol. 1546]

Category	Description	1954 Revenue	Loss Range (%)	Percentage Applied	Loss
6	Other comparable bridge traffic via Peoria-Kansas City-Omaha (Westbound)	211,800	45-55	50	105,900
7	Interline rec'd to Peoria	67,707	15-25	20	13,541
8	Interline f'wd from Peoria	86,741	15-25	20	17,348
9	Other westbound bridge via Peoria (Northwest)	1,089,369	5-15	10	108,964
10	Westbound terminations via Peoria ($1,163,950 Twin Cities-Des Moines)	1,985,772	3- 7	5	99,289
11	Other Eastbound bridge via Peoria (Northwest)	1,383,935	3- 7	5	69,197
12	Eastbound competitive originations via Peoria ($1,007,081 Twin Cities-Des Moines)	1,347,610	3- 7	5	67,381
	Total	$7,084,805			$1,109,576

DAVID A. HILL was sworn and testified as follows:

Direct examination.

Mr. Wheeler: Mr. Examiner, I would now like to have marked for identification exhibit showing Mr. D. A. Hill as the witness.

Exam. Albus: Very well, that exhibit may be marked for [fol. 1547] identification II-72.

(Applicant M&StL Exhibit No. II-72, Witness Hill, was marked for identification.)

By Mr. Wheeler:

Q. Mr. Hill, will you please state your name and address?

A. My name is David A. Hill. I am a consultant on railroad investments and maintain an office at 208 South LaSalle Street, Chicago.

My clients consist of two principal groups, the first being primarily institutions that must regularly invest and reinvest their large funds, and have well equipped and well staffed investment research departments; and the second consisting of underwriters and dealers, some of whom are members of the New York Stock Exchange, who also have investment research departments staffed with investment analysts.

Among my clients in the first group are included such institutions as Investors Diversified Services, Inc., of Minneapolis, the Northwestern Mutual Life Insurance Company of Milwaukee, the Continental Assurance Company of Chicago, the Central Standard Life Insurance Company of Chicago, the Aid Association for Lutherans at Appleton, Wisconsin, the Modern Woodmen of America, Rock Island, Illinois, and others.

Among my clients in the second group are investment dealers such as H. Hentz & Co., New York, Schwabacher & Co., San Francisco, A. G. Becker & Company of Chicago, [fol. 1548] and Brew-Jenkins of Milwaukee, Wisconsin.

In addition to serving investors, I have prepared reports for and rendered advice to a number of railroads, including the following: The Burlington, the Chicago and Eastern Illinois, the Toledo, Peoria & Western, the Minneapolis & St. Louis, the Bangor and Aroostook, the Kansas City Southern, the Tennessee Central, and the Chicago Great Western.

As a consultant, most of my work involves advising my clients as to the investment quality of particular railroad issues. At times my advice may include the prudence or desirability of including a particular railroad issue in a certain fund or as part of the portfolio. In addition, I respond to specific inquiries from my clients with reference to a particular railroad that has important lines in growth territory, whether its property is adequately maintained, and whether it has good management. I am also asked on

occasion to make personal inspections of railroads, and write a report of my observations and conclusions for my client. I have made personal inspections of a number of railroads, and in addition have been a member of large inspection parties over many railroads.

In addition, the work that I have done for railroads has included appearing as a witness before the Interstate Commerce Commission in Ex Parte 175, a hearing on railroad rates, and appearing as a witness before state commissions in abandonment and tax cases. I have been consulted by [fol. 1549] railroads and have written reports for some of them in anticipation of their doing some financing.

In addition to the foregoing, I have lectured on railroad investments at Northwestern University. For about six years, I have lectured at the same university before a class of the Investment Bankers Association. I have also lectured at the University of Minnesota. In addition, under the auspices of the University of Chicago, I have lectured at Beloit, Wisconsin, before the American Life Convention, which lecture was published by Railway Age. I have also written articles for Modern Railroads, a trade magazine.

The nature of my work is governed largely by the requirements of my clients. Accordingly, my work changes from time to time, but it is now, and for many years has been, exclusively with regard to railroads, and usually in matters of railroad credit.

For the past several years I have had under consideration the ability of the M&StL. to finance the purchase of the Toledo, Peoria & Western Railroad. I have made three inspection trips over the M&StL., the last two being in the years 1954 and 1955. In addition, in the year 1954 I made an inspection trip over the TP&W.

[fol. 1550] After examining the financial statements of both carriers for a number of years and having satisfied myself that they were maintained adequately for their needs and type of traffic, I expressed my opinion, and it is now my opinion, that the acquisition of control of the TP&W by the M&StL. at a purchase price of approximately $12,000,000 could be financed at competitive bidding at a reasonable interest rate.

It is my considered opinion, that a first mortgage collateral trust bond with a sinking fund secured by a first mortgage on the M&StL and by the pledge of the acquired stock in the TP&W would be readily salable. The sinking fund would enhance the salability of the bonds and at the same time could be planned to conform with the case requirements of the railroad. By planning the sinking fund so as to fit the cash requirements of the railroad, it would be possible to issue bonds that would be extinguished by maturity without placing a heavy burden on the railroad in any single year.

It is my recommendation that the sinking fund should not begin to operate until after five years from the date of the bond issue. As the proposed issue is in a principal amount of $12,000,000, an annual sinking fund payable from income of $480,000 would entirely extinguish the issue by its maturity of thirty years.

I would like to refer to combined and pro forma financial data for the M&StL and TP&W already received in evi- [fol. 1551] dence as Exhibit H-23. It is to that exhibit that I now refer.

Exhibit H-23 consists of five schedules. Schedule 4 of this exhibit shows the combined depreciation of both the M&StL and the TP&W based on the provision for depreciation for the year 1955 and projected forward through the thirty-year estimated life of the bonds. The exhibit also shows the combined equipment maturities on an actual basis, and the proposed bond sinking fund requirements. It will be noted that for the next five years the equipment maturities are substantial, but that nevertheless, there is an excess of depreciation over those maturities and over the maturities of all other long term debts.

Based on the last column of Schedule 4 to Exhibit H-23, it is apparent that depreciation alone would be ample to retire all present debt, including equipment obligations, retire the entire proposed bond issue and still leave an excess for the period of $23,002,000. This excess of more than $20 million would be more than adequate to take care of additional equipment financing in future years, or build up the cash reserves of the combined companies. Moreover, this figure does not include additional depreciation which would

be realized from any additions to the property out of net income.

The earnings coverage of fixed charges by the combined properties would be approximately seven times. It should be noted, however, that even if the combined property earned its fixed charges only one time, the proposed issue [fol. 1552] could be serviced in every year and the cash flow would be adequate to pay off the entire bond issue by maturity. Hence, the earning power of the combined property, not taken into account in the exhibit to which I have reference, would be additional and very substantial protection.

In evaluating the quality of a railroad bond, the most dependable and generally used factor is the historical coverage of fixed charges before all income taxes. In order to make a relative comparison of the proposed issue with seasoned bonds now outstanding, I have prepared Exhibit H-72 to which I now wish to refer.

In particular, I wish to refer to Schedule 1 of that exhibit. Schedules 2 to 11, both inclusive, are merely work sheets showing how Schedule 1 was computed. Schedule 1 is a summary sheet which shows that the contemplated bond issue would be att (sic) to institutional investors, and that it should command a bank rating which would enable it to be sold competitively.

In examining Schedule 1, I wish to say that the other railroads compared with the combined M&StL and TP&W were selected statistically, and I believe without prejudice. Only carriers that had earnings of nearly seven times, it is evident that even if wide fluctuations might occur in future years earnings, there would still be a substantial earnings cushion to service the bonds.

To summarize, the protected depreciation which consti- [fol. 1553] tutes cash available for payment of interest in itself is more than adequate to service the proposed bonds. The combined excess of depreciation over maturities of long term debt, including retirement of the proposed bonds, which excess as shown totals over $20 million, and the earnings in excess of the fixed charges, indicate strong protection of the interest charges and complete retirement of the proposed bonds.

The lower portion of Schedule 1 of Exhibit H-72 compares the several bond issues selected to ascertain the marked appraisal of bonds having a quality not unlike the proposed issues. In selecting for comparative purposes the particular bond of a railroad that has several outstanding, wherever possible I chose an issue that had a maturity as close as possible to 1986. As the coupons vary greatly, the yield at which those bonds are selling is the best statistical guide to the market appraisal of the several credits selected. This market valuation is, in my opinion, confirmatory of my own.

Schedule 1 of the Exhibit indicates that after a bond issue such as that proposed by the M&StL is seasoned, it will sell close to a 4 per cent basis. In order to make the M&StL bond attractive at the time of sale, I have recommended that it bear a 4½ per cent coupon.

It is my opinion that the M&StL will have no difficulty in financing the acquisition of all of the outstanding shares of the TP&W through the issuance of bonds of the type that [fol. 1554] have been described here. Moreover, my opinion and all of the statistics upon which I have relied, ignore very obvious operating savings. All such savings since they would increase the net earnings of the combined system would both increase the coverage of the fixed charges in good business years, or provide an additional cushion in lean years.

[fol. 1555] Q. Does that conclude your direct statement?

A. It does.

Mr. Wheeler: The witness is available for cross-examination.

Exam. Albus: Mr. Thomas.

Mr. Thomas: No questions.

Exam. Albus: Mr. Lucas.

Cross examination.

By Mr. Lucas:

Q. Mr. Hill, on the last sheet, the statement you have just said that this does not take into account very obvious operating savings—

A. That is right.

Q. Are you adopting the testimony of any other witness as to potential operating savings?

A. I heard them, but I wrote that long before I came to Peoria and, as you know, I have been over both roads. I could see two transportation yards, one on each side of the river, one is high and dry, it is a gravity yard, and it seems to me to be obvious, combine the roads, there would be no need of both of them.

Q. In your opinion, will the TP&W contribute to the collateral phase of this proposed mortgage?

A. The stock definitely would.

Mr. Lucas: That is all.

Exam. Albus: Mr. Hoag?

Mr. Hoag: No questions.

[fol. 1556] Exam. Albus: Mr. Broker?

Mr. Broker: No, no questions.

Exam. Albus: Mr. Cassell?

Mr. Cassell: No questions.

Exam. Albus: Are there any further cross-examination?

(No response.)

Exam. Albus: Is there any redirect?

Mr. Wheeler: No, sir.

Exam. Albus: You are excused, Mr. Hill.

(Witness excused.)

Mr. Wheeler: Mr. Examiner, we only have one more witness to present. Unfortunately he is a witness who came in from out of town, and his testimony has not been reproduced as yet and will not be reproduced in final form until Monday.

Exam. Albus: Is Mr. Provo available for examination, cross examination?

Mr. Wheeler: No, sir, both Mr. Provo and Mr. Schroeder had to return to Minneapolis in connection with an urgent matter that has arisen, Mr. Examiner, on the M&StL.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

This hearing is adjourned until 9 o'clock Monday morning in the LaSalle Room.

(At 4:15 p.m., February 10, 1956, the hearing in the above-entitled matter was adjourned to Monday, February 13, 1956, at 9 a.m.)

[fol. 1557]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

Finance Docket No. 19086

[Title omitted]

LaSalle Room,
Pere Marquette Hotel,
Peoria, Illinois,
February 13, 1956.

TRANSCRIPT OF HEARING

Met, pursuant to adjournment at 9:00 a.m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCES

Oliver A. Ossanna, 401 State Office Building, St. Paul, Minnesota, executive secretary and appearing on behalf of the Minnesota Railroad and Warehouse Commission.

[fol. 1559] PROCEEDINGS

Exam. Albus: The hearing will please come to order.

I understand there are some additional appearances to be entered at this time.

Mr. Ossanna: Oliver A. Ossanna, 401 State Office Building, St. Paul, Minnesota, I am an attorney at law and admitted to practice before the I.C.C. and I am the executive secretary of the Minnesota Railroad and Warehouse Commission and I am here in behalf of that Commission.

Exam. Albus: Thank you very much, Mr. Ossanna.

Mr. Lucas has a statement, I think.

Mr. Lucas: May I have the record show that this morning I have handed to Mr. Wheeler the information which he requested in pursuance of the items appearing at pages 10, 11, 10, 12, with the exception of items 5 and 6.

Exam. Albus: Thank you very much.

Mr. Wheeler: Mr. Examiner, we would like to have that made part of the record, if we can.

Mr. Lucas: We have already made an objection to furnishing it.

Exam. Albus: You want what furnished?

Mr. Wheeler: We want this made a part of the record. The information he has furnished, of course, we want it to be a part of the record.

Exam. Albus: You mean physically copied into the record?

[fol. 1560] Mr. Wheeler: Yes, sir.

Exam. Albus: Let me see it, please.

Mr. Wheeler: Or we can have it marked as an exhibit, if that would be more convenient. Perhaps we could have it all marked as an exhibit, Mr. Examiner.

Exam. Albus: All right.

Mr. Lucas: May I renew my objection to it as heretofore appearing in the record at page 1,013.

Exam. Albus: Yes, sir.

Let the record show that the information furnished by Mr. Lucas is marked for identification as Exhibit H-73.

(Applicant's M&StL Exhibit No. H-73, was marked for identification, Mr. Wheeler.)

Mr. Cassell: May copies of that be furnished for the parties?

Exam. Albus: Are copies available?

Mr. Lucas: I have just two copies available. I wonder if Mr. Wheeler shouldn't reproduce it.

Mr. Wheeler: I will.

Exam. Albus: H-73, and it is received in evidence.

(Applicant's M&StL Exhibit No. H-73, Mr. Wheeler, was received in evidence.)

Mr. Wheeler: Mr. Examiner, may we go off the record for just a moment?

Exam. Albus: Yes.
Off the record.

[fol. 1561] (Discussion off the record.)

Exam. Albus: On the record.
The first thing this morning we will hear from Monon. Mr. Shepard, please.
Mr. Shepard: I will call as witness for the Monon Mr. Ragland.

[fol. 1562] Charles E. Ragland was sworn and testified as follows:

Direct examination.

By Mr. Shepard:

Q. Mr. Ragland, will you give your full name to the reporter.
A. Charles E. Ragland.
Q. What is your position with the Monon Railroad?
A. Assistant Vice-President of Traffic.
Q. Will you state your experience with that carrier.
A. I started my career with the Monon at Birmingham, Alabama, in 1935 as Chief Clerk and served in the capacity as Chief Clerk, Traveling Freight Agent and Assistant District Traffic Manager until 1945. I was transferred to New York as Eastern Traffic Manager in charge of the New York office at that time, and in 1948 was given supervision of four eastern offices, and in 1954, February 1954, was transferred to Chicago as Assistant Vice-President.
Q. That is, Assistant Vice-President (Traffic), is that correct?
A. That is correct.
Q. Have you prepared a statement on behalf of the Monon Railroad for presentation at this proceeding?
A. Yes.
Q. Would you read that statement, if you please, for the record.
[fol. 1563] A. This will be a very brief statement as to the position of the Monon in this proceeding.

As a preliminary, I would like to state that the corporate name of the Monon has been changed from Chicago Indianapolis and Louisville Railway Company to Monon Railroad.

The Monon's position in this case is the result of three considerations; first, the fact that its principal gateway for the handling of through traffic is Chicago; second, that it has no direct connection with the TP&W; and third, that its Michigan City branch logically could and should form a part of what has been referred to as an outer outer belt transportation highway lying outside the Chicago metropolitan area.

I understand that testimony appears on the record in this case that the Pennsylvania is opposed to the effectuation of a connection between the Monon and the TP&W through trackage rights over its line between Reynolds, Indiana, and Effner. It is the position of the Monon that such a connection would be desirable in its own interest and in the public interest, which in this instance I believe are identical.

The Monon affords a useful north and south connection in which it functions as a bridge line with respect to east-west traffic which it interchanges at various of its junctions with carriers lying both east and west of its route. We believe that the existence of such a transportation highway is in the public interest in affording additional competitive [fol. 1564] routes to the shippers of the country.

We believe that it would be clearly in the public interest to strengthen and make more available those routes through an opportunity to open up the Effner gateway to a direct connection with the Monon.

To the extent that the development of the Peoria route, as envisioned by the applicants in this case, draws traffic from the Chicago gateway the Monon may suffer loss of some of its traffic through that gateway in common with other carriers similarly situated. A connection for the Monon at Effner would on an equality with our more powerful competitors in the solicitation of business as between the Chicago and Peoria routes.

As to the eventual possibility of the development of an outer-outer belt route around metropolitan Chicago, I be-

lieve that the Commission should bear in mind the inevitable increase in the transportation needs of the country and do nothing in this case that would jeopardize such a future development. Both from the point of view of the long range interests of the shipping public and from the point of view of the national defense, such a route may well become extremely important.

In conclusion, from the point of view of the Monon it does not believe that its interests would be served by the acquisition of control of the T. P. & W. by any of the applicants who are seeking control in these proceedings, except in the event that Monon access to an interchange at Effner would be included as a part of the transaction.

[fol. 1565] As I believe has been testified, the route via Peoria has prospered and progressively developed since the opening of the Lomax gateway. As indicated by exhibits already introduced, the financial position and operating efficiency of the T. P. & W. are of the first order. There appears to be no reason why this condition should not continue in the future under the present able management of the T. P. & W., leaving the T. P. & W. as an independent bridge carrier subject to no outside railroad control and therefore affording maximum service to all carriers equally with which it participates in the handling of traffic.

Mr. Shepard: That is all Mr. Examiner. You may cross.

Exam. Albus: Is there any cross-examination?

Mr. Thomas.

Mr. Thomas: No questions.

Exam. Albus: Mr. Lucas.

Cross examination.

By Mr. Lucas:

Q. Mr. Wogland, will you state what railroads your Michigan City branch crosses going north of a point between Effner and Logansport on your line?

A. Starting with Reynolds, of course, is the Pennsylvania.

Q. I beg your pardon.

A. We intersect interchange, of course, with the Penn-

sylvania at Reynolds, and from there north at Wilder, [fol. 1566] Indiana, at Erie, La Crosse with the New York Central, South Wanataw with the Nickel Plate, Wanataw with the Pennsylvania, Haskells with the Grand Truck, the latter with the B. & O., Westville with the Wabash, Otis with the New York Central, Michigan City the C. & O., New York Central and the C. S. S. & S. P.

Q. And generally speaking, the roads you have enumerated are east and west lines at your points of intersection?

A. That is right.

Mr. Lucas: That is all.

Exam. Albus: Mr. Cassell.

Mr. Cassell: No questions.

Exam. Albus: Mr. Broker?

Mr. Broker: No questions.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, Mr. Ragland, thank you very much.

(Witness excused.)

[fol. 1567] Mr. Wheeler: Mr. Examiner, I have a few additional questions to ask Mr. Provo. Both the questions and answers listed here are in incomplete form but for whatever value it will be to the counsel I want them to have them.

LARRY S. PROVO resumed his testimony as follows:

Direct examination (Continuing).

By Mr. Wheeler:

Q. Mr. Provo, could the economies to which you have testified, those detailed in Exhibit H-44, be accomplished under multiple ownership?

A. Not in my opinion.

Q. Mr. Provo, if you know, who on the M&StL was re-

sponsible for initiating the accounting modernization program that you have discussed?

A. Well, there is really no doubt about that, Mr. Heineman has been the driving force behind the whole accounting modernization program. He initiated it, it was his personal project, he has participated in the movement of that program from start to finish. He has also provided direction in many instances in the progress that we have made on the modernization program.

To clarify that a little bit, I might say when I was with Arthur Anderson I participated in writing the report that was the basis for the modernization program. That report, I believe, is about 150 pages long. It has many detailed graphs and flow charts in it. Mr. Heineman has read that [fol. 1568] many times and there are sections that I think he knows better than I do. I don't want to infer here, however, that Mr. Heineman has only participated in the modernization program. There are very few things of consequence on the M&StL that he is not very familiar with and has not participated in all of the planning.

Q. Have you had occasion to observe the decisions made by Mr. Heineman or recommended by him and the board of directors and the executive committee in connection with the various aspects of the M&StL?

A. I have.

Q. In light of your experience in public accounting, would you discuss some of these decisions and recommendations.

A. Of course, in the course of a year's time there are many decisions that have to be made. There are some, I think, that are more illustrative than others. One I referred to somewhat in my direct testimony, and that was in connection with the cost of the modernization program. The M&StL was really faced with an alternative. They could have taken the costs of the modernization program and amortized them over a period of years, since the benefits from the program will cover many subsequent years, and certainly bearing the cost in any one year is not necessary. However, Mr. Heineman made the recommendation to the board of directors that, in view of wage increases for 1956 and everything, he felt it conservative policy and a good

business practice to absorb those costs in the year 1955. [fol. 1569] Now, I think there is one other illustration. When Mr. Heineman first became associated with the M&StL, I think he immediately became concerned over the inadequate insurance coverage we had for our public liability exposure, and at that time a large insurance firm was brought in to make a survey of the insurance program of the M&StL. It so happens that the president of that firm is a very dear friend of Mr. Heineman's. At a subsequent date I met the vice-president of another insurance firm, one who Mr. Heineman did not know at all; in fact, he had never heard of them. This firm came up with a proposal which in my mind was far superior and something the first firm had not even thought about. I made my recommendation, Mr. Heineman accepted it, and he recommended it to the board of directors and we subsequently took the policy with the second firm, although, as I mentioned, Mr. Heineman knows the president of the first firm very, very well.

Now, another illustration might be that when we had our annual board of directors' meeting last year one of the directors started out and proposed that Mr. Heineman's compensation on the M&StL be increased because of the significant contributions he had made to the road and the time that he was spending on the property. He flatly refused this and would not even allow the matter to be discussed. I think one of the really significant points in that was that the director who proposed it was not a member of the eight-man slate that Mr. Heineman had proposed, but [fol. 1570] was a man who had been a director of the M&StL for many, many years.

Now, there are many more. I think one is on capital expenditures. Mr. Heineman has always been concerned that we are not sure, we are not sure that we have the proper criteria for determining where to spend our money, whether we buy freight cars or whether we build diesel houses. This has always bothered him to a great extent. He has or is going to recommend that we engage Joel Dean to help us on the M&StL to employ sound business criteria in determining our capital expenditures.

[fol. 1571] Q. Mr. Provo, what is your view with respect to these decisions—well, I believe you have covered that.

A. Well, I would like to make one additional statement, if I may. Exhibit H-25 was introduced, I believe, by the Santa Fe. I was in an unique position in that. I was with Arthur Andersen at the time of the proxy contest.

Q. (Interrupting) Pardon me, Mr. Provo, H-25, as I recall, is the proxy statement that was put out by the group seeking control, the group headed by Mr. Heineman of the group seeking control of the M&StL?

A. Yes, sir.

Q. Will you proceed.

A. As I say, I was in a rather unique position in connection with this because I was employed by Arthur Andersen at that time. Arthur Andersen was employed by his firm and his associates to investigate some of the expenses of the M&StL. I have read this document very carefully. I know of nothing in here that was not factual and very true. Also I know of nothing in the program recommended by Mr. Heineman and his group that has not been carried out in full or in part. And if it has only been carried out in part the only reason it hasn't been completed is a matter of time. For an example, in our accounting modernization program it is a big project and one that takes a little time to accomplish.

[fol. 1572] I might say that you cannot look at the income statements of M&StL and tell this. They are just not comparable. I know being comptroller of the railroad what has gone on, and I know that these recommendations in the program have been carried out. Since that time we have had wage increases. We have the costs of the accounting modernization program. We have made certain reclassifications in our account. The only point I want to make is that you cannot take the summary income statements of the M&StL or for that matter the Form A filed with the Interstate Commerce Commission and determine whether our not these measures have been carried out.

Q. Mr. Provo, do you have any comment to make with respect to the employment of your assistants?

A. During the time that the survey was made of the railroad and during my time there it became apparent that

we needed some help, we needed some top-flight accountants, and Mr. Heineman was highly in favor of this, and we then employed a Mr. Walter Hanson of Haskins & Sells, a nationally known accounting firm, who was 30 years old. Mr. Hanson has proved to be a very valuable addition to the M&StL. Just recently we have employed a Mr. Rogers, a senior with Arthur Andersen & Company, who is 27 years old, to be the second assistant comptroller in our department.

Q. Did you recommend the employment of these people to Mr. Heineman?

A. I did.

[fol. 1573] Q. Did he have any comment to make with respect to their employment?

A. Mr. Heineman has always been in favor of getting top personnel in the company. He was very enthused about getting these men. I will say, however, that there was only one concern that he had and that was that the first man we employed would not be fully apprised of his progress with the railroad, so that Mr. Heineman instructed me to discuss it fully with him and then report back to Mr. Heineman. I reported that the man was very favorable to the move and Mr. Heineman then agreed to the employment of the second assistant comptroller and wrote a letter to the first man thanking him for his view and his consideration of the M&StL.

Mr. Wheeler: That concludes his direct examination, Mr. Examiner.

Exam. Albus: Very well.

We will have cross-examination of Mr. Provo for all of his

Mr. Thomas, please.

[fol. 1574] Cross examination.

By Mr. Thomas:

Q. Do you have your prepared statement before you, Mr. Provo?

A. Yes, sir.

Q. Just as a matter of clarification, on page 4 you refer to certain items.

A. Which paragraph?

Q. Regarding reduction of general expenses. I can't by adding the items you have cited there arrive at the total of $341,102. Would you explain how that is done.

A. Are you $38,000 off?

Q. Yes.

A. Well, the figure instead of the two-eleven I see now should be two hundred fifty thousand shown on schedule 16. The two-eleven represents the compensation economy shown on schedule 15, that total should be two hundred fifty thousand five zero four.

Q. Thank you.

You referred, I think in your earlier testimony, and again today, to a non recurring item of general expenses dealing with the modernization of your accounting system.

A. Yes, sir.

Q. Did you indicate what that modernization is expected to save on an annual basis?

A. I did not.

[fol. 1575] Q. What would that be?

A. We think on all of our estimates at this time which have been confirmed in many of the modernization areas will be in excess of three hundred thousand, probably between three hundred and three hundred fifty thousand on an annual basis.

Q. Will you turn to your Exhibit H-44, schedule 1. At the foot of the page entitled "Schedule 1 Notes."

A. Yes, sir.

Q. You indicate why you have used a figure of 15 per cent in estimating the decrease in expenses by reason of your estimated traffic decline. You indicate it isn't practicable to estimate those expenses more accurately. Are you familiar with the cost formula used by the Interstate Commerce Commission known as "Rail Formula"?

A. I am not.

Q. You do not know that the Commission has a formula for estimating expenses variable with traffic?

Mr. Wheeler: I object to the statement the Commission has a formula.

Mr. Thomas: I asked the question, Mr. Wheeler.

Mr. Wheeler: I want to know what you mean has a formula. Do you mean to indicate by that that the Commission has adopted that formula for use in all cases?

Mr. Thomas: I simply asked the question. I am not making the statement.

[fol. 1576] Mr. Wheeler: I object to the question as not being sufficiently clear for the witness to answer.

Exam. Albus: Do you understand the question, Mr. Provo?

The Witness: No, sir.

Exam. Albus: Restate the question, please.

By Mr. Thomas:

Q. Do you know whether or not the Commission has a formula for estimating expenses to vc iable with traffic?

A. I would like to answer your question this way: I have heard that attempts have been made to measure incremental costs. It has been my understanding in visiting other railroads and discussing this matter with them that no one has come to the point where they have a good method of approximating or estimating reliably the costs of incremental traffic.

Q. But you are not familiar with the formula which has been used by the cost section of the Interstate Commerce Commission.

Mr. Wheeler: Mr. Examiner, if it has been used, I think the witness should be informed where it has been used.

Exam. Albus: Where has it been used, in what case?

Mr. Thomas: It has been used in Docket 28300, the class rate case.

Exam. Albus: All right.

Mr. Wheeler: Mr. Examiner, may we have the question restated.

By Mr. Thomas:

Q. Are you familiar with the formula which the cost section of the Commission has developed for estimating [fol. 1577] expenses variable with traffic and which was used in Docket 28300, the class rate cases.

A. No, sir.

Mr. Thomas: That is all.
Exam. Albus: Is that all, Mr. Thomas?
Mr. Thomas: Yes, sir.
Exam. Albus: Mr. Lucas, please.

Cross examination.

By Mr. Lucas:

Q. Mr. Provo, may I refer you to the top of page 4 of your prepared statement in which you refer to having visited the offices of the TP&W in December 1955. Can you give us the day or date, days that you were there?

A. I believe it was December 12. It was on a Monday, either 12th or 19th. I think it was December 12.

Q. Am I correct in the assumption, then, it was one day?

A. Yes, sir.

Q. Any other day that you made any visit to the TP&W accounting offices?

A. No, sir.

Q. In your economies and benefits to the M&StL what did you project for the future as to whether the returns would be consolidated or in what form to the Interstate Commerce Commission or in what form would they be filed?

Mr. Wheeler: Mr. Examiner, I object to the question. I don't think it is pertinent to any issue in this proceeding. [fol. 1578] Exam. Albus: Objection overruled.
You may answer.

A. We made the assumption that all reports to the Interstate Commerce Commission would be filed on an individual company basis.

Mr. Lucas: That is all.
Exam. Albus: Mr. Cassell.
Mr. Cassell: No cross.
Exam. Albus: Mr. Broker.
Mr. Broker: No cross.
Exam. Albus: Mr. Davis.
Mr. Davis: No cross.
Exam. Albus: Mr. Hoag.

Cross examination.

By Mr. Hoag:

Q. Mr. Provo, in your financial data you have worked up here have you included anywhere in there your cost as to the Washington job agreement?

A. No, as Mr. Heineman testified we have not.

Q. Have you made any study into the number or amount of home ownership of the TP&W employees, say specifically as far as clerical forces, shop forces and dispatchers?

A. I have not.

Q. Under the Washington job protection agreement there would likely be additional costs for that, is that correct?

A. It is my understanding that there would be, yes.

[fol. 1579] Q. On Exhibit 44, starting with schedule 19, on your last column, on each one of those respective schedules, what wages and salaries did you use as a base in arriving at those figures, the wages of the TP&W employees or the M&StL?

A. Well, that varied, that varied in certain instances the figures we used were the actual salaries of M&StL positions. In other instances they were the actual salaries of TP&W positions, but for the most part they were the average compensation for these particular groups as reported in the 1954 Form A to the Commission.

Q. Mr. Provo, I believe on schedule 19, if I am correct in interpreting that, you indicate a possibility of 256 employees that could be adversely affected?

A. No, I don't believe we have ever stated that, Mr. Hoag. We have said that through unification 256 positions could be reduced. Now, we believe and we sincerely believe that we have an unusual situation on the M&StL and that we have, as testified, a number of people who are 65, a number 64, and that extends on down. We have an over-age group in many respects. Also there is the normal attrition that will take place. We have never said that 256 people would be adversely affected. We think there are many things in our particular situation that will make the displacement minimal.

Q. Would 256 positions be eliminated?

A. Yes, sir, except as there may be other—I'd like to put [fol. 1580] it this way: For example in the accounting department with which I am most familiar we think there is a tremendous area for equipment and repair. Now, if we go into a cost accounting system for controlling the cost of equipment maintenance there will be more accounting positions. However, at that time we think it will be economically justifiable as a project in and of itself. I think that is another one of the things we have in mind when we say we think the displacement will be minimal.

Q. Mr. Provo, turning to schedule 25, on the next to the right-hand column, you have a figure of 267. Would you please indicate what that means.

A. I would say that is a last minute change that did not get corrected. It should be two fifty-six.

Q. Is the figure two fifty-six or two fifty-seven?

A. Two fifty-six.

[fol. 1581] Mr. Hoag: I believe that is all I have of Mr. Provo.

Exam. Albus: Are there any further questions? Redirect, please.

Redirect examination.

By Mr. Wheeler:

Q. Did the T. P. & W. supply you with information which was used as a basis for Exhibit H-44?

A. I am not sure that I understand what you mean by supply, Mr. Wheeler.

Q. Did you get from them information as to their organization and general setup and salaries, and so forth, which was used by you in the preparation of Exhibit H-44?

A. Yes, sir. The purpose of my visit down there was to determine their corporate structure, their departmental organization, and I received that information from the T. P. & W. as far as salaries used were those that were set forth in the form A plus averages developed from the detailed compensation employee schedule on their form A.

Q. Now, you have mentioned form A. Did you have available to you and did you use the T. P. & W. form A's for

past years and, if so, how many past years in the preparation of Exhibit H-44?

A. H-44 is based on the 1954 form A. I did have available for review the 1953 and 1952 form A's of the T. P. & W.

Mr. Wheeler: I have no further questions.

Exam. Albus: Are there any further questions?

Mr. Davidson.

[fol. 1582] Cross examination.

By Mr. Davidson:

Q. On your form schedule 19 there, Mr. Provo, the bulk of that $1,327,000 will be saved by reduction of moneys to be paid out to people employed within the State of Illinois, is that not correct?

A. The positions, I believe, are substantially, of the total number of positions the substantial portion of them are within the state.

Q. And the bulk of the people—the bulk of the positions to be abolished are right here in Peoria, are they not?

A. Yes, sir.

Mr. Davidson: That is all.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, Mr. Provo.

(Witness excused.)

[fol. 1583] Albert W. Schroeder resumed his testimony as follows:

Offer in Evidence

Mr. Wheeler: Mr. Examiner, I would like to offer Exhibit H-44 at this time.

Exam. Albus: Is there any objection?

(No response.)

Exam. Albus: Exhibit H-44 is received in evidence.

(Applicant M&StL's Exhibit No. 44, Witness Provo, was received in evidence.)

Direct examination (Continuing).

By Mr. Wheeler:

Q. Mr. Schroeder, can the economies which you have testified to be accomplished under multiple ownership by a number of railroads?

A. No, they cannot, in my opinion.

Q. Have you any comment on the effect of these economies on service to the public?

A. On the basis that I outlined it, there would be no change in the service as it exists now either by the M&StL or the TP&W.

Q. When Mr. Heineman discussed with you the possibility of your leaving the C&IE to become vice-president and ultimately president of the M&StL, did he tell you what he wanted to achieve with respect to the property, that is, the M&StL?

A. Yes, sir, he told me he wanted to make the M&StL the best railroad in the United States from an operating standpoint.

Q. Since coming to the M&StL, have you had occasion [fol. 1584] to prepare and discuss with Mr. Heineman a capital budget for the M&StL for the year 1956?

A. Yes, sir.

Q. What is the amount of that budget?

A. About $1,600,000. That is A and B.

Q. What is the purpose of the budget?

A. Well, this is the first budget in a series of what we are now talking about, a five-year plan, toward obtaining our objectives in making the operation of the railroad the very best we can do.

Q. Will you please name a few of the principal items that are included in this budget.

A. In 1956 we are buying a considerable amount of equipment, maintenance of way, mechanized equipment, such as power tampers, power jacks, ballast distributors, the use of trucks for our section and extra gangs. We

are going into the head end-rear end radio on the wayside stations to some degree. We are getting that started. We are finishing the rebuilding of a pole line that was started about three or four years ago that will give us a heavy copper-weld type line all the way from Minneapolis to Peoria. We have and are including in our budget some covered hopper cars to be purchased in 1956. We are increasing the utilization of our shops with added types of machinery of various kinds, such as overhead cranes and equipment of that kind. We are studying industrial development very closely with the thought in mind of [fol. 1585] increasing our activity tremendously in that field.

Q. How does this capital budget, that is, the one that you have spoken of for 1956, compare as to size with the capital budgets of the M&StL for prior years?

A. Well, just going back two years, in 1955, as compared to our proposed 1956 budget, '56 will be approximately 60 per cent larger than 1955 and it will be almost double that of 1954.

Q. Did you discuss with Mr. Heineman the size of the budget and the objectives that you wish to accomplish by the particular items in it?

A. Yes, sir, I did. Mr. Heineman is chairman of the executive committee of the M&StL.

Q. What was the reaction of Mr. Heineman to your proposed budget?

A. He was very enthusiastic about it and always has been in our discussion of such plans.

Q. Have you plans and recommendations for the capital budget for 1957?

A. Not specifically. Of course, there are things that come up that you are sure you cannot do under 1956 capital expenditure, but it takes time to study and it will take additional funds, I think, only by nature it is carried over into the next year by all railroads. We have discussed a number of things we hope to do.

Q. Have you any program with respect to the CTC or [fol. 1586] equivalent operation, Mr. Schroeder?

A. Yes, we do. The traffic density on the M&StL is not the controlling factor necessarily as far as our need of

CTC is concerned. On the other hand, we think it offers some advantages, the improvement in service over the railroad, and at the present time we have Union Switch and Signal studying a modified or simplified form of CTC. We will not expect to get the results of their study for sometime to come, but we have gone that far with it so far.

Q. But CTC, either in full or modified form, is in your future plans?

A. Yes, it is usually referred to as the poor man's CTC, with a spring switch on one end and a power switch on the other.

Q. Have you any comment with respect to your diesel power, your future plans with respect to that?

A. We have talked with at least one of the locomotive builders on some of our problems toward tailoring our diesel power on the M&StL exactly to the type of business that we have. During the period of dieselization—I think this is true on most railroads—what they were purchasing and what they desired and what they were able to get were to some degree two different things, and the M&StL is no exception in this respect. For instance, at the time of dieselization a 600-horsepower switcher looked like it would be a very practical switcher, but as time went on and then use was made of the larger [fol. 1587] type of switcher in yards and the road switcher in the yards it was found that certain advantages could be realized by using either greater horsepower, greater tractive effort and so forth, and we have had some talks with Electromotive Corporation on what they would recommend in our particular case. That is something that we hope to be able to finish discussions with them on in the next two or three weeks.

Q. Have you discussed these proposals and plans for the future that you have outlined with Mr. Heineman?

A. Completely.

Q. What has been the reaction of Mr. Heineman?

A. He has always been very enthusiastic about it. He is very deeply interested in all phases of railroad operation, regardless of what kind or type, what department or what the problems are.

Q. Did you recommend to Mr. Heineman and did the two of you interview new executives, officers, for the M&StL?

A. Yes, sir, I did.

Q. Would you please describe the men to whom you refer and discuss their qualifications.

A. Well, to date we have hired three men whom I recommended very soon after I arrived on the M&StL property. The first one I might tell you about is Mr. W. P. Colliton, who was elected at our last board meeting as vice-president in charge of operations, to succeed me on March 1, 1956. Mr. Colliton is presently superintendent of [fol. 1588] the Great Northern Railroad at Seattle on their Cascade Division. He has a background of transportation and maintenance. He is 35 years old. He is a graduate of the Wharton School of Commerce and Finance of the Pennsylvania University. He has gone through the student training program of the Great Northern, served as assistant trainmaster, trainmaster, assistant superintendent on two or three divisions and superintendent on two of their divisions.

The second I might mention is Mr. S. J. Owens, who is at the present time assistant to the chief engineer, the Burlington Railroad, for the entire system. He has had a background of engineering and maintenance. Mr. Owens is 46 years old. He has had a lot to do with mechanization of maintenance of way practices on the Burlington. He has handled some of their largest engineering projects, such as the opening of one of their longest tunnels out in Wyoming. He has had relocation work in connection with government projects with respect to the Burlington Railroad and, I think, has a fine background in general, all-round knowledge.

The third man, Mr. Jim Sullivan of the Illinois Central, who will come to us March 1, 1956, as chief personnel officer, is a graduate of St. Thomas College in Minnesota. He has a Master's Degree in economics and in labor management from the University of Minnesota. He has studied [fol. 1589] at Northwestern University Business School, but more importantly, has been with the Illinois Central since, I believe, about 1938. He served in the capacity of

fireman, fuel inspector, assistant trainmaster on at least two divisions, trainmaster on at least three more divisions, was to be appointed one of their division superintendents when certain supervisory personnel were requested to be planned on the Illinois Central, and he was picked by Mr. Wayne Johnson as the man to head that.

Those three men, first of all, Mr. Colliton, as I mentioned, succeeds to the vice-president of operations, which will be vacant; Mr. Owens is brought on the property because our chief engineer will arrive at 65 years of age in August, and we have created the new position of consulting engineer for our present chief engineer, so that he may help Mr. Owens to know the property and yet Owens has the opportunity of starting with the mechanized maintenance system; Mr. Sullivan will replace Mr. Barry who is the second-oldest employee on the M&StL Railroad and wishes to retire.

Q. What general qualifications for new personnel has Mr. Heineman outlined to you?

A. Well, the very best that can be obtained.

Mr. Wheeler: That concludes the examination of Mr. Schroeder at this time.

Exam. Albus: Thank you.

Cross-examine, please, Mr. Thomas.

[fol. 1590] Cross examination.

By Mr. Thomas:

Q. On page 16 of your prepared statement, Mr. Schroeder, you show a proposed consolidated schedule for the M. & St. L.-T. P. & W. I just want to ask you a question for clarification, on the westbound schedule you show arrive Lomax and in paren Keokuk and then you show 4:48 a.m. and then paren 12:44 a.m. Do I understand that the arrival in paren. relates to the Keokuk which is also in paren?

A. That's right. And that's right in line with timetable number 18 of the T. P. & W.

Q. Thank you. Now, on pages 20 and 21 of your prepared statement you show certain average figures relating

to boxcars, among others?

A. Yes, sir.

Q. Do you report all of your car surpluses and car shortages to the A. A. R. on form CS 44?

A. I believe that is the form, Mr. Thomas. The usual form used by all the railroads.

Q. Would these boxcar averages be found on your form CS 44 reports, the ones that are shown on pages 20 and 21?

A. On page 20 we broke it down as to various types of equipment if you are referring to that table.

Q. Yes.

A. On page 21 we took the A. A. R. CS 44 report, which, if I can recall correctly, and I am sure I am right, in-
[fol. 1591] cludes all types of equipment.

Q. Are the figures on page 19, would they be found in your form CS 44?

A. Yes, sir.

Q. And on page 20?

A. Yes, sir.

Q. Is that a continuation? That's a separate year?

A. One is 1954 on page 19 and 1955 on page 20.

Mr. Thomas: That is all I have.

Exam. Albus: Mr. Lucas, please.

Cross examination.

By Mr. Lucas:

Q. Mr. Schroeder, your map, Exhibit H-43, appears to show a direct connection on the part of the P. R. R. with the T. P. & W. Are you familiar that now the Pennsylvania Railroad does not connect direct with the T. P. & W. but has to work in to the T. P. & W. over the Nickel Plate?

A. Yes, sir.

Q. May I refer you to page 2 of your prepared statement, the one trip to which you refer there to study the unification of a property. Can you give me the date of that trip, please?

A. I am not sure that I can. I can certainly furnish it to you.

Q. Can you give me an approximation perhaps as to the month?

A. As I recall it, it was late in November.

Q. Of what year, please?

[fol. 1592] A. Of last year, 1955. I may be wrong. It may have been right after the first of December. It was right in that period.

Q. And you also stated that you made one additional visit to the Peoria yard. Was that subsequent to your trip?

A. About three weeks ago.

Mr. Lucas: That is all, Mr. Examiner.

Exam. Albus: Mr. Cassell?

Mr. Cassell: No cross.

Exam. Albus: Mr. Broker?

Mr. Broker: I have one question.

Cross examination.

By Mr. Broker:

Q. Mr. Lucas said the Pennsylvania has to work in to the T. P. & W. over the Nickel Plate?

A. I believe he did, but I believe it is through the T. P. & P. U.

Mr. Broker: That is what I mean.

Mr. Lucas: My information for what it may be of value to you, Mr. Broker, the Pennsylvania now connects direct to the Nickel Plate over which it operates from Farmdale to Wesley Junction as shown on map on page 2, Exhibit H-16.

By Mr. Broker:

Q. I don't disagree with that. The only point is, as shown by Mr. Witt's exhibit, interchange between the Pennsylvania and the T. P. & W. is affected through the P. & P. U., isn't that right, Mr. Schroeder?

A. That is the way I understand it, Mr. Broker.

[fol. 1593] Q. Do you know whether the Pennsylvania

actually operates over the Nickel Plate to get over to Peoria?

A. No, I do not know.

Q. In looking at your Exhibit 43, please. On the right-hand margin is the word "Farmdale" or most of it. Actually isn't Farmdale today at the point of the arrow N. K. P.?

A. That's correct, yes, sir.

Mr. Broker: Thank you.

Exam. Albus: Mr. Davis?

Mr. Davis: No questions.

Exam. Albus: Mr. Hoag.

Cross examination.

By Mr. Hoag:

Q. Mr. Schroeder, are you acquainted with the present bargaining agreements now in existence on the M. & St. L.?

A. Somewhat, yes, sir.

Q. Are you acquainted with the collective bargaining agreements on the T. P. & W.?

A. No, sir, I am not.

Q. Do you know or have you been informed as to any differences in Pennsylvania rates that prevail as between T. P. & W. contracts as compared to M. & St. L. contracts?

A. No, sir, I have not been informed in any way, Mr. Hoag.

Q. I assume that should your present application before the Interstate Commerce Commission be approved there [fol. 1594] would be no question but what the present collective bargaining agreements now in eixstence on the T. P. & W. would continue in effect?

A. I would say as far as it affects T. P. & W. employees, yes, sir, that would be correct.

Q. Now, along about page 3 of your testimony—you don't necessarily have to turn to it—you have been talking about this matter of attrition. Briefly could you state what you mean by attrition?

A. Attrition to me means three things generally: retirements, death, leaving the job for other employment, that is, in other companies, doing other things.

Q. Now, you speak of retirement. Could you enlarge upon that a little bit?

A. Well, retirement is set up by the railroad retirement board, I think means to most of us 65 years of age. That, of course, is not mandatory as far as contract employees are concerned. But, generally speaking, we think in terms, at least I do and I was thinking in what I have said here, a man reaching the age of 65 is eligible for that retirement.

Q. There is no provision in your present contract forcing a man to retire at the age of 65, however?

A. No, sir, that is correct.

Q. There are men beyond the age of 65 now working for the M. & St. L.?

A. That's right. I might add there are also occasions [fol. 1595] where men retire in advance of 65 due to disability or desire or for some other reason.

Q. Do you have any figures on the number that have retired before the age of 65?

A. No, I do not.

Q. Is it a relatively small number?

A. I would say it would be, yes, sir.

Q. Likewise, at page 3 you speak of your unification program. Do you have any general idea how long it would take to place that program into effect?

A. No, sir. I believe I said, if I recall correctly, I elaborated on what was said here, that we have not attempted to set up a timetable on when unification would be effected and realized completely that we would also take fully into account the Washington Job Protection provisions, this matter of attrition, and, of course, work with the respective general chairmen on those matters. I think it would be very difficult to try to give any kind of an estimate of the—certainly I am not able to do it now—when that might be fully realized. It might take some time. On the other hand, it might be realized much quicker than we think. It would depend entirely upon the circumstances at that time.

Q. I think throughout your testimony you have pointed out that your basic savings would be achieved by eliminating, say, the T. P. & W. clerical forces in Peoria, certain [fol. 1596] yard forces and certain dispatching groups. Now, let's take for a sample the T. P. &. W. office in Peoria.

How would that fit into your program, exactly what would be your procedure by which you would eliminate or close down the T. P. & W. office?

A. Let me go back just a minute. I did not, if I did, say, mean, to indicate that we would eliminate necessarily positions in Peoria to any more of a degree than similar positions, and I believe I mentioned our superintendent's office in Oskaloosa, dispatching, which you have mentioned, could be done as easily at Peoria. How you would do that is something that would have to be determined at the time. In all probability we might keep the clerical force in Peoria, including the superintendent's office, dispatching and consider discontinuance of ours in Oskaloosa. Now, that's merely to clarify the question as much for me as anything.

Now, as to the office force here most of the operating activity, such as dispatching, and so forth, are in the yard office here, in fact, the superintendent's office of the T. P. & W. is here. We have given no precise and considered thoughts on what the disposition of the office building would be. I think I mentioned two or three things. It might be sold, because it is an attractive piece of real estate. It might be rented as an office building for office space. Now, does that answer your specific—

Q. (Interrupting) No, it doesn't. You are talking about [fol. 1597] the physical property. I am concerned basically about the office. From your testimony, I understand that the Toleda, Peoria—T. P. & W. office in Peoria would in effect be consolidated with the M. & St. L. in Minneapolis. Now, how do you go about taking those employees or positions, as you prefer to call them, from Peoria and incorporating those in the office in Minneapolis?

A. Our needs in the Minneapolis office vary from time-to-time. It would be very much, as I have tried to outline here, by sitting down with the representatives of the employees of the T. P. & W. and our own in Minneapolis, determining what jobs would be combined and using the Washington Job Protection agreement perhaps as the basis for it.

[fol. 1598] Q. Wouldn't it necessarily mean, almost a simultaneous move to eliminate the office and consolidate it with the Minneapolis office?

A. Not necessarily, no, sir.

Q. How could it be worked out—

Mr. Wheefer: They are making noise upstairs. Can you speak up just a little louder. I can hear about one word in two.

By Mr. Hoag:

Q. How could it be worked out on a piecemeal basis?

A. I am not sure about the mechanics of it. Certainly it could be. When the time arrived the situation, for instance, might be different than it is today. Perhaps our requirements at Minneapolis might be greater. I am not suggesting that, but I think, and I have tried to give this a lot of weight in making my study, that it would be pretty difficult to go beyond what I have tried to outline and the manner in which we would do this thing until actually we knew what the situation was. And one other thing I think is important in this respect and that is it would depend upon some degree upon any impositions that the Commission might put in their decision on this matter. I believe Mr. Heineman testified to the effect that we would have no objection that the Commission made a part of their final decision the fact that we would abide by the Washington job protection agreement.

Q. The M&StL is a signatory at the present time to the [fol. 1599] Washington job protection, are they not?

A. Yes, sir.

Q. Could a copy of Exhibit 11-41 be made available to you, please.

Q. Is that the map?

Q. Yes, that is the map.

A. Yes, sir.

Q. I believe that shows the combined roads of the M&StL and the TP&W.

A. Correct.

Q. Would you please advise me where the dispatching offices are presently located in the Minneapolis and St. Louis?

A. One at Cedar Lake, which is Minneapolis. Cedar Lake is our yard at Minneapolis and therefore it does not appear as a station, but actually it is between St. Louis Park

and Minneapolis at the top of the map. Oskaloosa is the other point. Oskaloosa handles the dispatching on the M&StL between Mason City and Peoria, and between Oskaloosa and Albia, and therefore you can see that it would very naturally be logical to add the dispatching for the TP&W to that particular territory.

Q. What office controls the dispatching on your so-called western line here, say Albia running north up through Ruffton, Spencer and Winthrop?

A. From Albia, you say?

Q. Yes.

[fol. 1600] A. From Albia to Des Moines we operate jointly with the Wabash and CB&Q between Albia and Des Moines. I might say everything else but the territory that Oskaloosa had is handled from Cedar Lake.

Q. Have any attempts been made by the M&StL to enlarge the present dispatching office at Oskaloosa to include possibly territory presently covered by your Cedar Lake office?

A. No, sir.

Q. How many miles of main track are presently controlled out of your Cedar Lake office by the dispatching?

A. Well, let's see. I can tell you roughly here in a minute. Approximately slightly over a 1,000 miles. What it is is the difference between—

Q. (Interrupting) On the main track?

A. Well, that is correct, to the balance of the railroad. What it is is the difference between the mileage of the Oskaloosa dispatchers office area and the total main line lines operated on the railroad so it is three forty-two plus the distance from Oskaloosa to Albia of roughly about 20 miles, thirteen ninety-seven or very slightly over 1,000 miles.

Q. If you were to install CTS where would etc be installed?

A. I can't tell you, Mr. Hoag, we have not got that far in our examination, and, as I said, we are having an outside firm do it. We have not studied it carefully as yet.

Q. Would there be additional savings of personnel on [fol. 1601] installation of CTC?

A. I presume so, yes, sir.

Q. If the present TP&W line was incorporated into your Oskaloosa dispatching office how much main line of track would that leave under the Oskaloosa office or Peoria office, whichever way you prefer to set it up?

A. You mean total?

Q. Yes.

A. It would be about three forty-two plus two forty, it would be about five-ninety. It would be around 600 miles, roughly.

Q. In your experience in railroading is that a rather small or large amount of traffic to control, track to control?

A. I would say it would be about equal to a normal dispatching territory on most railroads.

Some other thing that I think is important is to take into account the density of the traffic over the lines. I know of some places on some railroads where a dispatcher has considerably more territory than that of like traffic. On other railroads, one other than I have experience on, he has much less but he has high density of traffic. So I would say this would be a representative district for dispatching.

Q. The track between Mason City to Oskaloosa to Peoria and likewise the TP&W track is that single-line track or double track?

A. Single line track would be the description of it gen- [fol. 1602] erally. May I make a correction, and I meant to say and I should have said, from Manley we operate joint track between Albert Lea and Manley and I believe I have been saying Mason City consistently. We are talking about from Manley instead of Mason City. It is a correction in station number.

Q. Are there foreign carriers that operate over a portion of this line?

A. Very small organizations. For instance, the Chicago North Western operates between Peoria and the mines at Middlegrove over the M&StL. I believe that is the principal tenant on that part of the railroad.

Q. Are there any foreign operations over the track of the TP&W?

A. Yes, sir, there is the Wabash on the west end of the TP&W, and also Forrest City on the TP&W, the Santa Fe.

I believe, operates some mileage around Eureka on the TP&W.

Q. Likewise does this trackage cross a number of other roads?

A. Yes, sir, many interlocking points.

Q. Can you point out an instance to me of dispatching office that controls single-line track with foreign lines operating over crossing a number of tracks approximately 500 miles in length?

A. I think except for the qualification that you have put in your question as to foreign line operation there is very little of it. I think a typical operation of that kind would be between Lincoln, Nebraska, and Hastings, Nebraska.

[fol. 1603] Q. What line is that?

A. On the Burlington. Now, that is a distance of about 180 miles, as I recall, having quite heavy train density and a number of interlocking plants. I have forgotten how many, but it comes to my mind that would be about as close an answer to your question that I could think of.

Q. That is approximately 180 miles in length?

A. Yes, sir.

Q. Not 500?

A. No. However, with the additional branch lines—I used to know what the territory was. It seems like the main line was CTC and they had branch lines of about 300 to 400 miles. As I recall that dispatcher handled about 500 miles of traffic. It was not all main line, that is right.

Q. Does the M&StL at the present time have any outstanding agreements, contracts, or understandings for the purchase of TP&W stock?

A. Not that I know of.

Exam. Albus: How do you propose to acquire it, then, if the Commission approves your application?

The Witness: Well, that's a question that I don't know that I am prepared to answer because I haven't studied the matter. Quite obviously there are some things that come to your mind, such as here is a property for sale, presumably property cannot be sold without or could be sold only [fol. 1604] to the bidders or offerers to buy as decided and determined by the Commission. As I see, there would be

only two alternatives, either to operate it as it has been operated or sell it to the ones that the Commission decides in favor of.

Exam. Albus: Yes, but the Commission can't force the trustees to sell the stock to the M&StL, could they?

The Witness: I don't know how they could, I will put it that way.

Exam. Albus: I don't either.

Mr. Wheeler: Mr. Examiner, we do have an outstanding offer.

The Witness: Yes.

Mr. Wheeler: And I think the record also shows, testimony of Mr. Gurley, that the trustees were about on May 26 were about to sell to the M&StL until the Santa Fe came along and offered them one hundred thirty-five instead of one hundred thirty-three dollars.

Exam. Albus: Are there any further questions, Mr. Hoag?

Mr. Hoag: Yes, I have a few questions here.

By Mr. Hoag:

Q. You spoke of this matter of unification. I think that is a kind word that has been used here. Am I correct, you also used the word integration would be synonymous?

A. Yes, sir, consolidation would also be synonymous.

Q. Consolidation would also?

A. I believe I mentioned that in my direct.

Q. Staying away from the legal aspect of it but rather [fol. 1605] attempting to find it on the physical aspect, how would what you propose to do be different than a merger?

Mr. Wheeler: Mr. Examiner, I don't see how you can get away from the legal connotations of merger.

Can you mention a specific example, Mr. Hoag, which might clarify your question? Because merger is a legal concept, I think, beyond question.

Mr. Hoag: I have tried to keep away from legal concept, Mr. Wheeler.

Mr. Wheeler: I understand.

Mr. Hoag: I attempted to phrase the question that way. It seems to me that so far we have merely had a play of

words of integration, unification, and consolidation, and I am attempting to find out why how physically it would differ from a merger.

Mr. Wheeler: I am not sure that this witness can give you a definition of merger in that I don't think he is a lawyer and with legal qualifications of merger. That is why I say that if you have an example in mind that might help it to understand your question.

By Mr. Hoag:

Q. How would the repair equipment of the companies be handled?

A. I beg your pardon?

Q. How would the repair equipment of the companies be handled?

A. I don't understand what you mean by repair equipment.

[fol. 1[illegible]] Q. Well, let's say we have a certain crane or a certain snowplow that is presently an asset on the books of the TP&W.

A. In the same manner that we would handle the repair of that equipment on the M&StL.

Q. Would the snowplow, say, continue to be an asset of the TP&W?

Mr. Wheeler: Mr. Examiner, I think Mr. Provo should be asked this question, this is an accounting question rather than operating.

Exam. Albus: No, I think it may have something to do with the operation of the equipment.

A. I don't really understand what you mean when you say will it remain under the ownership of the TP&W. It would be used—let's say that there is a snowplow on the TP&W at Peoria, and if we needed that in a heavy snowtime or periods we would certainly use that on lines on the M&StL. If it needed heavy repair or attention of that kind we would give it the same attention as we would other attention on the M&StL.

By Mr. Hoag:

Q. Turning to shop equipment, would there be any shop equipment of the TP&W remaining, and, if so, where?

A. I would have to say this, certainly—I have testified that the locomotives would be given attention here like any other outside point on any railroad.

Q. That is as far as running repairs?

A. That is right. To that degree that equipment would [fol. 1607] be retained. Now, to go a little further, probably not in line with your question, but I did say this, that I did testify, to, that every opportunity would be given to trying to lease the facilities that TP&W have now for warehouses and for foundry or anything like that. Now, to that degree certain shop machinery might make it attractive property.

A. As I understand it, you propose to have all of your heavy shop repairs done, am I correct, in Marshalltown?

A. For car repair, yes.

Q. Car repair?

A. That's right.

Q. And that is the only place a car repair would be performed either the TP&W or the M&StL?

A. Heavy repair, that is, the kind that requires the heavy work to be done.

Q. And all the assets and equipment at Marshalltown are those of the M&StL?

A. They are presently, yes, sir. If there is any material or equipment here that could be used we would probably integrate it with that that we have at Marshalltown. For instance, if there was a lathe on the TP&W that was physically better and able to do certain types of work, why, obviously we would keep that in favor of the one that was probably older and more inefficient than we might have at Marshalltown.

Mr. Hoag: I believe that is all I have at the present time. [fol. 1608] Exam. Albus: Mr. Davidson.

Cross examination.

By Mr. Davidson:

Q. You really haven't given much concern to what the effect of pulling all this operation out of Peoria will have on the economy of this city, have you?

A. Yes, sir, Mr. Davidson, we have been—I think I mentioned the other day in my direct that we have given a lot of consideration to what we might be able to do here industrially in the use of the facilities that we have here for attracting maybe new industries and which in turn would attract employment.

Q. That could be done just as well under an operation such as proposed by these other carriers and which would still leave this million three hundred thousand dollars in pay rolls in Peoria, couldn't it?

A. I presume to some degree the attraction of industry could be done in the same way that we plan to do it.

Mr. Davidson: No further questions.

Exam. Albus: Are there any further questions?

Mr. Lucas: May I just ask, not cross-examination but a point on clarification?

Exam. Albus: Yes, Mr. Lucas.

By Mr. Lucas:

Q. In your Exhibits H-42 and H-43 I see a point on the M&StL on a point just outside of Peoria called Maxwell and there is a reference in your testimony to Maxwell Hill. Can we understand they are the same points?

[fol. 1609] A. Yes, sir.

Q. What is the ruling grade on Maxwell Hill?

A. I believe it is 2.08.

Mr. Lucas: Thank you.

Exam. Albus: Any further questions.

Mr. Wheeler.

Redirect examination.

By Mr. Wheeler:

Q. Mr. Schroeder, were you furnished information by the TP&W which furnished in part the basis for your estimated saving and your proposed operation of the integrated M&StL, TP&W?

A. Yes, sir, and they were very cooperative.

Mr. Wheeler: I have no further questions.

Exam. Albus: Are there any further questions of Mr. Schroeder?

(No response.)

Exam. Albus: You are excused. Thank you very much.

Mr. Wheeler: Mr. Examiner, I would like to offer, if I have not done so, Exhibits H-41, H-42 and H-43.

Exam. Albus: My records indicate that they have already been received.

(Witness excused.)

[fol. 1610] Mr. Wheeler: I would like to call Dr. William Leonard.

Dr. William N. Leonard was sworn and testified as follows:

Direct examination.

Mr. Wheeler: Mr. Examiner, I should like to have marked for identification two exhibits that will be introduced by Dr. Leonard. The first is entitled "Selected Statistics".

Exam. Albus: "Selected Statistics" may be marked for identification Exhibit H-74.

(Applicant's Exhibit No. H-74, Witness Leonard, was marked for identification.)

Mr. Wheeler: The second exhibit is entitled "Distribution of Freight Tonnage".

Exam. Albus: "Distribution of Freight Tonnage" is marked for identification Exhibit H-75.

(Applicant's Exhibit No. H-75, Witness Leonard, was marked for identification.)

By Mr. Wheeler:

Q. Dr. Leonard, would you please state your name and address?

A. William N. Leonard, 208 Houston Road, Garden City, New York.

Q. And your present occupation?

A. Professor of economics and chairman of the department of Hofstra College, Hempstead, New York.

Q. Have you prepared a statement for presentation to the Commission in these proceedings?

[fol. 1611] A. I have.

Q. Will you proceed to give that statement.

A. By way of education and experience I have a B. A. from the University of Virginia, an M. A. from Texas, and a Ph.D. from Columbia. During the Second World War I served for three years in the War Production Board as a transportation analyst, and from 1945 to 1946 worked as Coordinator of Planning for Trans-World Airlines in Kansas City. I have taught transportation for 10 years and written books and articles in the field. For two years of the Korean War, 1950-1952, I served as consultant on transportation to the Secretary of the Interior. My doctoral thesis "Railway Consolidation under the Transportation Act of 1920" was published in book form by Columbia University Press, and articles on railroad consolidation have appeared in "Journal of Economic History" and "Traffic World".

I have appeared as an expert witness before the Interstate Commerce Commission in a number of cases, one of which involved consolidation, and before committees of both houses of Congress on matters relating to railroads.

I have a strong interest in railway consolidation, for I feel that it provides a valuable means of effecting economies railroad costs and of promoting more efficient railroad service. Consolidation represents a powerful weapon in the hands of the railroads to ensure their own solvency and to withstand competition from other agencies of trans-

[fol. 1612] portation. It is indeed a pleasant privilege to appear before the Interstate Commerce Commission and discuss the issues of this case, involving control of the Toledo, Peoria & Western Railroad Company, particularly as they concern the public interest in a strong, well-balanced, and efficient railroad system. I am happy, in this connection, to support the application of The Minneapolis & St. Louis Railway Company to acquire control of the Toledo, Peoria & Western, and would like to offer my reasons for doing so.

First, control of the T. P. & W. would provide a desirable strength and diversity to the M. & St. L., which far exceeds any value which the T. P. & W. could have to the Pennsylvania or Santa Fe systems.

To support this point, I should like to refer to Exhibit H-74 entitled "Selected Statistics, Toledo, Peoria & Western; Minneapolis & St. Louis; Atchison, Topeka & Santa Fe; Pennsylvania; and Wabash. Effect upon M. & St. L., Santa Fe, Pennsylvania of Acquiring the T. P. & W."

On the first page of this exhibit are shown selected statistics on the five roads in question taken from reports to the Interstate Commerce Commission in 1954, grouped under three headings:

(1) Size of Plant;

(2) Freight Volume, Density and Revenues;

(3) Total Revenues and Earnings.

While the Minneapolis & St. Louis appears from its miles [fol. 1613] of road to be a tenth of the Santa Fe or a seventh of the Pennsylvania, a fairer comparison of its proportions is indicated by investment in road and equipment where the M. & St. L. is about 1/20th the size of the Santa Fe and 1/40th the size of the Pennsylvania. Approximately the same ratios obtain if the number of employees are compared. By most standards the M. & St. L. is about one-fourth the size of the Wabash, a road competitive with the T. P. & W., which is almost completely owned by the Pennsylvania.

Perhaps a clearer indication of relative size of these rail companies can be gained from their rank among Class I

carriers based upon the valuations established by the I.C.C.

Road	Valuation (I.C.C.)* (000)	Rank among 127 roads
Pennsylvania	$3,817,145	1
Santa Fe	1,830,468	3
Wabash	312,627	30
M. & St. L.	93,628	60
T. P. & W.	19,288	100

* Cost of reproduction less depreciation, 1954.

The M. & St. L. lacks the investment per mile of road of the Pennsylvania and Santa Fe as well as their length and coverage of the east and west respectively. Traffic generating capacity throughout its line is also considerable lower, as attested by revenue ton-miles of freight handled per mile of road, which for the M. & St. L. are less than one [fol. 1614] half of those of the Pennsylvania. Its revenue ton-miles per mile of road of 1,008,000 are less than half the average for all Class I railroads of 2,441,000 in the year 1954. This thinness of traffic is a salient feature, and shows a profound need of the M. & St. L. for additional traffic strength.

On the second page of this exhibit are shown the effects of adding the T. P. & W. to the rail systems that have applied for control of that carrier, measure by the statistics shown on page 1 of the exhibit.

With regard to size of plant, the T. P. & W. would add substantially to the M. & St. L. Railway. Specifically, it would increase the M. & St. L.'s road mileage by 17 per cent, its investment by 14 per cent (I.C.C. valuation) and the number of employees by 20 per cent, that is, before economies are taken into account.

The contribution of the T. P. & W. to the rail plants of the Pennsylvania and Santa Fe would, of course, be far less. In this exhibit the Pennsylvania and Santa Fe are shown separately as systems, and the T. P. & W. statistics are added to each in turn. Actually this tends to understate the importance of these systems, and hence overstates the contribution of the T. P. & W. for two reasons:

(1) The Pennsylvania owns the Wabash, the Norfolk & Western, the Long Island Railroad, and other carriers which have not been included in this comparison;

[fol. 1615] (2) Since this is a joint application of the Pennsylvania and Santa Fe, in the event the application were granted, neither one by itself should be considered as having acquired the T. P. & W. properties.

It is nonetheless clear from these data that the addition of the T. P. & W. to these larger systems does not materially increase their size. In fact, the increases in plant size for the Santa Fe range between .9 and 1.8 per cent, and for the Pennsylvania, between .5 and 2.4 per cent.

While the T. P. & W. would add more than 1/6th to the M. & St. L. in plant size, its contribution to the Pennsylvania and Santa Fe nowhere exceeds 1/40th, and tends actually to be less than 1/100th.

With regard to freight volume, density and revenues, the gains accruing to the M. & St. L. from control of the T. P. & W. are even greater than those which size of plant would suggest. In magnitude, the freight business of the T. P. & W. adds 1/3rd to that of the M. & St. L. The greater density of freight traffic of the T. P. & W. helps to offset the thinness in M. & St. L. freight and to increase its revenue ton-miles per mile of road from 1,008,000 to 1,066,000, up 5.8 per cent.

On the other hand, the benefits to the Pennsylvania and Santa Fe systems from the additional freight traffic and revenues of the T. P. & W. are slight, ranging from one to [fol. 1616] one and five tenths per cent, and there would occur some reduction in density of traffic through adding the T. P. & W.

Statistics grouped under total revenues and earnings indicate that the acquisition of the T. P. & W. by the M. & St. L. would add 33 per cent to the latter's gross operating revenues, 36.9 per cent to its net railway operating income and 39.6 per cent to net income. Since net income is subject to wide fluctuations from year to year, a check of net income for the five year period 1950-54 reveals that over this period the net income of the T. P. & W. would add 40.3 per cent to that of the M. & St. L. These figures

are before any economies to which other witnesses have testified. This increase in earnings, net income, is indeed a very substantial improvement.

Against this, the gain in net income to the Santa Fe and Pennsylvania systems from control of the T. P. & W. is very slight. Gross operating revenues of the Santa Fe would increase 1.3 per cent, and those of the Pennsylvania, .8 of 1 per cent. Net railway operating income of the Santa Fe would rise 1.0 per cent; of the Pennsylvania, 1.4 per cent. Net income of the Santa Fe would be improved by 1 per cent through addition of the T. P. & W., and that of the Pennsylvania would gain 3.5 per cent.

While 1954 was a fairly good year for our economy, it did not achieve the level of employment, output and sales of 1955. I have, therefore, obtained data for the first nine [fol. 1617] months of 1955 (the latest I.C.C. reports available to me) on freight traffic and revenues, and net income, for the M. & St. L., the T. P. & W., the Pennsylvania, the Santa Fe, and the Wabash. These are shown on page 3 of the exhibit.

Compared with the first nine months of 1954, freight tonnage and revenues for the M. & St. L. rose by only a few percentage points, and net income by 5.6 per cent. The Pennsylvania enjoyed substantial increases in freight tonnage (nineteen per cent) and revenues (twelve per cent), and its net income shot up by 171.7 per cent. The Santa Fe added 11.5 per cent to its tonnage; 11 per cent to freight revenues and 22.4 in net income.

The Pennsylvania and Santa Fe systems are two of the strongest in the country. The Pennsylvania ranks number one among Class I carriers by investment, freight traffic and revenues, or by practically any standard used to indicate size and volume of business handled.

The Pennsylvania Railroad operates through 13 states and the District of Columbia, with a total population of 72,815,281 persons in 1950. It taps the major industrial centers of the nation, and its freight business is diversified and well balanced between extractive and manufactured products.

Ownership of the Wabash, a 2,393-mile system, ranking 30th in size among roads in investments, further increases

the size and power of the Pennsylvania Railroad, especially as regards traffic in the Midwest. When the further [fol. 1618] control by the Pennsylvania over the Norfolk & Western, Long Island Railroad, the Wabash's Ann Arbor, and the Detroit, Toledo-Ironton, is taken into account, we find that this aggregate received $924,334,525 in freight revenues in 1954, an amount equal to 11.9 per cent of the freight revenues of all Class I carriers and 170.6 per cent of the freight revenues of the next largest aggregate, the New York Central, Pittsburgh & Lake Erie combination. Adding the T. P. & W. to such an aggregate of line-haul properties as the Pennsylvania already possesses, is like tendering a mouse to a well-fed lion.

Exam. Albus: Let the record show a recess until 11 o'clock.

(Short recess.)

[fol. 1619] Exam. Albus: The hearing will please come to order.

We will continue with the direct testimony of Mr. Leonard.

You may proceed, sir.

The Witness: Among railways of the United States, the Santa Fe ranks first in mileage operated, 4th in number of employees, 5th in freight volume, 3rd in freight revenues, and 3rd in total revenues. This was in 1955. It operates in 12 states, with a total population of 44,488,858, in 1950. It is a strong road, with diversified traffic, a long haul of freight, and a good earnings record. The Santa Fe is strong in two of the fastest growing sections of the nation, the Southwest and California. The TP&W can add little to the Santa Fe's size or earning power.

On the other hand, the Minneapolis and St. Louis ranks 60th in size among the 127 Class I railroads, based on investment, and ranks approximately the same in other comparisons of size and business. It operates through only four states, with a population in 1950 of 14,968,000, and 8,712,000 of this population lives in Illinois where the M&StL has only 90 miles of road. It taps an area that is primarily agricultural in character, and one which is not gaining in population and industry as much as other sections of the nation. In fact, the three states of Minnesota,

South Dakota and Iowa, in which 80 per cent of the traffic of the M&StL is originated, gained only 3.7 per cent in population between 1940 and 1950, whereas the population [fol. 1620] increase for the entire country averaged 14.5 per cent. According to Mr. Nelson's Exhibit H-49, the 13 states and District of Columbia served by the Pennsylvania gained 12.0 per cent in population between 1940 and 1950, while the 12 states served by the Santa Fe enjoyed increases averaging 18.6 per cent in this decade. The area in which the M&StL operates depends largely on agriculture for its income, and the plight of this industry is too well known to require elaboration here. Clearly, the M&StL needs the diversification and strength which the TP&W can provide in order to bolster its earnings position and withstand the continued decline in agricultural income and the possibility of a general economic slump.

On the subject of freight, the contribution of the TP&W to the lightly-trafficked M&StL has been cited. There is another important regard in which the TP&W complements and offers strength to the M&StL, namely diversity of traffic. Exhibit H-28 reports tonnage handled by the two carriers, by product classification. The M&StL is a Granger road with a high percentage of agricultural products. In 1954 these represent 41.2 per cent of its originated tonnage. And I think my Exhibit H-74 shows this also, on the first page of H-74, the originated column under the M&StL. This agricultural product class accounted for 25.9 per cent of total tonnage and 30.4 per cent of freight revenues. Other extractive items—products of animals, mines and [fol. 1621] forest—combined with farm products, aggregated 80.6 per cent of its originated tonnage and 52.4 per cent of its revenues. Manufactures and miscellaneous represented only 18.6 per cent of originated tonnage, 33.4 per cent of all tons handled and 43.6 per cent of revenues. It is apparent that the M&StL, which originates so little tonnage in manufactures, is highly dependent upon its connections for this high revenue traffic. Even so, manufactured products amount to only one-third of all tonnage handled.

In the case of the TP&W, manufactures represented 35.3 per cent of originated tonnage in 1954, 49.7 per cent of ton

nage handled, and 58.5 per cent of revenues. Products of agriculture made up 25.7 per cent of originated tonnage and only 19.8 per cent of tonnage handled. Thus the TP&W's freight mix nicely complements that of the M&StL. In 1954 the revenue freight handled by the TP&W would have added 46 per cent to the total freight tonnage carried by the M&StL and 68 per cent to the tonnage of manufactured articles. In combination, the TP&W and M&StL would have a freight mix in which manufactures and miscellaneous would represent 39 per cent of all freight handled, a commendable improvement over the 33 per cent of such freight now carried by the M&StL.

Both the Pennsylvania and Santa Fe have a high proportion of their originated tonnage and freight revenues in manufactured products. These represent 51.1 per cent of [fol. 1622] the Pennsylvania's freight revenues and 64 per cent of those of the Santa Fe. They are also much less dependent proportionately upon farm products than the M&StL. Because of their present wide diversity of products, and the tremendous volume of traffic which they carry, the addition of the TP&W's freight traffic to their systems is small.

My second point deals with the Gateway problem. Approval of the Pennsylvania-Santa Fe application will tend to create a monopoly of gateways in the Midwest, without real benefit to Peoria, while control by the M&StL will keep Peoria an active competitive gateway. As I understand the term "gateway", it represents an important interchange point between different regions of the country served usually by a number of carriers operating in these differing regions, and may also represent a rate-break point on through traffic. Chicago, St. Louis and Peoria serve as gateways between western and eastern roads and territories with the Wabash route via Hannibal Bridge and Decatur constituting competition to all three.

Both the Pennsylvania and Santa Fe systems have routes and gateways other than Peoria which they control or where they have pre-eminent positions in the interchange of freight. Chicago is the major point of interchange in the midwest for the Santa Fe and Pennsylvania railroads. St. Louis represents a major point of interchange where the

Pennsylvania turns over traffic to the Wabash and other [fol. 1623] systems connecting with the Santa Fe at Kansas City. Still another important competitor to these gateways is the Wabash route via Decatur to which I referred, and which the Pennsylvania controls by its control of the Wabash. This route also connects the Pennsylvania with the Santa Fe at Kansas City. This line of the Wabash through Decatur also connects with other carriers at Omaha and Des Moines, and has branches to connections at Sullivan, Illinois; Champaign, Illinois; Streator, Illinois; Quincy, Illinois; Keokuk, Iowa; Ottumwa, Iowa; and Columbia, Missouri. The Wabash is competitive with the TP&W for the length of its route, and has a substantial advantage over the TP&W in the fact that it can receive westbound freight at points to the east of the TP&W, especially from its parent company, the Pennsylvania, and carry these farther into the Midwest than the TP&W. It is directly competitive with the M&StL-TP&W route on transcontinental traffic to and from all parts of the West, including the North Central section which the M&StL serves directly. The Pennsylvania-Wabash route through Decatur is even a little shorter than the TP&W route from Official Territory to Kansas City (494.7 miles from Logansport to Kansas City, using Decatur, against 499.3 miles, using Peoria).

The Pennsylvania-Wabash and Santa Fe Systems are already well provided with gateways in the Midwest. They enjoy a substantial position in the traffic moving through or to Chicago and St. Louis, and have the Pennsylvania-[fol. 1624] owned Wabash as a further strong link. To permit them to control Peoria by ownership of the TP&W would place them in an unduly strong position as against all other railroads operating through the midwestern gateways, and especially the M&StL. It gives them a conflict of interest which requires them to talk of parity of treatment and the like.

Actually, the availability of other gateways to the Pennsylvania-Wabash and Santa Fe systems could well militate against Peoria, and consequently against other railroads operating into and through that gateway.

There has been testimony from Mr. Symes that the Pennsylvania prefers for westbound movements (1) St. Louis,

where it gets a longer haul, (2) Chicago, and (3) either Effner or the Wabash route through Decatur. However, it is my opinion that because of the Pennsylvania's 99 per cent control of Wabash, a long-haul carrier, against the proposed 50 per cent control of TP&W, a relatively short-haul carrier, the Pennsylvania would not actually be neutral as between Decatur and Peoria for very long. Economic self-interest is too strong a motivating force to the contrary.

Likewise, the Santa Fe's route to Chicago, where it makes connections with the Pennsylvania, is directly competitive with the TP&W. Evidence has been introduced to show that, on the basis of effective division of freight revenues, it is clearly to the profit of the Santa Fe to haul eastbound [fol. 1625] transcontinental traffic by way of Chicago instead of giving it to the TP&W at Lomax.

On the other hand, Peoria is an indispensable junction and terminus for the M&StL in the midwest, and in contradistinction to Pennsylvania-Santa Fe, its only gateway in this area.

Figures of interchange traffic of the M&StL at Peoria indicate a total for 1954 of 30,660 cars received, 45,335 delivered, or a total of 75,995 cars handled at that point (Illinois Terminal Case, Docket 18752). This represents 36 per cent of all cars handled by the M&StL during that year. The M&StL, therefore, handles more than a third of its freight carloads through Peoria.

Of the M&StL's business at Peoria, 15.9 per cent is with the TP&W. Testimony has been entered showing that the M&StL solicits business through Peoria. Its advertising, e.g., in the Official Guide of the Railways, reads "The M&StL Ry. Co.... The Peoria Gateway."

The M&StL has no conflict of interest with any other gateway competitive with Peoria and can be expected to maximize use of the Peoria gateway.

Because of their adverse interests, the Pennsylvania and Santa Fe systems will not be inclined to make maximum, but rather incidental, use of the Peoria gateway. They have little incentive to increase their use of the Peoria gateway, except for local traffic. In fact, it is to their [fol. 1626] economic advantage to discontinue the competitive solicitation of the TP&W now in effect. By favoring

routes through other gateways which represent a longer haul or greater division of revenue to them, they will draw traffic away from the Peoria gateway and tend to dry it up as a competitive route. There is also the presumption that the M&StL will lose a large part, if not all, of that traffic it handles with the Santa Fe between Nemo and Peoria, representing 5.6 per cent of its freight revenues. This will reduce the earnings of the M&StL, and its ability to maintain the efficiency of its service and its traffic solicitation. The consequent atrophy of Peoria as a gateway would certainly not be in the interests of the City of Peoria, the TP&W, or the M&StL. Nor, may I add, would it be in the national interest in a strong competitive transportation system, in which Peoria is an important gateway, and a bypass for through traffic around Chicago, extremely valuable in peacetime, and indispensable in case of war.

Third, while the possible gain to the Pennsylvania and Santa Fe railroads from acquisition of the TP&W is slight, injury to the M&StL would be serious. The Pennsylvania and Santa Fe are in no real need of the added revenue from the traffic which they could obtain by acquiring the TP&W or which they could divert to themselves by control of the TP&W. As has been shown, the total traffic of the TP&W adds only fractionally to the large volume of freight busi- [fol. 1627] ness of the Pennsylvania and Santa Fe and to their freight revenues. These roads are large, well-balanced, have large proportions of high-revenue manufactured products already on line. Population and industry along the lines of the Pennsylvania and Santa Fe are growing rapidly, and their freight revenues and net income reflect this. The Pennsylvania has paid a dividend each year since 1847, a long and commendable record of payment to stockholders. The Santa Fe has paid a dividend on its stock each year since 1901, with the exception of 1933, 1938 and 1939. It has a large modernized rail plant and low fixed charges. It is known as a "blue chip" among rail stocks, has recently had a five-for-one stock split, and net income has lately hit new peacetime highs. Neither the Pennsylvania nor the Santa Fe had to be reorganized during the depression of the 1930's.

On the other hand, the Minneapolis & St. Louis has not in the past been a strong road. It is surpassed physically

and traffiewise in a highly competitive area by systems such as the Rock Island, Burlington, Northwestern, and Milwaukee, and it must also compete with the Chicago Great Western and the Great Northern. In 1923, when other railroads were improving their financial position, the M&StL entered receivership. In 1934 consideration of a loan to the M&StL led the Reconstruction Finance Corporation to recommend that it be split among other railroads in the region, and eight roads in the area applied for parts of the M&StL in [fol. 1628] an acquisition proceeding. However, the Commission kept the Minneapolis & St. Louis alive by denying that application on the grounds chiefly that its services and facilities were needed by the area which it served (228 I.C.C. 277, 1938). Since that time the M&StL has been reorganized, has emerged from bankruptcy, and has paid dividends since 1943.

However, the M&StL, despite vigorous and effective management, despite its improved financial position, could easily suffer a reverse. The wartime boom and general economic prosperity since World War II have helped a great deal, but the lines of the M&StL serve in large part sparsely settled counties whose chief, if not sole, economic activity is agriculture. This is indeed a frail basket in which to have all one's eggs. As a matter of fact, despite the prosperity of recent years, the M&StL has handled fewer freight cars in each year since 1950. In 1954 freight cars of the M&StL were only 89 per cent of the number handled in 1950. While 1955 saw a reversal of this downward trend and an increase of 2.9 per cent in the M&StL's freight revenues, the gain is small and could easily be lost. Today at the height of prosperity, farm surpluses have piled up and farm prices have declined, creating an unstable condition for the future. A crop control program through a soil bank could reduce shipments. A business recession reducing domestic markets for agricultural products could [fol. 1629] easily provoke a crisis in the farm belt and throw some of the roads in Granger territory into bankruptcy once again.

Should the M&StL lose traffic as the result of the success of the Pennsylvania-Santa Fe application for control of the TP&W, and preferential routing by these lines through Lomax, amounting to anything like the $1,110,000 annually

in freight receipts, or 5.6 per cent of its freight revenues in 1954, testified to by Mr. Swanson, this could place the property in critical position. Such a loss to the M&StL is far out of proportion to any gain to the Pennsylvania and Santa Fe accruing from control of the TP&W.

Fourth, the M&StL needs the TP&W as an active part of its freight traffic system. Some prosperous railroads get their strength from a copious supply of a raw material, such as coal or iron ore, and favorable operating conditions, as in the Pocahontas Region. But most strong railroads are anchored in large centers of population with industry at each end of their system, and tap large intermediate centers to provide further nourishment, particularly in manufacture. In this way not only is high revenue freight obtained, but a two-way flow of such traffic adds to the efficiency of operations.

The M&StL serves only one important industrial area, the Twin Cities of Minneapolis and St. Paul. Its next most important manufacturing center is Des Moines, with 180,000 [fol. 1630] persons, then Peoria, with 115,000. In all of these centers the M&StL encounters strong competition from other roads. The system lacks balance since it has no industrial metropolis comparable with Minneapolis-St. Paul at the eastern end of its system. In order to survive, it must obtain as much through or bridge traffic as possible, and particularly must it balance its eastbound freight with westbound movements of manufactured products at Peoria.

At the present time, the M&StL is delivering about three cars of traffic at Peoria for every two it is receiving. Figures for 1954 show the M&StL delivered 45,335 cars and received 30,660 cars at that center. In recent years the M&StL has not been receiving as many cars from the TP&W at Peoria as it has been delivering to the TP&W, though in 1950 the exchange was about equal. (In 1950 the M&StL turned over 5,995 cars to the TP&W at Peoria and received 5,880; in 1954 the M&StL delivered 7,473 cars and received 4,826).

It is imperative, if the earning capacity of the M&StL be maintained, that it not only hold its eastbound bridge traffic through Peoria, but increase its receipt of westbound freight at Peoria. The surest way of bringing this about

is by authorizing the M&StL to acquire control of th TP&W.

Fifth, the economies contemplated by the M&StL ap plication for control of the TP&W are important savings i transportation costs.

[fol. 1631] The matter of possible economies and servic improvements has always occupied an important place i I.C.C. decisions on control applications, and in my opinio consideration of this factor should always be in the fore front. Mr. Gurley's testimony did not mention any specifi economies or improvements in operations, inasmuch as th Pennsylvania-Santa Fe application assumes that the T &W would continue to operate as an independent railroad pretty much as it does today. Mr. Gurley stated that h had no knowledge of any improvement which the Penn sylvania-Santa Fe control would produce. He stated tha the Santa Fe had made no special study of economies, an added only that it might trade "ideas" on the subject wit the TP&W.

Mr. Symes also stated that he expected the TP&W t remain in its present state and offered no testimony o economies.

The M&StL, however, through Mr. Schroeder testifie that its application for control of the TP&W contemplate integrated operation which could produce savings of $960, 063. These economies could be effected in Maintenance o Way and Equipment, and in Transportation expense. Mr Provo introduced testimony showing further savings i accounting, traffic and other departments, aggregating $810,882. All told, these savings in operating expense com to $1,770,945. This amount is equal to 8.5 per cent of the combined operating expense of the M&StL and TP&W i 1954, and will to the extent realized help to ensure th [fol. 1632] financial future of the two roads. It is in keep ing with and in furtherance of the National Transportation Policy enunciated in the Act to foster "sound economic con ditions in transportation and among the several carriers." [fol. 1633] Sixth, multiple ownership of the TP&W will not be as productive of efficiency and economy as single ownership by the M&StL. There has been considerable testimony on the possibility of multiple ownership of the TP&W by the Pennsylvania, Santa Fe and other carriers.

including the Nickel Plate, the Rock Island, the Burlington and the Wabash. It is my considered opinion that joint ownership can and usually does lead to indecision and stagnation. It is definitely inferior to ownership of a line haul road by a single carrier.

As Mr. Gurley has stated, too many cooks may spoil the broth. Among the six carriers mentioned above who might become parents of the TP&W, there necessarily would be serious conflicts of opinion on how to raise the child. To please one road in a multiple ownership facility is often to displease one or more of the others. The result is a paralysis in policy.

Secondly, many of the carriers involved have serious conflicts of interest with the TP&W route through Peoria. The Santa Fe prefers Chicago, the Pennsylvania prefers St. Louis or Chicago or the Wabash, the Burlington has a longer haul to Chicago, and so has the Rock Island, and both of them also enter St. Louis.

Third, if the earnings of the TP&W have to be split among two, three, four or more carriers, the incentive of any one of the participating carriers to make the line profitable would be decreased. Mr. Carpi stated that the Penn- [fol. 1634] sylvania would not be interested in promoting the growth of traffic via the Effner route if there were divisions of ownership beyond the Pennsylvania and Santa Fe, and his position on multiple ownership would, I believe, be shared by other railroad men. I am talking about multiple ownership of line haul properties.

Only the M&StL is utterly dependent upon the Peoria gateway. Its paramount interest is in improving and augmenting service through Peoria, and the gains therefrom would make a substantial contribution to its total and net revenues, providing an incentive for efficient operation of the TP&W. Furthermore, the granting of the Pennsylvania-Santa Fe application would place them in a position to exercise undue power and influence over routes and competing gateways in the Midwest. This would be contrary to our National Transportation Policy.

The converse is true of control of TP&W by the M&StL. There a historically weak road would be united with a strategically located bridge line at its eastern end, in a natural

extension of its line, a road with which M&StL already does a substantial business, and whose control would not only protect the important artery of the M&StL stretching into Peoria, but would provide density and diversity of traffic for the combined carriers. While channels would be left open, acquisition of control of the TP&W by the M&StL, and the improvement in service resulting from integrated operation, should augment the movement of freight over the M&StL. So strengthened, the M&StL would be [fol. 1635] better able to survive depression in the farm belt, and to offer more effective competition to the stronger systems now operating in Granger territory.

The Commission is fortunate in this proceeding to have an affirmative choice between two applications, that of the Santa Fe and Pennsylvania, and that of the M&StL. Ordinarily, the Commission does not have the alternative of deciding whether a road should be acquired by one carrier or another in a case, comparing the benefits flowing from one proposal with those flowing from another, but only whether in a single application for control, the advantages outweigh the disadvantages. In this combined proceeding the Commission's choice is wider. Here, I believe, we have convincing proof that the gains to the Pennsylvania and Santa Fe and their shippers are minimal in comparison with the injury which could easily befall the M&StL, its shippers, and the area it serves.

As for possible injury to the Santa Fe and Pennsylvania from the proposed control by the M&StL of the TP&W, this would be negligible. Such control would be as injurious to these great systems as a gnat's bite would be to an elephant.

In the light of these considerations, I believe the application for control of the TP&W by the M&StL eminently meets the tests of public interest, and requires approval by the Commission.

Q. Does that conclude your direct testimony, Dr. Leonard?

[fol. 1636] A. It does.

Mr. Wheeler: The witness is available for cross-examination.

Exam. Albus: Mr. Thomas, please.

Cross examination.

By Mr. Thomas:

Q. Have you ever been employed on the staff of a railroad, Mr. Leonard?

A. Only as a consultant.

Q. You have never had any experience in the solicitation of freight traffic?

A. No, sir.

Q. On your Exhibit H-74, page 3, you compare certain figures, including revenues and net income for the Pennsylvania showing the year 1954 and the first nine months of 1955?

A. I have that.

Q. Do you know whether the Pennsylvania figures which you have used are on the same accounting basis for the two years, for the year '54 and the nine months for the year 1955?

A. No, I don't. I merely used the OSD reports filed by the Pennsylvania in the office of the Interstate Commerce Commission.

Q. You speak about the traffic moving through the Peoria gateway. Is it your understanding that that traffic must move via the TP&W?

A. Which traffic are you speaking of?

Q. East and west traffic moving through the Peoria gateway.

A. No, I assume that Peoria is a gateway at which a sum [fol. 1637] of interchanges are possible.

Q. Are there other roads there having interchanges on the east and west which are not controlled by the Santa Fe or the Pennsylvania?

A. Yes.

Q. As I take it, it is your view that the Pennsylvania attempts to influence the routing of traffic through Decatur with the Wabash?

Mr. Wheeler: Mr. Examiner, I don't believe that is a statement in his testimony.

Exam. Albus: He may so, then.

Mr. Thomas: I am not sure what he means, but he says the Pennsylvania, if it owned the TP&W, or part of it

would not actually be neutral as between Decatur and Peoria for very long.

A. I was referring there to the testimony by Mr. Atkinson of the Wabash in which he said that arrangements had been worked out with the Pennsylvania Railroad on the fast freight schedule between Kansas City and eastern points and that as between other carriers, other things being equal, the Wabash prefers the Pennsylvania.

By Mr. Thomas:

Q. Are you familiar, without commenting on whether that is an accurate statement of what Mr. Atkinson said, are you familiar with the relative volume between the Pennsylvania, as between the Pennsylvania and the TP&W at Effner?

A. No.

[fol. 1638] Q. On the top of page 14 of your statement you say that the M&StL handles more than a third of its carloads through Peoria, are all of the carloads that you have referred to through traffic?

A. Of the 75,000 cars?

Q. Yes.

A. A majority of them are. However, this includes a figure of approximately 12,000 cars originated by the M&StL, terminated at Peoria, and/or originated—well, that's where most of the cars would come from.

Q. Are they included in that third that you mentioned as being handled through Peoria?

The 75,995 cars is 36 per cent of the total of 210,000 cars handled by the M&StL in 1954.

Mr. Thomas: Will you read the question.

(Question read.)

A. My statement says 75,995 cars are handled at Peoria.

Q. Then you say—

A. (Interrupting) This includes some terminations.

Q. Then your statement that the M&StL handled also more than a third of its freight cars through Peoria is not correct?

A. The total handled through Peoria is 63,709 cars in 1954.

Q. Is that a more than a third of the total freight carloads of the M&StL?

A. I will have to work that out.

[fol. 1639] Q. Did you give us the total figure?

A. 63,709 cars. The total of carload freight, the total cars of carload freight, reported in 1954 as handled by the M&StL was 198,000. The figure of interchange or cars handled through Peoria would be 31.7 per cent of the total cars handled by the M&StL in 1954, which is almost a third.

Q. You state on page 19 that the M&StL is delivering about three cars of traffic at Peoria for every two cars it is receiving. Do you know whether or not the westbound movement of traffic through the Peoria gateway has declined in the last year or so?

A. What page is that, please?

Q. Page 19, near the top.

A. Would you repeat the question, please.

(Question read.)

A. No.

Q. Do you know whether or not the other western connections at Peoria are also receiving less cars than they deliver through that gateway?

A. No, I don't.

Q. I take it that your statement on page 21 that the Pennsylvania prefers St. Louis or Chicago or the Wabash was made without any knowledge of the interchange at Decatur versus Effner, is that correct?

Mr. Wheeler: Mr. Examiner if the predicate for this [fol. 1640] question is the Pennsylvania interchanges traffic with the Wabash only at Decatur, I object to it, because the facts of record point to the contrary.

Exam. Albus: Read the question, please.

(Question read.)

Exam. Albus: He may answer.

A. I am not sure that that is a very relevant factor. I was using Decatur only as a major junction on the Wabash system. The total interchange of the Wabash with the Pennsylvania system would be made at many other points besides Decatur and hence to get its proportions you would

have to take the total of all these points and relate them with the interchange of the TP&W through Peoria. I have no doubt but that the result would show a large, a considerable volume of freight handled by the Wabash and Pennsylvania at these other points in excess of that handled through Peoria, that is, between the Pennsylvania and the TP&W.

By Mr. Thomas:

Q. You don't know the volume handled at St. Louis?
A. I don't have that figure.
Q. Or at Logansport?
A. I don't have that figure.

Mr. Thomas: That is all.
Exam. Albus: Mr. Lucas, please.

Cross examination.

By Mr. Lucas:

Q. Dr. Leonard, are you connected with any other organ-[fol. 1641] ization that has some interest in the railroad industry?

A. I am connected with a railway trade association, the Federation for Railway Progress.

Q. What is your position with the last-named organization?

A. President. It is an honorary title, I might add, since I receive no compensation.

Q. I want to ask you one further question or two that Mr. Thomas touched upon, and that is the change in the Pennsylvania accounting practices, 1955 versus 1954. At the top of page 7 you speak of the Pennsylvania's net income shot up, and I emphasize those words 171.7 per cent, did you make any effort to ascertain why there was that degree of change for the first nine months in 1955 compared with the same nine months for '54?

A. No, sir, I just took the figures reported to the Interstate Commerce Commission.

Q. If one of the changes they made was to report other income, either monthly or quarterly, in 1955, whereas in

1954 and previous years it had all been appearing in the December reports, that would make quite a difference in net income, would it not?

A. It could.

Q. So that you are not there saying for the benefit of the Commission here in this case that that's all attributable to the increases in freight tonnage for those nine months?

A. No, there would be many other factors than freight [fol. 1642] tonnage in this but certainly the record shows an improvement in freight tonnage and freight revenues.

Mr. Lucas: That is all, Mr. Examiner.

[fol. 1643] Exam. Albus: Mr. Cassell, please.

Mr. Cassell: No cross.

Exam. Albus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. Dr. Leonard, in your consideration under item 6, on page 21 of your testimony on multiple ownership and the alleged disadvantages of it, that's an expression of opinion on your part, isn't it?

A. What page was that, sir?

Q. Page 21.

A. Would you give me the reference again, please.

Q. The point is this, that your statements on pages 21 and 22 relative to multiple ownership represent opinion on your part, do they not, rather than the assertion of facts?

A. This represents my considered opinion.

Q. Now, your statement says on page 21, and I quote it: "It is my considered opinion that joint ownership can and usually does lead to indecision and stagnation." Are you talking there of line haul railroads as opposed to terminal railroads?

A. Yes, sir.

Q. Have you any specific examples where it has led to indecision and stagnation?

A. I think the New Haven where you had the—no, I will withdraw that. I have heard executives of the SP&S, which is jointly controlled by the Great Northern and [fol. 1644] Northern Pacific linehaul carriers, indicate that

there are sometimes differences of opinion between managements of those two roads. As you know, the president of that road is alternately the president of the Great Northern and the Northern Pacific in the following year, and that because, that because sometimes of the change in top management that there is a certain amount of indecision there, and I think also a certain lack of incentive on the part of the supervisory personnel, since the top position is already blocked off.

Q. Could you identify the SP&S for the record?

A. Spokane Portland & Seattle.

Q. How many owners does that have?

A. Two.

Q. Are you familiar at all with the Lehigh & Hudson River and the RF&P?

A. Yes, I would consider the RF&P more of a terminal operation.

Q. Generally, they are prosperous, though, by normal standards, aren't they?

A. Referring to the RF&P, I think there is such an avalanche of traffic that moves through that area that it would have to be prosperous.

Q. Now, in your study of consolidation, have you noticed the tendency of the combined freight revenues to shrink somewhat below the individual revenues of the component lines—and when I use the term "consolidation" I mean unification?

[fol. 1645] The Witness: Would you repeat that question, please.

(The reporter read the last question.)

By Mr. Broker:

Q. Let me just correct the sentence this way: Have you noticed whether or not there is a tendency in that direction?

A. For the combined revenues of the two merged properties to fall below the total of the two individual?

Q. Yes.

A. I don't think there is any such tendency. It would depend upon traffic conditions, which would be external in many cases to the railroads themselves.

Q. In other words, each situation must be looked at individually?

A. Yes, sir.

Mr. Broker: No other questions.

Exam. Albus: Mr. Davis.

Cross examination.

By Mr. Davis:

Q. Mr. Leonard, from what source did you obtain your information as to junction points of various railroads and their connections at those points?

A. From the Railway Guide and from Mr. Atkinson's exhibits. You mean of the Wabash?

Q. Well, of any of these junctions that you mentioned in your testimony. Well, tell me what line is it that connects with the Wabash at Columbia, Missouri, for example?

A. The Katy, the Missouri, Kansas and Texas.

[fol. 1646] Q. Any other railroad?

A. Not to my knowledge.

Q. Do you have the interchange figures for the Wabash interchange with its various connections on certain lines that you mentioned at the junction points on page 12?

A. Could you indicate what junction points on page 12?

Q. Do you have the—

A. Oh, I have it.

Q. Do you have the figures of the Wabash interchange at each of those junction points with its connecting carriers?

A. No, I haven't.

Q. Do you know how many railroads enter St. Louis, or East St. Louis—I will add that?

A. Twenty-three, I believe.

[fol. 1647] Q. Do you know of that total how much of that traffic is carried by the Wabash into or out of that gateway?

A. No, sir.

Q. Do you know how much is carried by the Pennsylvania into or out of that gateway?

A. No, I don't.

Q. Is that gateway monopolized by the Wabash?

A. I wouldn't call it monopolized, no.

Q. When you speak of monopoly, you are referring to total cars handled in and out of a particular gateway?

A. As between gateways?

Q. Yes.

A. I am speaking about the control of traffic and routing which can be effected by large systems.

Q. Would you say that a particular route competes with a particular gateway if that route carries freight on either side of that gateway without actually passing through it?

A. Yes, I would think that a route that passed from one official territory into another, from one major region of the country, economically speaking, into another, and that by-passed gateways, where you have major interchange among many railroads would in a sense be a route which serves as an access to a territory and perhaps could be regarded as a gateway, though I did not strictly define a gateway as such.

Q. But that is what you mean by a route competing with a gateway?

[fol. 1648] A. That is right.

Mr. Davis: Thank you.

Exam. Albus: Mr. Hoag.

Mr. Hoag: No questions.

Exam. Albus: Mr. Davidson.

Mr. Davidson: Yes.

Cross examination.

By Mr. Davidson:

Q. May I ask you this, referring to page 15 of your prepared testimony, you say in the interest of the City of Peoria. Should the Commission infer from that that you think that the interest of the City of Peoria should be considered?

A. I would think the interest of the city should be, yes, sir.

Q. Would you feel that the interest of the City of Peoria is served by destroying $1,330,000 in payrolls?

A. Well, sir—

Q. (Interrupting) I have asked you a question.

Exam. Albus: He is going to answer it, now, give him a chance.

A. I can't certify as to this figure but I know that the economic interests are not served by the immediate situation alone. That a great deal of money that comes to the city comes from the federal government, it comes from general economic conditions in the country, it comes from firms that are national in their operation and that have offices and businesses in Peoria and hence to consider only an immediate situation of the kind you refer to is not to [fol. 1649] the interest of the City of Peoria.

Mr. Davidson: No further questions.
Exam. Albus: Mr. Thomas?
Mr. Thomas: I have one or two.
Exam. Albus: Yes, sir.

Further cross examination.

By Mr. Thomas:

Q. You spoke of the S. P. & S. example of joint ownership and indicated it was to a certain extent unsatisfactory. It isn't your understanding, is it, that anyone in this proceeding is proposing to change presidents of the T. P. & W. every year, is it?

A. I don't believe the Pennsylvania or Santa Fe have proposed that.

Q. Has anyone else?

A. Not to my knowledge.

Q. Are you familiar with the Burlington Railroad?

A. Yes.

Q. Is it owned by the same two roads that own the S. P. & S.?

A. It is controlled by them, but it has an immediate management, its own president.

Q. It is a pretty successful road, isn't it?

A. Definitely.

Mr. Thomas: That is all.
Exam. Albus: Anything further?
Mr. Thomas: No, sir.

[fol. 1650] Exam. Albus: Is there any further cross-examination?

(No response.)

Exam. Albus: Any redirect?

Mr. Wheeler: I want to check one exhibit. I am not sure whether it was corrected or not.

I have no further questions.

Exam. Albus: You are excused, Dr. Leonard. Thank you very much.

(Witness excused.)

Mr. Broker: I would just like to make a point for the record. I think at one time Dr. Leonard referred to Exhibit H-74 and he meant H-75.

Dr. Leonard: That is correct.

OFFERS IN EVIDENCE

Mr. Wheeler: Mr. Examiner, I would like to offer Exhibits H-74 and H-75.

Exam. Albus: Is there any objection?

(No response.)

Exam. Albus: They are received.

(Applicant's Exhibits H-74 and H-75, Witness Leonard, were received in evidence.)

Mr. Wheeler: Mr. Examiner, that completes the direct case of the M. & St. L. Railway Company.

Exam. Albus: Thank you very much.

Are you ready to proceed?

Mr. Cassell: Off the record, if we may.

[fol. 1651] Exam. Albus: Off the record, please.

(Short recess.)

Exam. Albus: On the record.

Let the record show an adjournment until 1:30.

(Whereupon, a recess was taken until 1:30 p.m. of the same day.)

VOLUME IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, APPELLANT,

vs.

UNITED STATES OF AMERICA, ET AL.

No. 27

SOUTH DAKOTA, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

No. 28

MINNESOTA, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

No. 12 filed December 1, 1958

No. 27 filed January 2, 1959

No. 28 filed January 8, 1959

Probable Jurisdiction Noted March 9, 1959

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Reply of intervenor Railway Labor Executives' Association to Petition of the Minneapolis & St. Louis Railway Company for reconsideration of the Report and Order of Division 4, dated May 31, 1957	2340	2025
Order of the I.C.C., dated December 13, 1955	2343	2027
Order noting probable jurisdiction	2345	2029

[fol. 1652]

AFTERNOON SESSION

1:30 p.m.

Exam. Albus: The hearing will please come to order. We will proceed at this time with the rebuttal witness on behalf of the Santa Fe.

Mr. Thomas, please.

Mr. Thomas: I will call Mr. Patterson.

GRIER D. PATTERSON was sworn and testified as follows:

Direct examination.

By Mr. Thomas:

Q. Will you state your full name and address for the record.

A. Grier D. Patterson, 1400 First National Bank Building, Chicago, Illinois.

Q. What is your occupation?

A. I am a member of the law firm of Winston, Strawn, Smith and Patterson.

Q. Did you have some conversations with Mr. Heineman on May 26?

A. Yes.

Q. Of this year?

A. Yes.

Q. Are you the Mr. Patterson that Mr. Heineman referred to in his testimony—pardon me, that was 1955.

A. Yes, '55, yes.

Q. Will you outline what took place on May 26 in connection with your conversations with Mr. Heineman?

[fol. 1653] A. I called Mr. Heineman on the phone around about 10 o'clock on May 26 and asked if I could come over to his office and he said yes, and we made an appointment for me to come over there at 11 o'clock. I went to his office at 11 for the purpose of presenting to him a request of the Wilmington Trust Company and Guy A. Gladson as trustees under the will of George P. McNear, Jr., for

an extension of an offer that Mr. Heineman had submitted on behalf of the Minneapolis and St. Louis Railway Company to purchase stock of the TP&W owned by the trustees. I presented that written request of the two trustees to Mr. Heineman, and after reading it he told me that his inclination was not to grant the request and was not to extend the offer. I was in his office, I suppose, a half an hour or 45 minutes, and at the conclusion of that time he told me that he wanted to confer with some of the members of his executive committee and that while his own inclination was not to extend the offer, that he would telephone me later after having conferred with some of his associates and let me know their definite answer.

About a quarter after 12 Mr. Heineman called me on the phone at my office and told me that—he called me to say, I made a note at the time of what he said, that his offer would be open until 5 o'clock that afternoon, if not accepted he would announce to the press that the offer was not accepted and had been withdrawn and that no negotiations were pending.

Q. Was there any understanding between you and Mr. [fol. 1654] Heineman that if some one else should bid for the property that he would have another opportunity to make an offer?

A. There was no such arrangement or understanding with me.

Q. What happened after you had received that telephone call from Mr. Heineman which you just described?

A. I tried to reach Mr. Gladson, who was the individual trustee and who was in Chicago at the time, and succeeded in getting him about a half an hour later, and I told him, relayed to him the message that Mr. Heineman had given me for transmittal to the trustees. Gladson said that in his opinion therefor the offer of the M&StL should be accepted unless the Santa Fe or the Pennsylvania that afternoon agreed to take all of the stock owned by the trustees on the basis of at least equal to or better than the offer of Mr. Heineman, and he asked that I try to get in touch with the Wilmington Trust Company and advise him of his attitude, Gladson's attitude. I tried to reach the Wilmington Trust Company, both Mr. Chinn and Mr.

Bancroft, and found that they were out for lunch. I then tried to call Mr. Robert Richards and found that he was out for lunch. I left word for them to call me back.

Q. Who is Mr. Richards?

A. Mr. Richards is a member of the law firm of Richards, Lawton and Finger in Wilmington, Delaware, who were counsel for the trustees of the McNear estate.

Q. Will you proceed?

[fol. 1655] A. After having left the message for either Chinn or Bancroft or Richards to call me back, the next thing I did was to call Mr. Ed Austin who was the principal for the beneficiary of the McNear estate and informed him of Mr. Heineman's decision with respect to his offer. Shortly thereafter I received a call back from Mr. Richards, and I told him of Mr. Heineman's decision and of Mr. Gladson's attitude with respect to it. Richards said that he would immediately try to get in touch with Chinn and Bancroft of the Wilmington Trust Company and would call me back as soon as he was able to contact them. Sometime later, another half an hour or 45 minutes later, as near as I can recall, Mr. Richards did call me back and said that he had talked, as I recall it, to Mr. Chinn, and that Mr. Chinn had agreed with the position taken by Mr. Gladson that the Santa Fe and Pennsylvania should be advised that if they did not that afternoon agree to meet or better the M&StL offer that the latter offer would be accepted, and we then discussed the manner of acceptance of it. Pointed out that Mr. Heineman had made it perfectly clear, to me, that his offer had to be accepted as is by 5 o'clock that afternoon or it would be withdrawn, and it was suggested that I proceed immediately to prepare a form of acceptance of the M&StL offer, and I started to work on that. Mr. Richards had said to me that Mr. Chinn was going to call the Pennsylvania and Santa Fe but didn't know how to reach Mr. Gurley. I [fol. 1656] called Mr. Gurley's office and was told by some one there that he could be reached at a certain address in New York, and I called Richards back and gave him that address.

At that time Mr. Richards told me that Mr. Chinn had already talked to the Pennsylvania, to Mr. Symes, and that

Mr. Symes had told Chinn on the long distance phone that the Pennsylvania would not make any further or additional offer, that it regarded the so-called April 15 letter agreements as being binding commitments and that the Pennsylvania expected to stand by them. As Richards said at that time, or rather at that time Mr. Chinn had not talked to the Santa Fe.

I then spent the next hour or so working on the acceptance of the M&StL offer—

Exam. Albus: Wait a minute, please.

Mr. Wheeler: Could I have that part of it read back there, I didn't get it.

(Part of answer read beginning with paragraph starting at line 4 on page 1,565.)

Mr. Wheeler: Thank you.

Exam. Albus: Proceed, Mr. Patterson.

A. (Continuing) —the next word I heard was from Mr. Richards stating that Mr. Chinn had talked to Mr. Gurley over the long distance phone, Mr. Gurley was in New York, and that Mr. Gurley had said that his board was in session and that he would consider the matter and take it up with [fol. 1657] his board and would call Mr. Chinn back very shortly.

[fol. 1658] Meanwhile I had prepared a draft of the acceptance of the M&StL offer and had telephoned Mr. Austin and read it to him over the phone and had called Mr. Richards to read it to him over the phone. There were certain questions involved in the preparation of the acceptance that were commented on and discussed and as a result of that I have started making some further revisions of the acceptance of the M&StL offer.

Late in the afternoon I was advised by Mr. Richards that Mr. Gurley had called Mr. Chinn back and had made a proposition that had been agreed to by Mr. Chinn to the effect that the Santa Fe would buy all of the trustees' stock at $135 a share, on condition that the contract covering that purchase was drawn that day and executed by both of the trustees. I raised the question as to the ability of the trustees to commit themselves to deliver the stock

covered by the so-called April 15 letter agreement with the Pennsylvania, in view of the position taken by the Pennsylvania, and it was explained to me that Mr. Chinn and Mr. Gurley had discussed that phase of it and that the Santa Fe's offer would be to take it all, if the trustees could deliver it, or all except the stock covered by the Pennsylvania offer if the trustees were not in a position to deliver that stock.

By Mr. Thomas:

Q. What time was it when you had that conversation with Mr. Richards?

A. As near as I can recall, about quarter of 5.

[fol. 1659] Q. What did you do then?

A. I called Mr. Heineman and advised him that the trustees were allowing his offer to expire.

Mr. Thomas: That is all.

Exam. Albus: Cross-examine, please.

Mr. Wheeler: May we have a minute?

Exam. Albus: Yes.

Cross examination.

By Mr. Wheeler:

Q. Mr. Patterson, do you have a copy of the instrument that you drew on May 26 to accept the offer of the M&StL?

A. Yes, sir.

Q. May I see it, please.

A. Yes, sir.

Mr. Wheeler: Mr. Examiner, I would like to have marked for identification, with the assurance that we will have photostatic copies made of it, and circulate them to all counsel immediately.

Exam. Albus: I will have to use this as your original.

By Mr. Wheeler:

Q. Do you have any objection to that, Mr. Patterson?

A. I have none.

Exam. Albus: Let the record show that the document referred to is marked for identification as H-76 and that counsel for the M&StL will undertake to supply copies to other counsel.

(Applicant M&StL's Exhibit No. H-76, Witness Patter-
[fol. 1660] son, was marked for identification.)

Exam. Albus: Are you going to have this reproduced this afternoon?

Mr. Wheeler: Yes, sir.

Exam. Albus: Very well. I want this back right away because it should not get out of my possession.

Mr. Wheeler: I will assure you that we will have it reproduced and returned at once.

I have no further questions.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, Mr. Patterson. Thank you.

The Witness: Thank you, sir.

(Witness excused.)

Exam. Albus: We will now proceed with the testimony of the Minnesota Railroad & Warehouse Commission.

Mr. Soderberg, do you want to mark these exhibits before we proceed with Mr. Nightingale's testimony?

Mr. Soderberg: Yes, sir.

Exam. Albus: Which one will be first?

Mr. Soderberg: There is just one exhibit, sir.

Exam. Albus: Let the record show that the exhibit to be introduced through Mr. Nightingale will be marked for identification H-77.

(Intervenor's Exhibit H-77 (Minn. Railroad & Ware-
[fol. 1661] house Commission), Witness Nightingale, was marked for identification.)

Exam. Albus: You may proceed, Mr. Soderberg.

EDMUND A. NIGHTINGALE was sworn and testified as follows:

Direct examination.

By Mr. Soderberg:

Q. Would you state your name for the record, please.

A. My name is Edmund A. Nightingale. My residence is 2120 Niles Avenue, St. Paul 16, Minnesota. I am Professor of Economics and Transportation, School of Business Administration, University of Minnesota, Minneapolis 14, Minnesota.

My education includes the degrees of B.B.A., M.A., and Ph.D. earned at the University of Minnesota and study of the British tax and transportation systems abroad in 1937. My transportation and traffic management experience includes 12 years after high school in operations, traffic, freight claims, accounting, and statistical work in various assignments ranging from labor to assisting management with the former Chicago, Milwaukee and St. Paul Railway Company, the American Railway Express Company, and the present Railway Express Agency, Inc. In 1942-43 I served the War Production Board in Washington as Principal Transportation Specialist and Principal Transportation Economist. During the Korean War, 1950-53, I served the Office of the Secretary of Defense as Consultant to the Director, Military Traffic Service; my duties included advice on general policy determinations [fol. 1662] concerning military traffic management. Consulting assignments over the years for the State of Minnesota include that as consulting transportation economist in the Class Rate Case, Docket Nos. 28300-28310, from July 1941 to the Supreme Court stage in 1947, including appearance before the Interstate Commerce Commission as expert witness. My admission to practice before the Interstate Commerce Commission by examination occurred in 1948; I have assisted the Department of Defense in several proceedings before the Interstate Commerce Commission.

Special committees of the Minnesota State Legislature and the Minnesota Railroad and Warehouse Commission have asked me to serve as consultant on transportation matters from time to time. I served the Minneapolis Mayor's Citizens Advisory Committee on Street Railway and Bus Matters as consultant in 1952-53 in connection with problems of full conversion from street railway to bus operation. I have also served various carriers or carrier groups as consultant from time to time.

My university teaching since 1936 has been primarily in the transportation and traffic management fields. My research activities have been in these fields and also in taxation. I have contributed numerous articles to professional journals, written several reports on and have been joint author of several studies pertaining to transportation and traffic management.

[fol. 1663] My appearance here today for the intervenors, State of Minnesota and Minnesota Railroad and Warehouse Commission, in support of the applicant Minneapolis and St. Louis Railway Company (hereinafter referred to as M&StL) in Finance Docket No. 19086 is at the request of and under the authorization of Attorney General Miles Lord of the State of Minnesota and the Minnesota Railroad and Warehouse Commission.

The State of Minnesota and the Minnesota Railroad and Warehouse Commission are vitally interested in the provision and continuance of adequate, economical and efficient transportation service for the people of that state. This objective is consistent with those of the National Transportation Policy, as stated in the Interstate Commerce Act. If the petition of the M&StL, the future interests of which are here at stake, is denied, the adverse effects upon the objectives stated above are likely to include curtailment or withdrawal of rail service from certain communities on light-traffic lines of the M&StL in western and southern Minnesota and South Dakota.

Possibility of curtailment of service or abandonment on mileage of low-density lines of the M&StL is not something remote. In I.C.C. Finance Docket No. 15619, the M&StL sought authority and permission to abandon 40.66 miles of line between St. James, Minnesota, and Estherville, Iowa.

some 36 miles of which is in Minnesota (see Ben W. Heineman's map in either Exhibit No. H-19 or H-21). A hearing was held at St. James, Minnesota in July 1947. By [fol. 1664] stipulation among the parties to that proceeding, passenger service was withdrawn and carload freight service was reduced to a tri-weekly basis.

My testimony in this proceeding will be confined to the following points: (1) that the acquisition of control of the Toledo, Peoria and Western Railroad Company (hereinafter referred to as the TP&W) by the M&StL is wholly consistent with (a) the requirement for "adequate transportation service to the public" (Sec. 5(2) (c) of the Interstate Commerce Act), and (b) the requirement in the National Transportation Policy of the Congress "to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers . . . all to the end of developing, coordinating and preserving a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense", (2) that the acquisition of control of the TP&W by the applicants in Finance Docket No. 18991, The Pennsylvania Railroad Company, the Pennsylvania Company, and the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Pennsylvania-Santa Fe combination) is inconsistent with each of the above-stated requirements since the resulting diminution of the existing competitive relations between the Pennsylvania and Santa Fe and the M&StL will tend to produce adverse financial results to the [fol. 1665] M&StL through loss of east-west traffic now available to it between Peoria, Illinois, and Nemo, Illinois, and other interchange points in Illinois and Iowa, and thereby reduce the capabilities of the M&StL to render adequate service over the rest of that system, with special reference to movements between the cities of St. Paul and Minneapolis, Minnesota, and communities located on thin-traffic lines in western and southern Minnesota and South Dakota; and (3) that the failure to include other petitioning railroads in the transaction proposed in Finance Docket

No. 19086, upon equitable terms, is consistent with the public interest.

The railroad known as the M&StL has had a long and interesting history since its inception in Minnesota in 1870. Public interest in this railroad, a corporation under the laws of the State of Minnesota, reached a high peak when this carrier, in great difficulty in the middle 1930's, was faced with dismemberment in 1936 in the Associated Railways Company Case, Finance Docket No. 10947, 228 I.C.C. 277 (1938). The people of the State of Minnesota have not forgotten the heroically successful efforts of the management and employees, and improved public patronage, which kept the property together. The public applauded when the I.C.C. denied in 1938 the application to dismember and sell portions of the property to various applicants, and affirmatively demonstrated their faith in the future of this carrier, which was improving its physical plant and service, by [fol. 1666] increased patronage as general economic activity arose. I should interject here and say the word "applauded" really should be "celebrated", because there was a three-day celebration in Minneapolis July 21, 22 and 23, 1938, the story of which is told in "Mileposts on the Prairie" by Frank P. Donovan, Jr., Chapter 16, pages 199 to 211, 1950.

The people of the State of Minnesota cheered again when the long receivership ended in 1943. The motive power was completely dieselized; improved ballast and heavier rails were laid; over 70 per cent of the freight cars were purchased in the past ten years, and only 12 per cent of the cars are over 15 years old. We have H-19 remounted on the [fol. 1667] board this afternoon once more.

It is axiomatic that most railroads cannot live on traffic which originates and terminates on their own properties; additional interline traffic must exist in order to build up sufficient revenues to render adequate service under honest, economical, and efficient managements. The M. & St. L. is at a crucial point in the present decade. Will the M. & St. L. be permitted to acquire control of the T. P. & W., a small but good railroad, thereby extending its service eastward to Effner, Indiana, from Peoria, Illinois, to connect with the Pennsylvania, and westward from Peoria to

Lomax, Illinois, to the connection with the Santa Fe and to Keokuk, Iowa, where the T. P. & W. interchanges with the Chicago, Rock Island and Pacific Railroad.

Acquisition of control by the M. & St. L. over this 239-mile line of the T. P. & W. currently up for sale by the trustees of an estate, will open up many opportunities for improvement of railroad service to the public by activating through service routes over which joint rates currently apply. Under the regulated private enterprise system, common carriers within their mode of transportation must be reasonably competitive if that mode is to progress and merit increasing public approval. Where rates between common points are the same, as is usually the case, competition takes place on the basis of over-all service.

The effects of existing divisions of joint rates on relative [fol. 1668] attractiveness of gateway points have been testified to by witnesses Fred Carpi and G. E. Duffy for the Pennsylvania-Santa Fe combination, and James A. Swanson of the M. & St. L. The best interests of the Pennsylvania Railroad on east-west and east-southwest traffic are protected on originated west-bound hauls in divisions applicable over the St. Louis Gateway. On eastbound traffic originated on or interlined to the Santa Fe, it is to the best interest of the Santa Fe to solicit and enjoy its maximum haul wherever possible to Chicago rather than passively to let traffic move through Lomax or Nemo, Illinois. Interchange with T. P. & W. at Effner, Indiana, yields the Pennsylvania less on eastbound or westbound hauls than that on traffic interchanged at the Chicago Gateway. The net effect on the T. P. & W. should the Pennsylvania-Santa Fe combination prevail in these proceedings, would appear to be a minimum of support sufficient to earn a reasonable return on the net transportation investment.

It is unlikely that the industrial development department of the smaller but very active M. & St. L. would be less active in making every effort to attract new industries to the existing T. P. & W. property than the Pennsylvania-Santa Fe group. If the M. & St. L. should prevail, the latter group—meaning the Pennsylvania-Santa Fe—would tend inevitably to benefit from newly-created traffic by their sheer size and the number of major producing and consum-

ing areas which they reach in their respective territories, [fol. 1669] that is to say, the traffic originated as it spreads off the T. P. & W. whoever operates it, is bound to have routings that will in considerable degree hit on east or westbound traffic the Santa Fe or the Pennsylvania.

The M. & St. L. management in control of the T. P. & W. would appear to be motivated further to improve through service via the newly-available direct connections with Official Territory and Mississippi Valley carriers. Witness James A. Swanson has indicated in his Exhibit H-28 how the blending of the revenue tonnage of the T. P. & W. with the M. & St. L. would improve the "product mixture" of the combined system, leaving less reliance on agricultural and mineral traffic and bringing about a decided improvement in the proportion of "manufactures and miscellaneous" traffic. Further diversification of traffic of the M. & St. L. is needed; a crop failure would have severe effects on this carrier. Intensive activity on the part of the M. & St. L. industrial development department should further improve the "manufactures and miscellaneous" ratio in the event the M. & St. L. should prevail.

The effect of the grant of authority to acquire control of the T. P. & W. to petitioners in Docket No. 18991 upon the net income of the Pennsylvania-Santa Fe combination, or either of them, would be minute. Actually, with operation of the T. P. & W. as a separate property, the net income effect, assuming a 50 per cent net equity of Pennsylvania [fol. 1670] and Santa Fe in net income of T. P. & W., will be $320,584. In the case of the Pennsylvania Railroad, this would amount to 1.1 per cent of the 1954 consolidated net income, or .02 cents per share of common stock; in the case of the Santa Fe this amount would produce 0.5 per cent of 1954 consolidated net income, or .07 cents per share of common stock. By way of contrast, the estimated annual value of the T. P. & W. to the M. & St. L. is $1,732,000 or 105.2 per cent of the 1954 net income of $1,647,000 or $2.17 per share of common stock (Witness L. S. Provo, Exhibit H-44, Schedule 2).

According to the "Interstate Commerce Commission's Sixty-eighth Annual Report on Transport Statistics in the United States for the Year ended December 31, 1954",

total assets of the T. P. & W. are $9,893,197, those of the Pennsylvania Railroad are $2,455,547,988, and those of the Santa Fe are $1,484,889,559, and those of the M. & St. L. are $37,807,778. The T. P. & W. assets in relation to the combined assets of almost $4,000,000,000 for the Pennsylvania-Santa Fe combination are hardly visible at only 0.025 per cent of this huge total. Viewed in broad perspective, the effect therefore of adding the 1954 net income and assets of the T. P. & W. to those of the Pennsylvania-Santa Fe group is negligible, or about that of a peanut tossed by a child at a zoo to a hippopotamus.

M. & St. L. freight revenue losses in the Peoria-Nemo traffic and that through Peoria to or from other gateways in [fol. 1671] the event the application of the Pennsylvania-Santa Fe combination were granted, have been estimated by Witness James A. Swanson at approximately $1,110,000 in his Exhibit H-32, Schedule 1, and testimony. His estimate of potentially vulnerable traffic revenue is $7,000,000. Highly desirable traffic like that between Peoria and Nemo not only pays its way but gives substantial support to the entire M. & St. L. system. It is highly doubtful that the grant of authority of acquire control of the T. P. & W. to the Pennsylvania-Santa Fe group which would further reduce the already thin cushion which enables the M. & St. L. to provide needed service on thin-traffic lines, is consistent with the National Transportation Policy and the requirements of Section 5 (2) of the Interstate Commerce Act.

Inclusion or exclusion of other lines in the territory affected must properly be weighed under Section 5 (2) (c) and (d) of the Interstate Commerce Act. In the absence of any showing of major injury to lines which have petitioned for inclusion in the event authority to acquire control is granted, namely, the Chicago, Rock Island and Pacific Railroad Company, the Chicago, Burlington & Quincy Railroad Company, the New York, Chicago & St. Louis Railroad Company, the Wabash Railway Company (99 per cent of common stock of which is held by the Pennsylvania), et cetera, a grant of authority to the M. & St. L. to acquire sole control would appear to be in the public

interest and consistent with the National Transportation [fol. 1672] Policy.

The State of Minnesota is vitally concerned with the availability of transportation facilities for movement of goods between that state and other areas of the United States. Between Minnesota and Official Territory, which includes Central, Trunk Line and New England Territories, export or eastbound rail movement naturally includes the very large movement of "Products of Agriculture". The large Minnesota iron ore traffic which in recent years, other than 1954, when we had the steel production decline, averaged about 75,000,000 tons, generally moves eastward from Duluth, Minnesota, Superior, Wisconsin, and Two Harbors, Minnesota, by lake. In order to keep up supplies of particular grades of ores at certain steel mills in Official Territory for national defense purposes, movements of several millions of tons have been made during winter in certain years by rail since 1950. The westbound rail movement from Official Territory into Minnesota is largely "Manufactures and Miscellaneous" and "Products of Mines" (coal traffic). In addition to the Minnesota originations and terminations, a very large amount of overhead traffic between the East and Southeast on the one hand, and the northwestern portion of Mountain-Pacific Territory passes through the Twin Cities (Minneapolis-St. Paul) Gateway, one of the several major gateways of the United States.

The gateway situation and the importance of the Peoria Gateway to rail traffic between Minnesota and Official [fol. 1673] Territory can easily be seen by referring to Witness Ben W. Heineman's large map, Exhibit H-19 immediately to our rear.

Starting at the Canadian Border at Sault Ste. Marie, Michigan, and Sault Ste. Marie, Ontario, we see the Soo Gateway. In addition to the interchange of American-Canadian traffic between the Minneapolis, St. Paul and Sault Ste. Marie Railway Company (Soo Line), the Duluth, South Shore and Atlantic Railroad Company, and the Canadian Pacific Railway Company, traffic having both United States origin and destination is interchanged. Some of this American traffic moves westbound on "differential routes" and "differential rates" (slightly lower than all-

rail standard rates on most all-American routes) from New York, New York, and New England Territory to Minnesota points. Some miles to the south another smaller interchange occurs between the New York Central and Pennsylvania and the Duluth, South Shore and Atlantic Railroad over the Mackinaw City-St. Ignace, Michigan car-ferry route.

Car-ferry routes are also operated across Lake Michigan: (1) by the Chesapeake & Ohio Railway Company between Ludington, Michigan, and Kewaunee, Manitowoc, and Milwaukee, Wisconsin; (2) by the Grand Trunk Railway between Muskegon, Michigan, and Milwaukee, Wisconsin; and (3) by the Ann Arbor Railroad between Frankfort, Michigan, and Manistique and Menominee, Michigan, and Manitowoc, Wisconsin (see also, Witness Ben. W. Heineman's maps, Exhibit Nos. H-20 and H-21 for clear depiction of [fol. 1674] these car-ferry routes).

If need be, Mr. Examiner, I can point these out.

Exam. Albus: Yes, sir.

A. If we were at the Twin Cities gauging this thing and seeing our relationship between Minnesota and the Official Territory, this is what we would have to look at.

The next, and most important, interchange point is, of course, the great Chicago Gateway (Chicago Switching District), the primary significance of which need not be developed in my testimony.

Some 160 miles to the Southwest, the Peoria gateway is seen as the second most important gateway with respect to Minnesota movements in view of its geographic position and the number of Official Territory railroads which reach this gateway. Three Western Trunk Line (or Granger) railroads serving the Twin Cities, reach the Peoria Gateway on their own rails, M. & St. L., Rock Island Lines, and the Burlington Lines. It has already been pointed out that the Twin Cities-Peoria line of the M. & St. L. is the main line of that railroad. The Peoria Gateway is also a point of interchange for traffic destined from or to the Ohio River Gateways into Southern Territory, and traffic to or from Southwestern Territory via St. Louis, Missouri, Thebes or Cairo, Illinois. Hence the significance of this gateway and of the M. & St. L. as one of three major rail

carriers serving the Twin Cities on their own rails, and [fol. 1675] the only one with main-line service cannot be overlooked. Moving south from Peoria, we see that Decatur, Illinois, has significance as an interchange point for certain traffic, but Decatur is not served by any of the lines reaching the Twin Cities.

Next in our consideration is the great St. Louis Gateway, easily observed to be a natural gateway for certain traffic such as East-West and East-Southwest, Mississippi Valley, and East-Mississippi Valley movements. The St. Louis Gateway is geographically out of line for movements between Minnesota and most of Central Territory, and all of Trunk Line and New England Territories. Other major gateways to the south, such as Memphis, Tennessee, and New Orleans, Louisiana, are out of the question from the standpoint of rates and service between Minnesota and Official Territory.

The Peoria Gateway, in my considered judgment, is and will continue to be of second highest concern to the State of Minnesota and its users of rail transportation service to or from Official Territory. The importance of the Peoria Gateway to the national defense aspects of the National Transportation Policy cannot be overstated in view of the unsettled world political conditions in the atomic age and the "high opportunity" afforded by such strategic targets as the Soo locks and bridge and the great Chicago industrial and transportation complex.

Evidence of the Pennsylvania and Santa Fe here discloses that for transcontinental and East-Southwest traffic, [fol. 1676] their two principal gateways are respectively, St. Louis and Chicago, and that these carriers are primarily concerned with these gateways above all other gateways on transcontinental and East-Southwest traffic.

In view of their understandable primary interest in St. Louis and Chicago, success of their application here could result in augmentation of their interest in these (St. Louis and Chicago) gateways, and a declining interest in the Peoria Gateway.

The State of Minnesota cannot be dependent in time of peace or of national emergency on the Chicago Gateway and strongly urges that the importance of the Peoria Gate-

way with good competitive service to the people of that State, the Frankfort routes are shown here (indicating) in red, be maintained and preserved.

Consequently, the proposed acquisition of control of the T. P. & W. by the Pennsylvania-Santa Fe group, which would tend seriously to weaken the M. & St. L. giving direct service between the Twin Cities and other Minnesota points and the Peoria Gateway, appears to be inconsistent with the National Transportation Policy and should be denied.

Will you please turn now to my Exhibit No. H-77, which was prepared under my direction and supervision from data available at both the offices of the Minneapolis & St. Louis headquarters, on the one hand, and the Minnesota Railroad and Warehouse Commission and the State Division of Taxation, on the other hand. This exhibit purports [fol. 1677] to show the importance of some of the principal facets of M. & St. L. Minnesota operations to those of the entire system, for five years ended December 31, 1954.

[fol. 1678] The lines of the M&StL and of other railways in Minnesota are shown in Witness Ben W. Heineman's Exhibit H-19. His Exhibits H-21 and H-22 also depict these lines in somewhat larger cartographic scale or ratio. To avoid repetitious material in the record of this proceeding, M&StL system figures for railway operating revenues, operating expenses, and transportation investment have not been included, but will be referred to in exhibits of other witnesses or elsewhere. System operating revenues, operating expenses, taxes, and the like, are included in Witness Ben W. Heineman's Exhibit H-23, Schedule 2. System revenue tons are included in Witness James A. Swanson's one-sheet exhibit, H-28. County agricultural and manufacturing data are shown in Witness Roy W. Nelson's Exhibit H-39, sheet 3, and that, of course, gives some idea of what goes on in the industrial community in the metropolitan area with roughly a million and a half people at the present time out of the state population exceeding some three millions.

The M&StL serves 57 communities in Minnesota.

Page 4 of my Exhibit H-77 indicates that Minnesota operated mileage amounts to 399 of the total of 1,397 miles in the system, or 28.56 per cent. Page 1 shows that operat-

ing revenues allocated to the State of Minnesota on the basis of the operated mileage formula applied to interstate business, plus the total of intrastate business, amounted in 1954 to $6,576,659, or 33.1 per cent, which is approximately [fol. 1679] the five-year average. Total operating revenues for 1954 were $7,039,437 or about one-third of the system total. Revenue carloads in 1954 moving in Minnesota, shown on page 1, amounted to 129,432 which is 65.1 per cent of the total of 198,813 for the M&StL system, as shown in I.C.C. Statement No. 55100. Freight Commodity Statistics for Year Ended December 31, 1954. The five year average is about 65 per cent.

Page 2 of my exhibit deals with railway operating expenses by principal categories allocated to Minnesota operations. The figure of $5,302,466 for 1954 in relation to the system figure of $16,275,294 amounted to 32.7 per cent. The five-year average would be about 33⅓ per cent.

Page 3 shows allocation of Federal Government taxes to Minnesota operations and the Minnesota gross earnings tax. Railroads in Minnesota are taxed on a gross earnings basis, in lieu of all other taxation on transportation property and operations. The rise or fall in allocated interstate operating revenues plus those derived from intrastate hauls affects immediately gross earnings taxes; and any action proposed here which will affect operating revenues and hence tax collections, is naturally of concern to the State of Minnesota.

Page 4 shows the allocations of investment in equipment property allocated on the basis of operated mileage, road, and general expenditures chargeable to property investment accounts. Accrued depreciation has not been deducted [fol. 1680] from figures on this page. The figure of $26,583,682 for 1954 represents 35.8 per cent of the I.C.C. figure of $74,376,381 for the corresponding items, I.C.C. Sixty-eighth Annual Report on Transportation Statistics for Year Ended December 31, 1954, page 393, line 1.

Page 5 shows the number and compensation paid to all employees located in the State of Minnesota. According to the I.C.C.'s sixty-eighth annual report on transportation statistics for the year ended December 31, 1954, page 415, line 22, the M&StL had 2,543 employees whose compensa-

tion amounted to $10,879,825. Employees located in Minnesota for that year numbered 1,459, and received compensation of $5,676,899. Minnesota, therefore, had 57.3 per cent of the employees and 52.2 per cent of the pay roll of the M&StL in 1954.

The importance of Minnesota to the operations of the M&StL is seen from the foregoing data in this exhibit and my testimony. Conversely, the importance of the M&StL to the State of Minnesota and its citizens, in terms of transportation investment, service, operating revenues, pay roll, purchases of materials and supplies, and gross earnings taxes is likewise understood.

[fol. 1681] Mr. Soderberg: Does that complete your direct testimony?

The Witness: It does, Mr. Soderberg.

Mr. Soderberg: That is all.

Exam. Albus: Cross-examine, please.

Mr. Thomas?

Mr. Thomas: No questions.

Exam. Albus: Mr. Lucas?

Mr. Lucas: No questions.

Exam. Albus: Mr. Cassell?

Cross examination.

By Mr. Cassell:

Q. Hasn't the financial picture of the M&StL been constantly improving recently?

A. Generally speaking, it has been getting better over the last few years, although the revenue gains in relation to the M&StL and in relation to other lines in this territory, in my judgment, leaves something to be desired.

Q. The present management have indicated they have substantial plans for improvement of the property as presently constituted, haven't they?

A. That is correct.

Mr. Cassell: That is all.

Exam. Albus: Mr. Broker.

Cross examination.

By Mr. Broker:

Q. How did you allocate the federal income taxes among the states?

[fol. 1682] A. The federal income taxes, Mr. Broker, again were allocated, to my knowledge, on the basis of the mileage.

Mr. Broker: Thank you.
Exam. Albus: Mr. Davis?
Mr. Davis: No questions.
Exam. Albus: Mr. Hoag?
Mr. Hoag: No questions.
Exam. Albus: Mr. Davidson?

Cross examination.

By Mr. Davidson:

Q. You are not concerned with what happens to the people in the State of Illinois or what happens to its citizens' transportation investment, service, payroll, purchase of material, supplies, are you?

A. In broad terms, my first representation would be that of my principals, the Attorney General and the Railroad & Warehouse Commission of the State of Minnesota.

Q. You haven't taken those into account at all, as to the State of Illinois?

A. I have made no check as to the changes. I am speaking for the State of Minnesota.

Mr. Davidson: Thank you very much.
Exam. Albus: Is there any further cross-examination?

(No response.)

Exam. Albus: Is there any redirect?

(No response.)

[fol. 1683] OFFER IN EVIDENCE

Mr. Soderberg: I offer H-77.

Exam. Albus: Is there any objection?

(No response.)

Exam. Albus: It may be received.

(Intervenor Minnesota Railroad & Warehouse Commission's Exhibit No. 77, Witness Nightingale, was received in evidence.)

Exam. Albus: I think Mr. Ossanna has a statement to make at this time.

Mr. Ossanna: The Minnesota Railroad & Warehouse Commission takes the same position as our State Witness, Professor Nightingale. The Commission is of the opinion that the approval of the sale of capital stock to any other rail carrier would be detrimental to the public interest insofar as the State of Minnesota is concerned. For this reason, the Commission filed its petition in intervention in support of the Minneapolis & St. Louis application.

Exam. Albus: Thank you very much, sir.

(Witness excused.)

Exam. Albus: Copies of Exhibit H-76 are now being circulated among counsel. Let the record show that that exhibit is now received in evidence.

(Applicant M&StL's Exhibit No. 76, Witness Nightingale, was received in evidence.)

Exam. Albus: Now I think we are ready to proceed with the testimony of the Rock Island.

[fol. 1684] Mr. Cassell: Yes, sir.

Exam. Albus: If you will, please, Mr. Cassell.

Mr. Davidson: Mr. Examiner, may I be excused?

Exam. Albus: Yes, indeed, Mr. Davidson. Thank you very much.

D. B. JENKS was sworn and testified as follows:

Direct examination.

By Mr. Cassell:

Q. Please state your name, address and by whom you are employed.

A. My name is D. B. Jenks. My business address is 139 West Van Street, Chicago, Illinois. I am President of the Chicago, Rock Island and Pacific Railroad Company.

Mr. Cassell: May we go off the record and, for convenience, number the exhibits?

Exam. Albus: You may. Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

By Mr. Cassell:

Q. Would you please give a short resume of your railroad experience.

A. I started railway service as a chainman on the SP&S Railway in 1934. After getting my engineering degree at college, I entered service with the Engineering Department of the Pennsylvania Railroad. In 1938 I joined the Great Northern as a roadmaster. After that, I worked as division [fol. 1685] engineer and then trainmaster on various divisions of the Great Northern. During this time I spent three years in the Army, two and one-half years overseas with the Military Railway Service in Africa, Italy, France and Germany.

In 1947 I was division superintendent on the Great Northern and at the end of 1948 went to the C&EI Railway as General Manager, later becoming Vice-President. In December 1950 I joined the Rock Island as Assistant Vice President-Operations, becoming Vice-President-Operations in July 1951. In May 1955 I was made Executive Vice President and became a member of the Board of Directors in October 1953. In April 1955 I became a member of the Executive Committee of the Board and was elected Presi-

dent January 1st of this year, to succeed Mr. J. D. Farrington, who has been President since 1948. At the time of my election Mr. Farrington became, and still is, Chairman of the Board.

Q. Mr. Jenks, are you familiar with the two applications being presented to the Commission in this hearing?

A. Yes. I have read both the application of the Santa Fe and Pennsylvania, and that of the M&StL. I have also read the testimony of Messrs. Gurley and Symes.

Q. Referring now to the application of the Santa Fe and Pennsylvania, when did the possible purchase by those two railroads of control of the TP&W first come to your attention?

A. For some time there had been general rumors—I do [fol. 1686] not recall any specific source—to the effect that the TP&W might be sold. In May of 1955 we became aware that the Santa Fe and Pennsylvania were each planning to purchase 26 per cent of the stock of the TP&W.

Q. What was the reaction of the Rock Island management to this information?

A. Mr. Farrington and I had a number of discussions about it and the effect upon the Rock Island of any possible change in TP&W ownership. There were also informal discussions with members of the Executive Committee. It was our considered opinion that while we would prefer the TP&W to remain under its present ownership and management, if that ownership went into railroad hands, especially those of competitors, it would be essential for the protection of the Rock Island to secure equal participation with any such railroad owner.

Q. Was any action taken to implement that decision?

A. Yes, under date of May 13, 1955, Mr. Farrington wrote a letter to Mr. Guy A. Gladson and The Wilmington Trust Company, Trustees of the McNear Estate, offering to purchase a companion block of 26 per cent of the TP&W stock at the same price we understood the Pennsylvania and Santa Fe were offering; namely, $100.00 a share. The details of this offer, on behalf of the Rock Island, are more fully set out in the letter of May 13, 1955, a copy of which is in the Rock Island's files, the original of which was mailed to the Trustees.

[fol. 1687] Q. Did the Rock Island ever receive acknowledgment of that offer?

A. Yes. On May 16, 1955, we received an acknowledgment from the office of Winston, Strawn, Black & Towner, over the signature of Grier D. Patterson, on behalf of Guy A. Gladson, individual co-trustee of the estate of George P. McNear, Jr., a copy of which has been marked Exhibit H-79 for identification.

Q. Do you know whether or not the Santa Fe or Pennsylvania acquired knowledge of this offer prior to May 26, 1955?

A. The Santa Fe knew of it prior to that date, and I am informed that Mr. Gurley has so testified. As to the Pennsylvania, I do not know.

Q. What was the reaction of the Rock Island upon learning of the purchase by the Santa Fe on May 26, 1955, of all of the T. P. & W. stock?

A. That reaction is fully revealed by the correspondence between Mr. Farrington and Mr. Gurley following the 26th of May. Mr. Farrington wrote a letter to Mr. Gurley on June 16, 1955, a copy of which has been marked Exhibit H-80 for identification. You will note in this letter that there is a reference to a meeting on June 7 and a call from Mr. Gurley to Mr. Farrington when Mr. Farrington was in Fort Worth, Texas. This exhibit is a correct copy of the original carbon from our files, the original of which was sent to Mr. Gurley. I call your attention particularly to the paragraph beginning at the bottom of the first page, which [fol. 1688] reads as follows:

"As I told you, from the standpoint of our own protection we could not agree to the entrance of the Santa Fe into Peoria, either on their own or as owner in whole or in part of the T. P. & W.; I would be willing to go along with a proposition which would in fact be a partnership of either joint or multiple ownership and would assure the T. P. & W. continuing to function as an independent line in a neutral manner. Likewise, we would oppose vigorously the acquisition of the T. P. & W. by Mr. Heineman of the M. & St. L. or any partnership in which he or the M. & St. L., and possibly the Monon, might become involved, unless we were

permitted to become a party to such a combination, with sufficient voice to assure adequate protection of the interests of the Chicago, Rock Island and Pacific Railroad Company."

Under date of June 20, 1955, Mr. Farrington received a reply from Mr. Gurley, a copy of which has been marked Exhibit H-81 for identification. This is a correct copy of the original in our possession, signed by Mr. Gurley. I call your attention to the fact that in the first paragraph a letter dated June 13th is referred to. However, this is an obvious typographical error and should read "June 16th," as the letter of June 16th is the only letter Mr. Farrington had written previously to Mr. Gurley in regard to this transaction. Otherwise, I believe the letter speaks for itself. [fol. 1689] This letter in turn was acknowledged by Mr. Farrington's letter of June 21, 1955, a copy of which has been marked Exhibit H-82, the same being a true and correct copy of the original carbon in the files of the Rock Island, the original of which was sent to Mr. Gurley.

The next communication between the Rock Island and Santa Fe in regard to this matter took place on June 28, 1955, when Mr. Gurley wrote a joint letter addressed to Messrs. Heineman, Murphy, White, and Farrington. A copy of this letter has been marked Exhibit H-83 for identification, and is a correct copy of the original in our file which bears Mr. Gurley's personal signature.

The final letter of the series is Mr. Farrington's letter of June 30, 1955, which acknowledged Mr. Gurley's letter of June 28, 1955, and indicated that if it correctly stated the position of the Santa Fe, and the Rock Island was to be excluded from equal participation, the Rock Island would have to take action to protect itself. The action, of course, is that which we are now taking before the Interstate Commerce Commission: namely, the Rock Island's request for inclusion. A copy of this letter has been marked Exhibit H-84 for identification.

Q. Mr. Jenks, would you go into the basis for the Rock Island's decision a little more in detail?

A. The Santa Fe and the Rock Island compete as rail- [fol. 1690] road systems. The Santa Fe has its own lines from Chicago to the West Coast through Kansas City, and

its lines throughout the southwest. The Rock Island operates from Chicago to Kansas City and into the southwest where it has a connection to the West Coast through the Southern Pacific Railroad at Santa Rosa, New Mexico. We are highly competitive for business to and from the east through the Chicago and Peoria Gateways, and to and from the west through the Kansas City and southwestern gateways. Both the Santa Fe and the Rock Island connect with the T. P. & W. at its western end.

The Santa Fe has no operation into Peoria at the present time. I am aware that the Santa Fe does have a branch line from Eureka down to Pekin, but this does not afford any real competition in the Peoria area, as was acknowledged by Mr. Gurley in his testimony.

Peoria is very important to the Rock Island. While we compete generally with the Burlington, Milwaukee, North Western, Illinois Central, New York Central, Nickel Plate, Illinois Terminal, and T. P. & W. in and out of Peoria, it is a most important point to us. In fact, it is the fourth or fifth from the standpoint of revenue of any city on our line. We have also, of course, developed it into a major passenger point. As other railroads have dropped their passenger service into Peoria, we have taken up this burden so that today we afford the only real passenger service by rail in and out of this important city.

[fol. 1691] I have been speaking primarily of the Santa Fe rather than the Pennsylvania. That is because the Pennsylvania's influence, so far as we are concerned, does not extend west of Peoria, whereas we are in direct competition with the Santa Fe, Kansas City to Chicago, and if the Santa Fe is permitted to have control of the line between Lomax and Keokuk on the west end, and Peoria on the east, it means bringing the Santa Fe into this territory to compete through the Peoria Gateway, and this is competition we do not have today.

The entrance of the Santa Fe into Peoria will not provide any service not available today. It will not generate any traffic; it would merely divert, divide, and dilate traffic which is presently moving. This statement is made on the assumption that the applicants take no action beyond that indicated in their presentation before the Examiner here.

If any through passenger service or through freight service were inaugurated, or the operation changed as a result of this acquisition, then, of course, we would be presented with an entirely different picture, and one which might have a much greater and more serious impact on the Rock Island. [fol. 1692] We do not believe that the Santa Fe and the Pennsylvania should be permitted to enter this territory in any form without adequately protecting the carriers presently in the field. These railroads are two of the largest in the United States. The Santa Fe, with which we are in active competition, and the Pennsylvania, are not only very large railroads, but are also exceedingly wealthy. There is an additional point which should be borne in mind in regard to the resources of the Santa Fe. While a line like the Rock Island has to depend on revenues derived from rail operations for its continuance, the Santa Fe is not only favorably situated in regard to rail revenue, but it has large revenues from other sources. The Commission should be aware of these facts and should not consider this as an isolated case. Here is the Santa Fe Railroad which has made it a point in the past to have a short line from Kansas to Chicago and has enjoyed the advantage of that line. Now that it has become a wealthy railroad, it should not be allowed to pick and choose favorable locations which have been served by other railroads throughout the years. If the Santa Fe through its great wealth is permitted to enter desirable markets, retaining its short line and bypassing the less remunerative points, a railroad such as the Rock Island, which must depend solely upon its rail revenue, simply will not be able to survive and continue to provide service to those less desirable communities which have been bypassed.

[fol. 1693] Since there is no service which is required by the shipping public which will be provided by the Santa Fe and Pennsylvania, nor any service which could not be supplied by the TP&W independently of the Santa Fe and Pennsylvania, it seems to be that this Commission should give special consideration to the effect upon competing carriers. The impositions of conditions by the Commission as to routes and gateways, or voluntary statements by the Santa Fe and Pennsylvania, afford no adequate protection

to the competing carriers. The Santa Fe and Pennsylvania, should they each have 50 per cent of the ownership of this stock, would have complete control of its policies and management. They would elect the directors. The officers, in turn, are controlled by those directors. The only way effective protection can be assured to the carriers now in the field and the public they serve, is through equal participation by the Rock Island in the ownership of the stock. Otherwise, the TP&W inevitably will cease to be the neutral, independent railroad that it now is; and we would find the Santa Fe, to all intents and purposes, in our territory under the name of TP&W.

Q. Mr. Jenks, the Santa Fe and the Pennsylvania contend that ownership of the TP&W by more than two railroads—multiple ownership, they call it—would result in inefficient operation and unprogressive policies. Do you agree?

A. No. If the TP&W is to continue under present management as a separate and independent operation and [fol. 1694] neutral as to all its connections in solicitation and otherwise—all as the Santa Fe and Pennsylvania have promised, and as the Rock Island desires—then I cannot imagine why ownership by more than two stockholders would render it inefficient or unprogressive; nor can I see why the Santa Fe or Pennsylvania should object to participation in the transaction by the Rock Island and other competing connections.

Of course if the TP&W is not to be managed and operated with neutrality towards all its connections, but with the object of capturing traffic from those connections, then I can readily see why the Santa Fe and Pennsylvania would believe that "multiple ownership" would be "inefficient and unprogressive," and might even "spoil the broth."

Q. If the Rock Island were included in this purchase, what would be its position with respect to efficient operation and progressive policies?

A. It would cooperate in every way with the other owners, whoever they may turn out to be, to perpetuate and improve upon the present efficient operation of the TP&W. It would cooperate in building up the property and every

part of it to the end that the TP&W might become an even better and more prosperous railroad than it now is.

Our intervention involves the possible expenditure of four million dollars. That indicates the sincerity of the Rock Island's position. Four million dollars, or three mil-[fol. 1695] lion dollars, is a great deal of money to the Rock Island. I am sure that an investment of this size is every bit as great an incentive to us as six million dollars would be to the Santa Fe.

I do not believe that anyone would deny that the eastern half of the TP&W is entirely complementary to the Rock Island and necessary to it in the development of the Peoria gateway in which the Rock Island has so large a stake. While our volume of traffic may be smaller in number of cars through Keokuk than that of the Santa Fe through Lomax, this does not mean that it is a connection that we value less than the Santa Fe values Lomax. It is our service route from and to the west through the Peoria gateway. It is necessary to us to be able to compete on anywhere near equal terms. Certainly this very vital interest would compel us to have every bit as much interest in the continued healthy existence of the western half of the TP&W as the Santa Fe.

Q. By the way, back on page 7 of your statement where you were listing the names of the various railroads operating in and out of Peoria, the Rock Island is in competition with the M&StL there, too, isn't it?

A. Yes, definitely.

Q. Returning to page 13.

As part owner of the TP&W, what would be the Rock Island's position with respect to industrial development in Peoria?

A. I do not believe that anyone could deny that the Rock [fol. 1696] Island over the years has made a substantial contribution and has evidenced a very great interest in the development of Peoria, both as a gateway and as a local point; yet the Rock Island today has only ten acres of land in Peoria available for industrial development and that is subject to flooding. Consequently, it would be to our interest as a participant in the TP&W purchase and as a Peoria line to encourage, to the best of our ability, industrial de-

velopment in the City of Peoria and on the property now held by the TP&W for that purpose. There would be no conflict between Peoria and Chicago. As Mr. Carpi said, an industry usually has smaller areas in mind for alternative locations that would include both Chicago and Peoria. With our railroad laid out as it is, Peoria or Chicago is equally attractive as a producer of revenue and we would certainly like to see more traffic generated by the communities served by the Rock Island, and Peoria in particular.

Q. Mr. Jenks, you have directed most of your remarks thus far to the application of the Santa Fe and Pennsylvania. What have you to say in regard to the Rock Island's position in regard to the application of the M&StL to acquire sole ownership of the TP&W?

A. As indicated in Mr. Farrington's letter of June 16, 1955, the Rock Island feels it is compelled, in order to protect its interests, to oppose the acquisition of the TP&W by any railroad or combination of railroads unless it is [fol. 1697] included as an equal participant. Just as the Rock Island is in competition with the Santa Fe through the southwest, and more particularly, the Kansas City and Chicago gateways in relation to the TP&W, so we are in competition with the M&StL through the Twin Cities gateway and, in effect, through the Chicago gateway, and, of course, for traffic to and through the Peoria gateway. The extent of the traffic which is vulnerable to the M&StL will be shown in greater detail by our traffic witness. Just as with the Santa Fe and Pennsylvania, I do not believe that the imposition of restrictions by the Commission as to the maintenance of routes and gateways is adequate protection for the carriers with which the TP&W now connects, and with all of whom it now exercises an impartial neutrality. Again, the only adequate protection for the revenues and traffic, especially of a line situated as ours, is through equal participation. And in this connection I would like to say that if the Commission should decide to grant the M&StL application, the Rock Island believes that the Commission's order should not only require equal participation in ownership by the Rock Island, but that it should contain conditions requiring the continuance of the TP&W as a separate, independent, and neutral carrier.

Q. Would the general remarks you have made as to multiple ownership with respect to the Santa Fe-Pennsylvania transaction have similar application here?

A. Yes. And also having similar application are the [fol. 1698] statements I have already made that the investment of such a large of money in the TP&W provides not only a guarantee of the sincerity of our position, but a great incentive to develop this property to its greatest potentiality.

Q. There has been fear expressed by public witnesses in favor of the Santa Fe-Pennsylvania acquisition that acquisition by the M&StL might ultimately result in abandonment, or at least deterioration, of service on the western half of the TP&W. Do you have any comment on this?

A. If there are any questions in the mind of the shipping public as to the continued operation of the western half of the TP&W, the inclusion of the Rock Island would act as additional insurance in that regard because of our Keokuk connection. The statements I have made in regard to location of industri ould, of course, remain the same whether our inclusion results in either one of the cases.

Q. What then is the essential position of the Rock Island in regard to both of these applications?

A. We concur in the statements that have been made in this proceeding to the effect that the present management of the TP&W has been efficient and that it should be maintained in the operation of the property with its present officers and corporate setup. We believe that the preservation of the TP&W as nearly as possible in its present form will best provide that service which the shipping public has indicated it wants and needs. The inclusion of the [fol. 1699] various lines of railroad interested in the preservation of the several junctions of the TP&W will act as a further insurance of the preservation of the present service.

We believe that, whether the Santa Fe-Pennsylvania application or the M&StL application is granted, the Commission's order should require inclusion on an equal basis, or the opportunity to be so included, of not only the Rock Island and Nickel Plate, but every other connection of the TP&W so desiring. The Rock Island will pay its share of

the purchase price out of available cash, or will participate in any appropriate financing of the purchase price.

Q. Mr. Jenks, are you familiar with the fact that Mr. Gurley and again Mr. Symes have both stated that if any other railroads were included as a condition to their acquisition of the TP&W that they would have to consider at that time as to whether or not they would accept such an order?

A. Yes.

Q. Has the Rock Island determined its position if the Commission approves the application of the Santa Fe and Pennsylvania conditioned upon the inclusion of any other railroad and those applicants refuse to complete the acquisition subject to such a condition?

A. Yes.

Q. Similarly, if the Commission should approve the [fol. 1700] M&StL application conditioned upon the inclusion of any other railroad and the M&StL should refuse to accept such an order, has the Rock Island taken any position in regard to such an eventuality?

A. Yes.

Q. Would you please state what that is?

A. This morning this matter was considered by our Board of Directors and I am authorized to state that in either of such eventualities as you have referred to that I am authorized to state on behalf of the Rock Island that in the event the Interstate Commerce Commission authorizes the purchase of the capital stock of the Toledo, Peoria & Western Railroad Company by the Atchison, Topeka and Santa Fe Railway Company, the Pennsylvania Railroad Company and The Pennsylvania Company, and the Chicago, Rock Island and Pacific Railroad Company and other railroad companies and that thereupon The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and/or The Pennsylvania Company decline to accept the inclusion of the Chicago, Rock Island and Pacific Railroad Company with other railroad companies in the said purchase, the Chicago, Rock Island and Pacific Railroad Company will purchase the said capital stock of the Toledo, Peoria & Western Railroad Company at $135 per share with one or more other railroad com-

panies and will take the necessary steps to effectuate said purchase. I am further authorized to make the same state-
[fol. 1701] ment with respect to participation of the Chicago, Rock Island and Pacific Railroad Company with the Minneapolis & St. Louis Railway Company in the purchase if the Minneapolis & St. Louis Railway Company would refuse to agree to the inclusion of the Chicago, Rock Island and Pacific Railroad Company and others in its purchase.

Mr. Cassell: If I can just complete this, Mr. Examiner, I will be completely through with his direct.

Exam. Albus: Very well.

Mr. Cassell: Would you please mark this for identification as the next exhibit?

Exam. Albus: H-85.

(Intervenor's, Rock Island, Exhibit No. H-85, Witness Jenks, was marked for identification.)

By Mr. Cassell:

Q. Mr. Jenks, I hand you a document which has been marked Exhibit H-85 for identification. Is that a copy of the resolution which you just referred to as having been adopted by the Rock Island board today?

A. It is.

Mr. Cassell: I will furnish copies to the other members here later in the afternoon, if I may, please.

OFFERS IN EVIDENCE

I offer Exhibits H-78 to H-85, inclusive, subject to cross-examination and tender the witness.

Exam. Albus: Very well.

Let the record show that Exhibits H-78 through H-85 are
[fol. 1702] received subject—

Mr. Lucas: Mr. Examiner, I would like to make an objection. I thought he said subject to cross-examination.

Exam. Albus: We will receive them after cross-examination.

Mr. Broker: Mr. Examiner, this is an appropriate time for me to make a statement, if I may.

Exam. Albus: Yes, indeed.

Mr. Broker: I have been authorized by our management to state that in the event the Commission approves the application of the Pennsylvania and the Santa Fe or of the M&StL subject in either case to the inclusion of the Nickel Plate, and then the applicants refuse to proceed to consummate the purchase, that the Nickel Plate is willing to join in the stock purchase on the basis of $135 per share with the Rock Island or any other connection of the TP&W on the understanding that any other connection may participate in the purchase on an equal basis. I'd furnish a board resolution to this effect along with that to be passed in March along with our participation in the M&StL application.

Exam. Albus: Very well, Mr. Broker.

Does that complete the direct testimony of Mr. Jenks?

Mr. Cassell: It does, sir.

Exam. Albus: We will take a 10-minute recess.

(Short recess.)

(The document described to be furnished by intervenor Nickel Plate.)

[fol. 1703] Exam. Albus: The hearing will please come to order. We will continue with the cross-examination of Mr. Jenks.

Mr. Thomas, please.

Cross examination.

By Mr. Thomas:

Q. Mr. Jenks, I understood you to say that Keokuk is your service route through the Peoria gateway from the west.

A. Yes, sir.

Mr. Cassell: I might interject there that we will have an operating witness on as our next witness who will explain more in detail concerning that service route.

Exam. Albus: Thank you very much.

Mr. Cassell: And how that operates.

Mr. Thomas: That will save a little time.

Exam. Albus: Very well.

Mr. Thomas: I will withdraw the question.

By Mr. Thomas:

Q. You indicated if you were to participate in the ownership of the TP&W you would be interested in helping to develop industries on the TP&W at Peoria.

A. Yes, sir.

Q. Has the Rock Island recently acquired an important industrial property in the Lake Calumet area around Chicago?

A. We acquired some property sometime ago. We have added to it small amounts from time to time.

Q. Was that the Pullman Railroad property?

[fol. 1704] A. Yes.

Q. Are you an owner of the Belt Line, Chicago Belt Line?

A. We are a part-owner.

Q. Isn't it true that you are trying to keep them out of that area?

A. There have been some conversations about it, no definite action as yet.

Q. Well, you haven't asked them in, have you?

Mr. Cassell: I think that is inappropriate to this case.

Mr. Broker: I think it is utterly irrelevant, Mr. Examiner.

Exam. Albus: All right, I will sustain the objection.

By Mr. Thomas:

Q. You mentioned that the Rock Island serves both the Chicago and the Peoria gateways. It also serves the St. Louis gateway, doesn't it?

A. Yes.

Q. You talked about the possibility of the Santa Fe-Pennsylvania ownership of the TP&W as a means of diverting traffic from the Rock Island, is that right?

A. Yes.

Q. Are you familiar with traffic solicitation work of the traffic departments of the various railroads? Have you had any experience in that field?

A. I have been spending quite a little time on that just recently.

Q. Just recently?

A. Yes, sir.

[fol. 1705] Q. I gathered from some of your testimony an implication that I don't think you meant to convey, that the Santa Fe doesn't serve a lot of unremunerative points. I think you would concede, wouldn't you, that the Santa Fe does serve a lot of unremunerative points just like a lot of other railroads?

A. Undoubtedly I was referring, I believe, in this portion of my direct statement you mention, to the Santa Fe having a direct line from Kansas City to Chicago. When that line was built, as I understand it, they could just as well have built into Peoria but they built the short route to Chicago. We have been serving Peoria for about a hundred years now.

Q. Does your route to Chicago go through Peoria?

A. Our route from where?

Q. Kansas City.

A. From Kansas City to Chicago, no, it does not go through Peoria, but a very important part of our railroad is the line from Bureau to Peoria.

Q. Have you any specific plans on the part of the Rock Island for helping the development of the TP&W if you should become part-owners?

A. We don't know yet whether we are going to become a part owner. We hope that we are. Undoubtedly there are many ways in which we can help the TP&W, but we do not expect to hurt other railroads in doing so.

Q. Do you think the development of the TP&W would [fol. 1706] hurt other railroads?

A. The development of the TP&W along the lines proposed by the Pennsylvania-Santa Fe application and the development of the TP&W along the lines proposed by the M&StL application would definitely hurt the Rock Island, and our traffic with it will have some evidence as to just how much. I believe from the testimony I have heard already here that it will do harm to other railroads.

Q. That wouldn't extend to the development of industry on the TP&W, would it?

A. I don't quite understand your question.

Q. That wouldn't harm other railroads, would it?

A. What wouldn't harm other railroads?

Q. Development of new industry on the TP&W.

A. No; I believe I stated in my direct testimony that we would be glad to help with the development of industry on the TP&W.

Q. That is the only thing you mentioned, is that right?

A. In what?

Q. In that line of thinking.

A. What is the only thinking I mentioned?

Q. The location of industry.

A. I mentioned the location of industries, yes.

Q. You didn't mention anything else?

A. I mentioned the location of industries, yes.

Q. You didn't mention anything else?

[fol. 1707] A. I mentioned quite a little, about 15 or 20 minutes of conversation there.

Mr. Thomas: That is all.

Exam. Albus: Mr. Lucas.

Cross examination.

By Mr. Lucas:

Q. Mr. Jenks, has the Rock Island had any recent acquisitions in which the Commission has imposed conditions upon them incident to the approval of any such acquisition?

A. I don't recall any.

Q. You have no personal knowledge since you went with the Rock Island in 1950 of any such situation?

A. I don't recall any now, no.

Q. In coming to the Rock Island, have you inherited any such situations that have come to your knowledge?

A. There may be some; I don't recall any specifically.

Q. But you don't know any as of now, to your personal knowledge?

A. Not specifically, no.

Q. In connection with your willingness to become a part owner here, your counsel, as you probably know, has agreed to certain conditions that have been put into the record.

A. For example, what?

Q. As to the maintenance of routes and gateways.

A. Oh, yes.

Q. Those conditions, if imposed upon you, were you to become a part owner, you would live up to them, would you? [fol. 1708] A. Oh, yes. We are anxious to preserve the TP&W as an independent carrier.

Q. Your offer or the resolution that sets forth the proposal to go in with one or more railroads, does that mean that the Rock Island is not considering purchasing this as a sole owner?

A. We are not considering purchasing it as a sole owner.

Q. Have there been any—

A. I believe that the Nickel Plate made a statement that they wished to go in with us, and I believe the Burlington has an application already in to that effect, so that automatically sets up three, and I understand the Wabash made a similar application, which would make it four.

Q. That is right. Has there been any conversation since these hearings started between you and any official of the Nickel Plate?

A. Yes.

Q. With reference to the possibility of joining on the purchase, such as covered by your resolution?

A. Yes.

Mr. Lucas: That is all.

Exam. Albas: Mr. Wheeler, please.

Cross examination.

By Mr. Wheeler:

Q. Mr. Jenks, have you talked to the trustees of the McNear estate regarding purchase of partial interest in the TP&W stock?

[fol. 1709] A. I mentioned a letter which was introduced in evidence from Mr. Farrington to the trustees of the McNear estate.

Q. That isn't the extent of the Rock Island efforts in that regard?

A. Yes.

Q. You make a good many references throughout your testimony, Mr. Jenks, to traffic, traffic considerations. Is

your testimony in that regard based on information that you obtained from a traffic witness who will follow you on the stand?

A. A traffic witness will follow me on the stand and will give you the details as to what we think our loss of traffic will be in the event the M&StL acquires the TP&W alone or in the event that the Santa Fe and Pennsylvania acquire the TP&W together.

Q. Mr. Jenks, what I am basically trying to get at is whether I should examine you on traffic or direct those questions to a traffic witness who will give in detail the breakdown of the possible erosion of business from the Rock Island in the eventuality of the approval of either transaction without our inclusion.

Mr. Wheeler: Is Mr. Jenks' testimony based upon information obtained from the witness who will follow?

Mr. Cassell: Essentially it must be based on the study that was made. He didn't make any individual and prolonged study; however, he has general knowledge of the [fol. 1710] competition which the Rock Island encounters from the various railroads operating in its territory.

Mr. Wheeler: Is that general knowledge, is that knowledge obtained from this witness that is to follow? That is what I am trying to get at.

Mr. Cassell: His general knowledge would not be, but as to any specific figures, it would be.

Exam. Albus: I suggest you reserve the traffic questions for the traffic witness, Mr. Wheeler.

By Mr. Wheeler:

Q. There is one point here I would like to ask you about, Mr. Jenks. On page 7 of your statement you say that "Peoria is a most important point to us, in fact it is the fourth or fifth, from the standpoint of revenue, of any city on our line." Now, when you said "revenue", to what were you referring?

A. Passenger and freight revenue.

Q. That is, passenger and freight revenue originating at that point?

A. Yes, originating and terminating.

Q. Originating and terminating?

A. Yes, sir.

Q. Would it include interchange?

A. It would include some. Actually what it is is a statement of the station earnings, which we make up every month, showing the station earnings of each of our princi- [fol. 1711] pal stations in the order of their importance.

Q. What would the Peoria station, what relation would the Peoria station bear to Chicago?

A. Chicago is first on the list.

Q. And what would the relationship be, ten to one or what?

A. No; Peoria's earnings would be much greater than that. I don't recall the exact figures, but I can get them very readily and give them to you.

Q. I would like to have them if you can furnish them. Could we also get those broken down as between freight and passenger?

A. Yes.

Q. What are the other cities that you refer to that would be ahead of Peoria?

A. Well, there is some variation each month in the relative standing. Kansas City is a very important point, Des Moines, sometimes Minneapolis is ahead of Peoria—generally it isn't, the Tri-Cities are quite often right up in the top rank.

Q. What about St. Louis?

A. No; St. Louis is generally farther down, below Peoria.

Q. Houston?

A. Houston would be below Peoria.

[fol. 1712] Q. Mr. Jenks, you refer to industrial development on the TP&W. As I gather, the most you expect to have would be a fourth interest in the railroads, isn't that correct?

A. It would appear that way, although the more that come in the better as far as we are concerned.

Q. But you would rather have an industry on your own lines rather than on a line of which you only own a fourth or less interest, would you not?

A. Naturally. But in many instances an industry wants to locate in a general certain area, if they wanted to locate

down in this area we'd certainly like to see them on the TP&W.

Q. But you'd rather see them on the Rock Island first?

A. Naturally.

Q. Even in this area?

A. Why, certainly. I mentioned we didn't have very much property, though.

Q. Your annual report for 1954 shows a substantial rental accruing on leases of land. Wouldn't that indicate that the Rock Island has substantial quantities of industrial property along its line that is available for the location of industry?

A. May I see the report, maybe I can tell better?

Q. Yes.

A. Yes, that is land that we have leased to industry. Some of those leases are, for instance, in station ground. Generally speaking, it is the lease of ground that is im-
[fol. 1713] mediately adjacent to the track, to the main line. For instance, the lease for a building or a coal yard or something like that, it might be a large station or a small station.

Q. Mr. Jenks, you made a comparison between the size and wealth and amount of traffic the Santa Fe has, revenues it derives annually, in comparison to the Rock Island, did you not?

A. Yes.

Q. Wouldn't you say that the M&StL was to the Rock Island in those terms what the Rock Island is to the Santa Fe?

A. That's a mathematical calculation that I haven't made. I can't say positively what such a ratio would be. The M&StL obviously is smaller than the Rock Island just as the Rock Island is smaller than the Santa Fe. I believe the Rock Island has some good divisions, our divisions generally aren't as good as some of our neighbors. The Santa Fe gets the very long haul and doesn't have quite the division worry about like a railroad like the Rock Island does that doesn't go all the way. The M&StL got pretty good divisions, I believe, when it was re-organized so as to keep it healthy.

Q. The Rock Island has been doing fairly well on its earnings on its common stock, has it not, since the war?

A. Yes, the Rock Island has been doing fairly well.

Q. I wonder if you could furnish for the record the statement of earnings per share from 1946 through 1955?

A. There is certainly no objection to that. I believe it [fol. 1714] was mentioned earlier that the Form A's with the various railroads would be put in evidence and put in the record. The record should be there.

Q. All right.

Mr. Cassell: Do you want that in addition to the Form A's which you may refer to?

Mr. Wheeler: I would like those additional years.

Mr. Cassell: '46 to '55?

Mr. Wheeler: Yes.

By Mr. Wheeler:

Q. What is the relative amount of business that you do at Keokuk versus Peoria?

A. Our business at Keokuk is quite a bit smaller than Peoria. Our traffic witness will have the detailed figures available for you. We hope that our Keokuk business will increase. We have just spent a lot of money in repairing our railroad from Eldon to Keokuk in recent years and now have a railroad down there which is good for about the same speed, I believe as the Pennsylvania make on their line to Effner.

Q. Mr. Jenks, on page 15 of your testimony, your last answer begins, "If there are any questions in the mind of the shipping public as to the continued operation of the western half of the TP&W," do you know whether or not such questions are in the minds of the shipping public?

A. I believe there was mention made in the hearing a number of times—I forget offhand by just what witnesses [fol. 1715] —statements about the possibility of taking up the western half of the TP&W. Possibly that was in connection with the M&StL. But we are certainly anxious that the western half of the TP&W be left in.

Q. You are aware of the statements on the record by the M&StL witnesses, are you not, with respect to the continued operation of that part of the line, are you not?

A. Yes.

Q. And your reference here was to the testimony that's been given in this proceeding?

A. Yes.

Q. Mr. Jenks, as I recall, and I don't locate it immediately in running through your testimony, you stated that regardless of who acquired the TP&W it ought to be continued under independent management?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Schroeder with respect to savings in operations that would result from integrated operation of the TP&W with the M&StL?

A. I did not hear his testimony directly.

Q. Don't you believe—he testified that very substantial savings could be made by integrated operation, and that on an independent operation those savings could not be made, in substantial part, would you have any reason to disagree with that conclusion?

[fol. 1716] A. It is rather difficult for me to agree with it without making a detailed study. However, I do think that considerable economies and increased efficiency can be reached under independent operation, merely to absorb a railroad into another railroad does not necessarily mean that you can make very much greater economies. You can eliminate probably the general office, but a great many of the other things that you could do, when you absorb one railroad by another, you can still do under an independent operation.

Q. What sort of things are you talking about?

A. Like greater efficiency of your maintenance of way work, efficiency in your bridge work, your increased efficiency in the maintenance of cars, the repair of locomotives, better efficiency in transportation.

Q. Now, those items are items that have no relation to control one way or the other, do they?

A. Well, that's what I am saying that irrespective of—let me put it this way: I think you can make considerable economies with independent operation just as you may be able to make considerable economies if, for example, the M&StL takes over the TP&W.

Q. But the type of economies you are speaking of could be made only in the event that the present management has not accomplished them already, isn't that correct?

A. Oh, yes, that's absolutely true. But I have never yet [fol. 1717] seen a management that was so efficient that it could not be improved.

Q. But the type of economies to which you refer would have no relation to acquisition of control or be dependent upon—

A. (Interrupting) You mean are they possible?

Q. Yes.

A. Certainly they are possible.

Q. Independent of an acquisition of control?

A. Yes.

Q. Can you conceive that substantial further economies could be made by integrated operation of two properties, such as the M&StL and the TP&W that could not above and beyond those that could be accomplished of the kind that you have spoken of?

A. I suppose you could cut off some of your general offices, eliminate your general offices. Sometimes you can do that and sometimes you can't. Sometimes it is desirable to keep some kind of a general office, subgeneral office in a city, as important as this would be to the TP&W.

Q. Is that the only economy that you can think of that might be achieved by an integrated operation of two railroad properties previously—

A. (Interrupting) There are other economies such as operating locomotives over the two railroads, but you can do that even with independent operation. For example, on the C&EI and the L&N they ran their power through [fol. 1718] for quite a while, other railroads do it, there are all sorts of cases of that kind. The same way on repair power.

Q. Mr. Jenks, one of the things that I couldn't quite square with your answers to me is the fact that you have testified on your direct statement that top management at the TP&W is efficient?

A. Why, certainly. I think the management of the Rock Island is efficient but I think we can do a lot better than we are doing now. We hope to be improving all the time. I think the operation of the Santa Fe is efficient but I am sure that it can be made more so.

[fol. 1719] Q. Do you think that $135 a share is a rea-

sonable price for the Rock Island to pay for the stock of the T. P. & W.?

A. I think $135 a share for a portion of the T. P. & W. is a reasonable price in the sense that if we were not to pay that to get it, assuming that such would be permitted, we would lose a great deal more. In other words, our losses would be considerable, as our traffic witness will point out, in the event of M. & St. L. control, ownership and sole control of the T. P. & W., and our losses would be great in the event of Santa Fe and Pennsylvania joint control of the T. P. & W. We think it is quite worthwhile to pay for a part of the T. P. & W. to avoid that eventuality. And, after all, the T. P. & W. is a pretty good property, it makes money.

Q. Now, I believe the net income is around seven or eight hundred thousand dollars a year, which isn't too bad a return for an expenditure of about twelve million.

Q. How do the times earning ratio, how does the times earnings ratio for the T. P. & W. at $135 a share compare with the times earning ratio with most railroad properties?

A. I don't know. I haven't figured that one out.

Q. It represents primarily a protective insurance, then, so far as you are concerned?

A. Yes.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Broker.

[fol. 1720] Mr. Broker: No questions.

Exam. Albus: Mr. Davis?

Mr. Davis: No questions.

Exam. Albus: Mr. Hoag?

Mr. Hoag: One question.

Cross examination.

By Mr. Hoag:

Q. In regard to the Washington Job Protection Agreement in the event the Rock Island were successful in becoming a part owner of the T. P. & W. is the Rock Island agreeable that the Commission impose the Washington Job Protection Agreement on the employees?

A. I don't see that the Washington agreement would apply but in any event we have no objection to it.

Mr. Hoag: Very well.

Exam. Albus: Are there any further questions on cross-examination?

(No response.)

Exam. Albus: Redirect?

Mr. Cassell: None.

Exam. Albus: Thank you very much. You are excused, Mr. Jenks.

(Witness excused.)

Exam. Albus: Now, we will consider the introduction of exhibits.

Mr. Cassell: H-78 to H-85 inclusive.

[fol. 1721] Mr. Lucas: I have no objection to the authenticity of the documents but the testimony fails to show that they came to the knowledge of the Pennsylvania Railroad and I object on that ground.

Exam. Albus: Very well. The objection is overruled.

Let the record show the exhibits marked for identification H-78 to and including H-85 are received at this time.

(Applicant's Exhibits Nos. H-78 to H-85, Witness Jenks, were received in evidence.)

E. E. Foulks was sworn and testified as follows:

Direct examination.

By Mr. Cassell:

Q. Please state your name, address, and by whom you are presently employed.

A. My name is E. E. Foulks. My business address is 139 West Van Buren Street, Chicago, Illinois. I am employed by the Chicago, Rock Island and Pacific Railroad Company as Assistant Vice-president-Operating Department.

Q. What has been your railroad experience, Mr. Foulks?

A. I entered railroad service in June 1920 with the Santa Fe Railway, working as a clerk and telegrapher at various stations on their territory south of Albuquerque, New Mexico. In 1922 I transferred to the Coast Lines, a portion of the Santa Fe system which comprises the lines west of Albuquerque and Belen, New Mexico, serving as clerk, secretary to the superintendent, telegrapher-agent, car distributor, train dispatcher, chief dispatcher, transportation [fol. 1722] inspector, trainmaster, assistant superintendent, and division superintendent until March 1942, when I was ordered to active duty with the United States Army.

With the army I commanded a railroad operating battalion and a railway grand division of the Military Railway Service, Transportation Corps, in North Africa, Italy, France and Germany.

On returning to railroad service November 1, 1945, I was appointed Superintendent of Transportation of the Santa Fe system with headquarters in Chicago. I resigned from this position in March 1952 when I was appointed General Superintendent of Transportation for the Rock Island Lines. I held this position until October 1, 1954, when I was promoted to my present position, namely, Assistant Vice-president-Operating Department.

Q. Will you please describe the present service that the Rock Island affords in and out of Peoria?

A. Our railroad presently operates three passenger trains daily in each direction between Peoria and Chicago. In addition, there are two bus trips in each direction daily which are operated between Peoria and Bureau to provide connections at Bureau with through passenger trains either to or from Chicago and the West.

As to freight, we operate train 901 daily, except Saturday, from our Burr Oak Yard in Chicago to Peoria. This train departs from Chicago at about 8 p.m., arriving in Peoria at 5 a.m. the following morning. By having this [fol. 1723] early morning arrival, it permits us to begin working these cars immediately and have some of them placed during the morning and the bulk of them placed during the balance of the day. Traffic for Peoria, or for delivery to connecting lines at Peoria, received during

the day or loaded at Chicago during the day, is handled in this evening train with the early morning arrival which I have just described. Our train 902 leaves Peoria at 2:30 a.m. daily, except Sundays, and arrives in Chicago at 9:30 a.m., providing service for traffic originating in Peoria or received in Peoria from connecting lines for termination in Chicago, or delivery to connections at that point. By leaving Peoria at 2:30 a.m., it permits us to have assembled all the cars which have been loaded at the close of the business day. This departure shortly after midnight enables us to take delivery from the T. P. & W., P. & P. U., and P. T. at about midnight. We also make a late evening pull of certain industries in the Peoria area after the close of the business day.

Just as our train coming into Peoria is available for early morning working, similarly you will note that this schedule is set up not only to take care of all the business that has accumulated during the day, but also is set up to arrive at Chicago in time to be distributed to the various connections and make important outbound trains over connecting lines. Of course this train also handles traffic for delivery to connections at Joliet, Joliet being an important [fol. 1724] interchange point with the Michigan Central, E. J. & E., and G. M. & O.

On traffic coming from the north or northwest and from the west or southwest and moving over our lines down from the Twin Cities or east from Kansas City or Denver-Des Moines, we have train 908-909, which leaves Silvis at 10:30 p.m. daily. At Silvis we have a new modern retarder yard with a capacity of 4,372 cars. This yard is located approximately 1.4 miles east of the Tri Cities of Rock Island, Moline, and Davenport. This train arrives in Peoria at 5:20 a.m. the following morning. Again you will note that this train, by leaving Silvis at 10:30 p.m., is set to leave at a time which permits the taking of all the cars which have come in during the day; and similarly the arrival time in Peoria at 5:20 a.m. makes them available for working in Peoria with the opening of the business day. As I have said, this train handles traffic originating in the Twin Cities area or from connections in the northwest; from Denver, Council Bluffs, or western connections at

those points, as well as that moving over our own line from our western connection at Tucumcari, New Mexico, and from Arkansas, Oklahoma, and Texas origins. In the reverse direction we have train 910-911, leaving Peoria at 10:05 p.m. daily and due to arrive at Silvis, Illinois, at 2:30 a.m. This evening departure again is to accommodate the traffic which has been made available during the business day at Peoria. Most cars are made available for movement toward the end of the business day rather than in [fol. 1725] the morning so that an evening departure hour is best capable of the earliest possible movement of cars which are tendered to us by industries, and further provides an arrival time at our Silvis yard to permit forwarding of traffic in proper connecting trains routed to or via the Twin Cities, Denver, Kansas City, and Tucumcari Gateways.

In addition, we operate tri-weekly locals from Silvis over our line running through Cambridge, Galva, and Princeville to Peoria, which is generally known as the R. I. P. line. In addition to the scheduled trains which I have mentioned between Peoria and Bureau, we have extras in local service between Peoria and Bureau on a daily basis. Although these are primarily to provide local service for industries located in the area between Peoria and Bureau, that is to say for cars moving only between Peoria and the intermediate points, these trains do provide an extra service in making connections with freight trains moving through Bureau to or from the west, which, in some instances, permit expediting cars that are made available at the time these trains leave. By far, the greater part of the cars from the T. P. & W. at Peoria move to the northwest.

[fol. 1726] Q. What service does the Rock Island have in and out of Keokuk, Iowa?

A. We have a daily freight train from Eldon, Iowa, which departs from Eldon at 1:10 p.m. for Keokuk. This time of departure is set in order to afford a connection with our train no. 98 which handles perishables and other important traffic from California, Arizona, New Mexico and Texas origins. This train to Keokuk, which is train 1076, arrives at 5:15 p.m. for a close connection with

TP&W train 120, which is scheduled to depart at 6:44 p.m. The TP&W cut-off time set by the TP&W is 6:15 p.m. for forwarding in their train 120. However, the TP&W has been very cooperative in not adhering strictly to this cut-off, but has held its train to assure forwarding traffic secured from us in proper connection.

Westbound from Keokuk we have train 1077, which leaves Keokuk at 5:30 p.m. It takes care of the westbound business out of Keokuk which will be worked through Eldon, Iowa, for connections with our westbound train 91, which furnishes through freight service to transcontinental points. It also has a close connection at Kansas City for Texas, Oklahoma, and Arkansas destinations. I would like to call your attention to the fact that at the present time our schedules between Keokuk and Eldon are set up for four hours running time. Actually our freight running time is approximately two hours and thirty minutes. The present schedules were set up before the track improve- [fol. 1727] ments were made on our line between Eldon and Keokuk which permitted us to materially increase the maximum permissible speed. While the line improvements have materially shortened the running time on this line, we have left the schedule in its present form as it permits greater flexibility to effect meets. This permits us to hold longer for connections and still make the same delivery time in Keokuk or Eldon, as the case may be. The line from Keokuk to Eldon also extends on to Des Moines, Iowa, to provide freight service on traffic originating on our Denver-Council Bluffs-Des Moines line or on our lines north of Des Moines.

Q. You have outlined in some detail your scheduled freight service from Chicago, Silvis and Eldon to junction points with the TP&W. Do these schedules constitute a link in through transcontinental schedules comparable with other similar junctions and interchange?.

A. Yes, sir. The through service performed by the route in trains I have described, such as Kansas City to Keokuk via Eldon by use of the Rock Island, then TP&W from Keokuk and eastern connections, is a route providing comparable and competitive service to a route such as Kansas City to Lomax to eastern connections via Santa

Fe-TP&W, and, of course, both of these routes I have just mentioned would be in competition with the routes which the Santa Fe and Rock Island both have, using their own lines from Kansas City to Chicago for eastern con-
[fol. 1728] nections.

Q. Have you completed your description of the service in and out of Keokuk?

A. No. Certain of the important packers rotate their meat shipments between various serving railroads. As an example, each sixth weeks the Rock Island gets a substantial number of cars from the various packers at Kansas City and St. Joseph, Missouri. Part of this meat routes via Chicago and connections, and part of it via Keokuk and the TP&W. During the weeks when the Rock Island is handling the Kansas City and St. Joseph meat, we run an extra train leaving Eldon, Iowa, at 3:15 a.m. to deliver to the TP&W at Keokuk at 6:30 a.m., and the TP&W operates a close connection from this train. The TP&W is an extra train, just like our own, put on to handle this meat business. Their train is held for our arrival to handle this traffic. If there were sufficient business we would be glad to operate this extra on a regular daily basis rather than on a periodic basis as it is presently set up and this has been under consideration. As I have indicated, this is an extra train for the TP&W. It is competitive with the Santa Fe at Lomax and the Santa Fe is one of the lines which alternates in handling the meat, including that which routes via the TP&W.

Q. Are your presently scheduled trains both as to Peoria and those operating over the line into Keokuk handling full tonnage?

A. No. None of these trains either in or out of Peoria, or
[fol. 1729] in or out of Keokuk, have a full load. The Peoria trains have heavier loadings than the Keokuk trains. However, the trains in and out of Peoria, as well as the Keokuk trains, have additional capacity at the present time without increasing the size of the engine or the crew to haul substantially increased tonnage.

Q. If there was a falling off in tonnage on either the Keokuk or Peoria business, would this permit any operating savings?

A. No. We would still have to operate the same trains with the same crews and power to handle the business which remains. The effect of a diversion of traffic would be to increase our unit cost since our over-all costs would remain constant. We could not effect any road economies nor is there any terminal savings which we could effect without curtailing service and the business which would remain would require the service in its present form.

Q. As an operating man, are you at all familiar with the Rock Island relations with the TP&W?

A. Yes. My work requires me to know the nature of our interchange performance with the TP&W.

Q. What have you found that relationship to be?

A. The TP&W has always been most cooperative. We have found them neutral insofar as their various connections are concerned. As a specific example, when due to unforeseen operating circumstances if our trains are late [fol. 1730] into Keokuk, which occasionally happens, they have held departure of their trains to secure the business from us and endeavor to expedite the movement of their train to run off any delays which would otherwise have been chargeable to us, thus providing a dependable service route. This has been particularly important in our meat traffic. Sometimes these delays have been occasioned by operating problems, and at others due to late receipt of the meat at Kansas City.

Q. What could be done by a non-neutral operation on the TP&W in regard to the Rock Island connections, for instance, at Keokuk?

A. One of the easiest ways to dry up a connection is to strictly observe a cut-off time or set such a close connection that it cannot be effected regularly. Just take our meat traffic, the meat shippers are very sensitive to the effecting of connections on their routing. If for any reason proper connections were not made at Keokuk and eastern junctions, I am sure that this traffic would be taken away from us and transferred to other routing rather than the Rock Island. So here it would be a very simple matter to effectively dry up the Rock Island traffic by merely setting too tight a connection on scheduled operations and then to observe the cut-off time rigidly or to fail to hold on even

the present schedules, or in the event the TP&W held for the connection but did not make a special effort to run off this delay in order to effect delivery at the other end of the line—this would have the same final result.

[fol. 1731] Q. What is the nature of the connection of the Rock Island and TP&W at Keokuk?

A. We have interchange tracks with the TP&W directly in front of the passenger station at Keokuk. These are located less than one-half mile from our yard. From the interchange track, the TP&W then hauls them over the bridge and onto their main line east into Peoria. The close proximity of our yard to the interchange point at Keokuk makes a very expeditious move. The TP&W's operating timetable no. 18, effective April 10, 1955, as well as prior issues I have seen, shows the principal or main line of the TP&W as extending from Peoria yard to Keokuk, this being their second subdivision.

Q. Have you seen Exhibit 6 as attached to the application of the Santa Fe and Pennsylvania to acquire the TP&W, this being the map of the TP&W line?

A. Yes.

Q. Have you any comments to make on that in this record?

A. Yes. The map shows a heavy red line extending from Effner to Peoria to LaHarpe; and then up to Lomax, and a small line from LaHarpe down to Keokuk. This would seem to indicate that the Pennsylvania and Santa Fe intend to make the main line of the TP&W from Peoria to Lomax, and the light line, LaHarpe to Keokuk, would become a branch or secondary line. As I have just said, their main line, according to their timetable, is into Keokuk. This same timetable shows a third subdivision extending [fol. 1732] from LaHarpe to Lomax, which I would consider to be in the nature of a branch connecting with the main line at LaHarpe. Also, in the TP&W annual report for 1954, Item 411 reports the line into Keokuk as main line and the line into Lomax as branch line.

Q. What is the situation as to interchange at Peoria?

A. The Rock Island yard and TP&W yard are approximately two and one-half miles apart. Shortly after arrival of our freight trains 901 and 909, which I have previously

mentioned, we deliver traffic routed to or via the TP&W during the morning to permit forwarding of such traffic in their train 22 due to depart at 12:01 p.m. for the east, or their train 121 due to depart at 1:00 p.m. for the west. We also make a delivery to the TP&W about 9:00 or 10:00 p.m. The TP&W regularly makes a delivery to us at Peoria during the afternoon, usually around 3:30 or 4:00 p.m., which permits forwarding of such traffic in our trains 910 or 902 that night. Here again I have described the cooperation existing with the TP&W's handling of traffic from Keokuk. They have worked closely with us by forwarding traffic we deliver to them in first trains and in getting important traffic to us in time for our forwarding in our evening trains. The Rock Island has also worked closely with the TP&W to provide schedule service on traffic received from them. If the TP&W were not strictly neutral, they could cause cars to be delayed which would discredit routing via our respective lines.

[fol. 1733] Q. Have you made any check as to the daily average interchange of loads and empties between the Rock Island and the TP&W?

A. Yes, a check of our interchange records with the TP&W for the months of April, July and October 1955, shows that at Keokuk, Iowa, we received and delivered a daily average of 23 loaded and 13 empty cars during April; 19 loaded and 10 empty cars during July; and 17 loaded and 5 empty during October. At Peoria we received and delivered 26 loaded and 18 empty cars during April; 18 loaded and 13 empty cars during July; and 18 loaded and 10 empty cars during October.

Q. If a car came to the Rock Island which showed shipper routing of RI-TP&W and an eastern connection of the TP&W, but did not have any junction specified so that the Rock Island was free to move it through either its Keokuk connection or its Peoria connection with the TP&W, how would it move?

A. A car moving through Kansas City, Denver, or west thereof, routed RI-TP&W, thence an eastern route without junction specified, would be delivered to the TP&W at Keokuk rather than Peoria due to the fact that the Keokuk-TP&W route is the service route. If we were to

handle the car through Silvis and into Peoria, and thence to the TP&W, it would result in delay to the traffic and I am sure would result in that shipper selecting other routing.

And I would like to add in there, I was familiar with the instructions we had in effect at Kansas City on any [fol. 1734] traffic routed Rock Island-TP&W without junctions shown. I heard Mr. Coulter's testimony last Wednesday, and in order to verify the instructions that were in effect, I checked with our yard forces at Kansas City who have the instructions, and all understand that the traffic will be delivered at Keokuk due to it being the service route.

In my opinion, one of our major operating problems on all the railroads today is to devise ways and means of reducing delays in terminals, and particularly at interchange points. Our patrons are becoming more critical of the loss of time with their freight traffic in getting it through the terminal areas. It seems to me that this factor is going to make a route such as that provided by our line in connection with the TP&W at Keokuk of ever-increasing importance.

[fol. 1735] Q. How much delay would there be on through traffic moving via Peoria versus Keokuk?

A. I would say at least one day in arrival at destination, and possibly more.

Q. Did you hear the testimony of Mr. Symes in regard to the Pennsylvania route through Terre Haute versus Effner-TP&W route into Peoria?

A. Yes.

Q. Would you say that your disability on the route through Terre Haute versus Effner-TP&W route into Peoria?

A. Yes.

Q. Would you say that your disability on the route via Eldon-Silvis-Peoria as against the TP&W through Keokuk was substantially the same?

A. Yes. Our circuity is substantially the same and, as I have said, this is not the service or competitive route and takes a day or more in transit time.

Some mention has been made by the applicants' witnesses, Mr. Symes among others, of the fact that the Rock

Island has two lines into Peoria, one of which is our principal line from Bureau and the other a branch line from Colona into Peoria. This we usually refer to as the RIP line. The distance from Silvis to Peoria via Bureau is about 116 miles, and via the RIP line, about 86 miles. However, this RIP line is strictly a branch line on which speed is restricted to a maximum of 30 miles per hour and, [fol. 1736] on portions of the line, 20 miles an hour. It is not a service route. We only operate tri-weekly service in one direction on this line, primarily to handle the local communities.

Q. What direction is that tri-weekly service?

A. It is eastbound, from Silvis to Peoria, the crews returning in local service via Bureau to Silvis on the main line.

Q. What is the nature of the Rock Island connection with the TP&W at Keokuk?

A. We have a line, which we usually refer to as the KD line, which extends from Des Moines to Keokuk. This crosses our Kansas City-Rock Island line at Eldon. It is about 64 miles from Eldon to Keokuk, and it is a stub end line very similar in that respect to the Pennsylvania line which connects with the TP&W at Effner. It is essential to the Rock Island to retain this connection with the TP&W at Keokuk for while we do not have the volume of business interchanged at Keokuk between our line and the TP&W that the Santa Fe has at Lomax—I might say we wish we did—it is my belief that if we lost any of the traffic moving in either direction between our line and the TP&W, we would still have to operate train service to Keokuk with business destined to that point and would still maintain the 64 miles of railroad from Eldon to Keokuk.

Mr. Fitzgerald, our maintenance engineer, will testify as to the improvements and expenditures we have made in [fol. 1737] recent years on this line to permit us to improve it as a through service route.

If we had to support that line on the freight that would remain without the interchange, or if the interchange were diminished, it would be a real hardship and the retention of the line in service could become burdensome.

As I see it, our interest in the TP&W at Keokuk is as important, or more important to us than the Santa Fe with their connection at Lomax as that is a connection on their main line and they would not be confronted with a problem of maintaining a branch with diminished traffic such as we would have.

Further illustrating the relative importance of Keokuk to the Rock Island versus Lomax to the Santa Fe, is the fact that the Rock Island has had an interchange with the TP&W ever since it went into Keokuk, which, as I understand, is from about 1878, whereas the Santa Fe went right by the TP&W and had no connection with it until Mr. McNear asked for one in 1927, although the Santa Fe went by it from 1887 on.

Q. In regard to refrigerator cars, both empty and loaded, would you tell us how the line that is moving a refrigerator car pays the owner for the movement of that car?

A. The handling railroad pays the car owner a rate per mile for each mile the refrigerator car moves on its line whether loaded or empty. The present mileage rate is four cents per mile on RS type refrigerator cars, which is [fol. 1738] the principal type of refrigerator car moving. RBs are three and one-half cents a mile.

Q. Are you familiar with the amount of industrial property the Rock Island has in Peoria?

A. Yes. We have only ten acres of property which is available for industrial development. It is located down by our roundhouse and is subject to flooding.

Q. The Rock Island is competitive with the M&StL between Peoria and the Twin Cities of Minneapolis and St. Paul?

A. Yes.

Q. Now you have given the service in and out of Peoria as far north as Silvis. What is your service route between the Twin Cities and Peoria?

A. This traffic would move over our line from Silvis through Cedar Rapids, Manly, thence to Inver Grove yard, which is located just south of St. Paul.

Traffic from Peoria arriving at Silvis on train 911 at 2:30 a.m. would move in train 99-98, leaving Silvis at 8 a.m., for arrival at Inver Grove 11 p.m. the same day, and is de-

livered promptly to Minnesota Transfer for close connection with the Great Northern or Northern Pacific.

In the reverse direction, traffic for Peoria would be forwarded from Inver Grove on our train 915, due to depart at 6:15 a.m. This train, which also is operated as a close conection with traffic from the northwest, would arrive at [fol. 1739] Silvis at 8:15 p.m. the same day for forwarding in 908-909 to arrive in Peoria at 5:20 a.m. the following morning.

Q. Mr. Foulks, who sets the cut-off time for deliveries to and from the TP&W in Peoria?

A. Well, the TP&W sets the cut-off time for traffic we deliver to them for forwarding in certain trains, and we have a set cut-off time for receipt of traffic from the TP&W, or any other railroad in Peoria, for forwarding in our outbound train.

Q. You have discussed the possible difficulties as to your interchange at Keokuk if the TP&W were not neutral. What would be the situation at Peoria under similar circumstances in effecting connections at Peoria?

A. Generally speaking, our freight service from competitive points with the M&StL, such as Mason City, Albert Lea, Minneapolis-St. Paul, is comparable with that provided by the M&StL. It is my observation that the greater portion of traffic we interchange with the TP&W at Peoria is traffic to or from that territory, I mean by that territory the Northwestern territory, or connections to and from the northwest. Here again, as I have pointed out at Keokuk, the cooperation between our lines has been excellent. The TP&W has been very good in protecting through service, each of us, when necessary, holding our freight trains to protect the through service. Under a changed managerial policy, if the TP&W became a part of a line competitive with ours up to the Twin Cities, it is [fol. 1740] only natural that the owning line would give preference to its own traffic and possibly create cut-off times or schedules in connection with ours which would not provide comparable service to that which we enjoy today under neutral ownership.

Mr. Cassell: You may cross-examine.

Exam. Albus: Mr. Thomas, please.

[fol. 1741] Cross examination.

By Mr. Thomas:

Q. Isn't that meat traffic that you referred to divided up by the shippers to spread the business among a number of railroads?

A. That is my understanding.

Q. Do you think they'd give a greater share to one railroad if they found out it was using its control of another railroad to make the service less?

A. I am very sure that any railroad that doesn't provide proper schedule service will lose the business because we have had that happen.

Q. Don't you think when shippers divide business that way they would retaliate against a railroad by its control of another railroad to cut that line out of the service?

A. I couldn't say—

Q. (Interrupting) And connecting lines?

A. I couldn't say what the shippers policy would be. I know particularly the packers will not tolerate any schedule failures.

Q. You mentioned the map which showed the line of the TP&W from Lomax to Effner as a heavier line than the line from Keokuk from LaHarpe.

A. That is right.

Q. How does the traffic move over the TP&W when you think of it in volume?

[fol. 1742] A. I believe there has been evidence submitted in the case to show a greater volume at Lomax than at Keokuk.

Q. Isn't it many times greater?

A. I believe that evidence was in the case.

Mr. Cassell: I will ask counsel, that map prepared to show volume of traffic?

Mr Thomas: It reflects that to some extent in a through route.

Mr. Cassell: Is there any indication of that in your application?

Mr. Thomas: It is in the record here.

Exam. Albus: All right, next question, please.

By Mr. Thomas:

Q. You say that Keokuk is your service route from the west and southwest?

A. On traffic moving through Kansas City, yes.

Q. Why does a substantial volume of that move through Peoria for interchange with the TP&W there?

Mr. Cassell: I object to that. There is no such indication in this case that that is true.

Exam. Albus: Read the question, please.

(Question read.)

Exam. Albus: You may answer.

Mr. Cassell: Mr. Examiner, that is assuming a fact that is not in evidence, and a fact that is exactly contrary to the fact, if it were in evidence.

[fol. 1743] Exam. Albus: The objection is overruled.

A. According to my best information the traffic we exchange at Peoria is primarily that from the Northwest. The traffic that is interchanged at Kansas City is an interchange from Keokuk. There may be a car through error or a later version that might be routed through Peoria. But that traffic routed through Kansas City without a junction shown would be delivered to the TP&W at Keokuk.

By Mr. Thomas:

Q. Is it only the Kansas City traffic that you route through Keokuk?

A. That off the Kansas City line because on the other lines the other route is a better service route.

Q. Is that true as to traffic from Des Moines, Iowa?

A. That would depend on when the traffic was available there. We operate one train a day in the morning out of Des Moines over the so-called KD line, and if it were available for that it would move via Keokuk, otherwise it would move via Silvis.

Q. You referred to these instructions that were issued to your people to route via Keokuk when the junction wasn't named in the waybill.

A. That's right.

Q. Did you ever advise the TP&W that that was being done?

A. I am quite sure they were familiar with it, certain of their people were.

Q. What ones?

[fol. 1744] A. Oh, I think their traffic department is.

Q. When did you issue those instructions?

A. Well, they were in effect as far as I know when I went to the Rock Island. They have been effective ever since I have been with the line.

Mr. Thomas: I have some questions along this line but I will save them for the traffic witness.

Mr. Cassell: We will have that split for you.

Exam. Albus: Very well.

By Mr. Thomas:

Q. You spoke of the line extending from Eldon to Keokuk and improvements and expenditures that have been made on that line. It was in pretty bad shape, wasn't it, before these improvements were made?

A. That's my understanding. I didn't see it prior to that time. Mr. Fitzgerald will testify as to that.

Q. Weren't the speed limits pretty low?

A. As I say, I wasn't familiar with that. Mr. Fitzgerald can testify to that.

Q. Did the TP&W complain to you about the service over that line?

A. Not since I have been with the Rock Island.

Q. Are you certain of that?

A. The only complaint that I recall was the fact that they wanted us to operate a second train daily there. We didn't feel we could justify it.

[fol. 1745] Q. Are you sure that no complaints were made about the service under the existing schedules?

A. Not to my knowledge.

Q. When were these changes in that track, the improvements?

A. I would prefer that Mr. Fitzgerald would cover that.

Mr. Cassell: He will be our next witness, Mr. Thomas.

Mr. Thomas: That is all I have.

Exam. Albus: Mr. Lucas, please.
Mr. Lucas: I have no questions.
Exam. Albus: Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. Mr. Foulks, how does your traffic move from Minneapolis to Peoria?

A. It moves through Manley, Iowa, and then over the land through Waterloo.

Q. Will you take this slowly, I want to see if I can follow this.

A. Through Waterlook, Cedar Rapids, at West Liberty it joins the east-west line and comes into Silvis on that line, thence from Silvis through Bureau and then into Peoria.

Q. What is the distance of that route?

A. Oh, I'd have to check it. I can't recall all of them. I can tell you in just a minute.

Q. O.K.

A. That would be about 450 miles, 448 miles.

[fol. 1746] A. Approximately.

Q. Can you give me the distance from Minneapolis to Des Moines to Keokuk?

A. Yes, sir. By Des Moines and Keokuk it would be approximately 410.

Q. So that Cedar Rapids route is circuitous as against the Des Moines route, is that not correct?

A. It is longer but it is a better service route due to the operation of freight trains, scheduling of the freight trains in that territory.

Q. What part of the route is better, the route between—isn't the route between Minneapolis and Des Moines as good as the one between Minneapolis and Cedar Rapids?

A. Physically it is, yes.

Q. What about the route from Des Moines into Keokuk, how does that compare with Cedar Rapids into Peoria?

A. It isn't quite as good a railroad, particularly that part between Des Moines and Eldon, Iowa.

Q. Now, you said in your testimony that a car moving from Kansas City-Denver west thereof would encounter

delay if it were routed through Silvis into Peoria instead of routing via Keokuk?

A. That's right.

Q. Supposing the routing were by Bureau instead of Silvis, would there be any delay?

A. Well, the car actually would move via Bureau. It [fol. 1747] moves from Silvis through Bureau to Peoria.

Q. Well, I thought you were distinguishing between Bureau and Silvis as being two different lines?

A. If I did it was not intended to imply that way.

Q. How much delay would be involved—how much farther is it to Peoria from Kansas City via your Bureau line as against Keokuk?

A. From Kansas City to Peoria?

Q. Yes, sir.

A. About 45 miles further.

Q. Now, the Kansas City-Bureau would be on main line all the way, would it not?

A. That is right, but you move through a large terminal there, and you have a very close connection to effect between the scheduling of the train that normally would handle that type of traffic.

Q. Well, now, you are speaking only of meat traffic now?

A. No. I am speaking of perishable traffic from the Pacific Coast, as an example. We block this that is routed via the TP&W at Eldon, that's taken off and that train can leave there 15 minutes after the train on the main line arrives. At Silvis there is a different problem there of making a very close connection with a train that would get it into Peoria. If the car moved out of Kansas City on our train 98, we delivered it to the TP&W at Keokuk, it would be in Peoria around midnight. If we handled it around via Silvis it would be in about 5 a.m. (sic) Perishable you prob- [fol. 1748] ably could effect that connection, but if it was other than perishable I think you'd add another day to it because I don't think you can get the train humped at Silvis in order to effect that close connection.

Q. I was speaking of Bureau rather than Silvis.

A. Well, I use Silvis because that's the yard where the train is made up, but the freight train that I described that is the expedited train to Peoria operates from Silvis to

Bureau thence to Peoria. We don't operate it over that so-called RIP line.

Q. Then you can meet a fast schedule from Kansas City into Minneapolis through Bureau?

A. Wait a minute, Kansas City into Minneapolis?

Q. No, into Peoria through Bureau, pardon me.

A. No, I say if we made the same connection, taking the car moving out of Kansas City, and if it were perishable and we handled it through Silvis, Bureau, into Peoria it would arrive about five hours later than if we cut it out at Eldon, moved it to Keokuk and the TP&W handled it into Peoria. If it were other than perishable I think it would be a day longer than that.

Q. And what did you say the difference was again there, about 45 miles?

A. Approximately 45 miles.

Q. The terminal at Chicago has been referred to fre-
[fol. 1749] quently in this record as being subject to congestion at times, is that correct in your experience?

A. You mean all the railroad terminals in Chicago?

Q. Yes, sir.

A. I think that happens.

[fol. 1750] Q. Why is it you can move your traffic down from Minneapolis through Bureau without encountering this big delay at Silvis that you encounter on your traffic moving from Kansas City?

A. Well, I would say that that is a matter of scheduling. In the first place, you have to schedule the train out of Kansas City when you have the traffic available to move out of there, and as I have explained at Eldon we have this very close connection where they simply lift off the few cars that are in this train 98. At Silvis that train is subject to some icing. It is an emergency icing station. Some perishables are billed to ice there, and then the train has to be humped because it has Chicago traffic, it has various destinations traffic in there. The other train coming down from the Twin Cities is made up a little differently and it is scheduled to provide this connection between the train arriving from Cedar Rapids and the train that goes to Peoria.

Q. So that it is a problem of scheduling and the original makeup of the train?

A. That is right, when the traffic is available to move, when you can schedule the train.

Q. Don't you have the same problems with respect to when the traffic is there to move regardless of what origination points you use?

A. That is true.

Q. And when you say, on page 13, that your Eldon, [fol. 1751] Silvis, Peoria route takes a day or more in transit time than moving from Eldon to Keokuk, that derives from the same facts, is that correct?

A. That is what I was trying to describe, yes.

Q. Now, the distance from Eldon to Peoria via Keokuk is not substantially less than that via Silvis, is it?

A. About 45 miles.

Q. That would be going to Bureau, would it?

A. That's right. If you want to figure the other line, why, it would be about 25 miles.

Q. You could cut that down, cut down that differential, could you not, by improving the track between Colona and Peoria?

A. If there were sufficient traffic potential to justify the expenditure, I imagine it could be done.

Q. Just as you have speeded up your route between Eldon and Keokuk?

A. Yes, sir.

Q. The surest route is not always the best or the fastest route, is it?

A. Not necessarily.

Q. Mr. Foulks, if you were assured of the same service that you are receiving from the T. P. & W. today, wouldn't that satisfy your primary problems, primarily the problems that you have outlined here from an operating standpoint?

A. Well, I don't know how such assurance could be given and continued. It might be given and continued for a week [fol. 1752] and then changed, as I see it.

Q. Well, assume with me that you could get that assurance and it did continue, wouldn't that take care of most of your problems?

A. From strictly an operating standpoint I assume, yes.

Mr. Wheeler: I have no further questions.

Exam. Albus: Mr. Broker?

Mr. Broker: No questions.
Exam. Albus: Mr. Davis?
Mr. Davis: No questions.
Exam. Albus: Mr. Hoag?
Mr. Hoag: No questions.
Exam. Albus: Is there any further cross-examination?

(No response.)

Exam. Albus: Now, Mr. Cassell.

Redirect examination.

By Mr. Cassell:

Q. Mr. Foulks, in response to some of Mr. Thomas's questions you mentioned how traffic might get through the Peoria Gateway. Isn't there a possibility that there might be a shipper routing with a junction specified, too?

A. That is entirely possible.

Q. Isn't that done on occasions?

A. Yes, sir.

Q. On this train which would come through Silvis and Bureau to Peoria with a 5 o'clock arrival, 5 a.m., do you know whether or not that misses or meets the train to the [fol. 1753] east out of Peoria on the T. P. & W.?

A. That should make the T. P. & W. east connection out at noon but that would be 12 hours later than had we delivered it at Keokuk, if it were going to an eastern point.

Q. So you would not only have the five-hour difference at Keokuk, but you would also have the further twelve-hour delay?

A. You would have at least a 12-hour delay, yes, sir.

Mr. Cassell: That is all.
Exam. Albus: Are there any further questions?
Mr. Wheeler: Let me ask one further question.

Recross examination.

By Mr. Wheeler:

Q. Is your train, Mr. Foulks, out of the Twin Cities—
A. (Interrupting) 915 is the train number.

Q. (Continuing) —is that competitive with the M. & St. L. schedule?

A. We think it is fairly competitive with it.

Q. What is the time differential?

A. I think there is about four or five hours difference in time. I believe the M. & St. L. train is due out at 3 a.m. I think you are due in here about 11 o'clock at night, something like that. We get out at 6:15 a.m. and we are due in at 5 o'clock the next morning.

Q. 5:20 is that?

A. I would say about that, yes.

[fol. 1754] Mr. Wheeler: That is all.

Exam. Albus: Are there any further questions of Mr. Foulks?

(No response.)

Exam. Albus: You are excused, sir. Thank you very much.

(Witness excused.)

Mr. Cassell: Mr. Fitzgerald.

[fol. 1755] J. T. FITZGERALD was sworn and testified as follows:

Direct examination.

By Mr. Cassell:

Q. Will you please state your name, address, and by whom you are employed.

A. My name is J. T. Fitzgerald. I reside in Chicago, Illinois, and I am employed by the Chicago, Rock Island and Pacific Railroad Company as Maintenance Engineer.

Q. How long have you been with the Rock Island?

A. Forty-two years.

Q. All that time in the Engineering Department?

A. Yes.

Q. As Maintenance Engineer, what are your duties?

A. I have charge of the maintenance of roadbeds and tracks over the Rock Island system.

Q. How long have you been Maintenance Engineer?

A. Since January 1, 1950.

Q. Prior to that, what kind of work were you doing?

A. Construction engineer, division engineer, roadmaster, resident engineer on construction, assistant engineer, and when first employed I also worked as timekeeper and B&B carpenter for a very short period.

Q. Then in your various capacities you have had an opportunity to become familiar with the Rock Island physical plant?

A. Yes.

[fol. 1756] Q. As Maintenance Engineer, do you have charge of the programming and of the work on relaying of rail and ballasting of track?

A. Yes.

Q. Are you generally familiar with the Rock Island's line of railroad between Eldon, Iowa, and Keokuk, Iowa?

A. Yes.

Q. Would you describe in a general way the Rock Island Railroad between those two points?

A. The Rock Island track between Keokuk, Iowa, and Eldon, Iowa, is a single track line approximately 63 miles in length.

Q. What has been done on the railroad recently in the way of maintaining or improving it?

A. In the years 1954 and 1955, the 65-pound rail was relaid with second-hand 90-pound rail, using reformed bars which improved that railroad considerably. The balance of the rail between these two points is 80-pound rail. With the 65-pound rail it was necessary to reduce the speed of trains somewhat as trouble had been encountered with some breakage, particularly in the joint bar. Since the rail has been relaid the permissible speed on this line has been increased to 40 miles per hour. At the time this was 40 miles per hour; it's later been increased to 45 miles per hour. The line has very good tie conditions. The tie, rail, and ballast conditions have been considerably improved since 1950.

Q. Do you know anything about the condition or carrying capacity

[fol. 1757] is such that they will permit the use of main line power and full loading of cars.

Q. From what I understand, then, this road now is all laid with 80- and 90- pound rail?

A. Yes, and there is only 15 miles of the 80, all the rest is 90.

Q. How does the permissible speed for freight trains on this line compare with the line of railroad from say through Eldon itself going to Chicago?

A. On the main line, Eldon to Chicago, a high speed line, there is a permissible speed for freight trains of 50 miles per hour. The permissible speed between Eldon and Keokuk is 45 miles per hour. So this is within 5 miles an hour of the top speed permitted on the railroad for freight trains.

Q. Do you know what the average speed for freight trains on the Rock Island is?

A. Yes, the average speed is 61.6 miles per hour. That was the average. This statement was made from the statistics of the railroad.

Q. Mr. Fitzgerald, aren't you kind of inflating our speed there a little bit? You said 61.6.

A. 21.6.

Q. What can you say about the grades and curvatures on this line?

A. The grades and curvatures on this line are very good.

Q. What is the ruling grade on this line?

[fol. 1758] A. The ruling grade is 0.92 per cent eastbound, 1.37 per cent westbound, which permits hauling average loaded train of 33 cars eastbound or 27 westbound, using a single 1,500 horsepower diesel engine. By adding another diesel unit, number of cars per train can be doubled. In this connection this ruling grade is only two miles long for eastbound and 7,800 feet for westbound. Generally, the eastbound grade is a water grade.

Q. Can you say how many cars are moving as a rule in the present trains between Eldon and Keokuk?

A. Yes, on an average there are about 20 cars each way in freight trains now operating.

Q. From your foregoing testimony then I take it that the railroad has a capacity for hauling considerably greater tonnage and longer trains than are now being moved?

A. Yes.

Q. Have you any continuing program as to this particular piece of railroad?

A. We intend to continue to maintain the line in its present maintained condition and, in addition, to make some improvement in drainage in the vicinity of a rock out location where some trouble has previously been experienced with slides. There is also involved some maintenance on the Des Moines River, which will require some additional rock placed which is just normal maintenance for this line of railroad.

Mr. Cassell: You may cross-examine.

[fol. 1759] Exam. Albus: Mr. Thomas, please.

Cross examination.

By Mr. Thomas:

Q. What was the speed limit before this 90-pound rail was laid?

A. Twenty miles per hour generally.

Q. Wasn't it less than that in some places?

A. In some places, yes, that is true.

Q. Didn't that delay your service?

A. You couldn't run as fast for that distance.

Q. Weren't there delays?

A. There were some—yes.

Q. It was really in pretty bad shape, wasn't it?

A. Just the rail. Generally it was the rail condition. We had old 65-pound rail which has, as you know, a small joint and the trouble was experienced with those joints. By relaying practically all of our troubles were overcome. Of course there was some improvement made in surfacing.

Mr. Thomas: That is all.

Exam. Albus: Mr. Lucas, please.

Mr. Lucas: I have no questions, Mr. Examiner.

Exam. Albus: Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. Was this new or relay rail that you put in there?
A. It was relay rail.

[fol. 1760] Mr. Wheeler: I have no further questions.
Exam. Albus: Mr. Broker.
Mr. Broker: No questions.
Exam. Albus: Are there any further questions?
Mr. Hoag: No questions.
Exam. Albus: You are excused, Mr. Fitzgerald. Thank you, sir.

(Witness excused.)

Mr. Cassell: May we go off the record, please?
Exam. Albus: Off the record, please.

(Discussion off the record.)

Exam. Albus: On the record.
This case is adjourned until tomorrow morning at 9:00 o'clock in the Carrousel Room of this hotel.

(Whereupon, at 5 p.m., an adjournment was taken until 9:00 a.m., Tuesday, February 14, 1956.)

[fol. 1761]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991
Finance Docket No. 19086

[Title omitted]

The Carrousel Room,
Pere Marquette Hotel,
Peoria, Illinois.

TRANSCRIPT OF HEARING—February 14, 1956.

Met, pursuant to adjournment, at 9:00 a.m.

Before: Paul C. Albus, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 1763] PROCEEDINGS

Exam. Albus: The hearing will please come to order.

I think the first thing we will do is mark the exhibits to be presented through Mr. Bruce.

Mr. Cassell: If we may please.

I believe the first exhibit is to be numbered H-86.

Exam. Albus: That is correct.

(Intervenor's, Rock Island, Exhibit No. H-86, Witness Bruce, was marked for identification.)

Mr. Cassell: For the convenience of the parties you will find an index of the exhibits. The first exhibit, which is the train schedules, will be 86?

Exam. Albus: That is correct.

Mr. Cassell: The second exhibit which is a picture of the exterior of the new jet rocket is 87.

Exam. Albus: All right.

(Intervenor's, Rock Island, Exhibit No. H-87, Witness Bruce, was marked for identification.)

Mr. Cassell: The third exhibit which is an interior picture of one of the new coaches 88;

The fourth exhibit a copy of the union depot time table in effect on January 1, 1912 H-89;

The next exhibit, which is a copy of an item from the magazine "Trains" for December 1955 H-90;

The next exhibit being a news item appearing in the [fol. 1764] Keokuk Gate City for November 15, 1955, H-91;

The next exhibit being an item in the Peoria Journal Star, appearing on June 5, 1955, H-92;

The next being an item in the Peoria Journal Star, appearing on December 30, 1955, H-93;

The next, an item in the Peoria Journal Star appearing on July 8, 1955, H-94;

The next a reproduction of the Peoria Journal Star article of July 9, 1955, H-95;

The next a reproduction of an editorial appearing in the Keokuk Gate City, July 16, 1955, H-96;

The next, an item appearing in the Keokuk Daily Gate City on January 19, 1956, H-97;

And the last Patronage on Peoria Rockets for the last ten years H-98.

(Intervenor's, Rock Island, Exhibits Nos. H-88 through H-98, inclusive, Witness Bruce, were marked for identification.)

Mr. Cassell: Off the record, please.
Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

I. C. Bruce was sworn and testified as follows:

Direct examination.

[fol. 1765] By Mr. Cassell:

Q. Please state your name, address, and by whom you are employed.

A. I. C. Bruce, my business address is Room 723 La Salle Street Station, and I live at 461 Woodlawn Avenue, Glencoe. I am employed by the Rock Island Railroad as General Passenger Traffic Manager.

Q. Would you mind stating briefly what your duties are, and what your railroad experience has been?

A. I started out with the Texas & Pacific Railroad 39 years ago and have been with the Rock Island since 1917, except for the time when I was in service during World War I. I began my railroading in the Passenger Traffic Department in Fort Worth, Texas, with the Texas & Pacific, and have been in the Traffic Department of the Rock Island ever since I came over. From 1920 to 1926 I was not only assigned to the Passenger Department, but also to the Freight Traffic Department in Texas, and as such worked as a Freight Traffic solicitor. I have been General Passenger Traffic Manager since October 14, 1953. In that position I have over-all charge of the Rock Island's Passenger Department. Prior to becoming General Passenger Traffic Manager, I was devoting my time primarily to sales and

service. Most of my experience has been in sales and service rather than on the technical rate side. The Passenger Department under my direction and supervision is divided into a number of different functions. We have one section which handles the matters relating to mail, baggage, and [fol. 1766] express. Another section of our Passenger Department devotes its time to the technical matters of rates and divisions; and then we have the sales and service section.

Q. Are you familiar with the proposal before the Commission?

A. Yes.

Q. Mr. Bruce, would you please describe the Rock Island passenger service to and from Peoria, going back to the very beginning and bringing it up to the present time.

A. The Rock Island has been operating passenger service in and out of Peoria for approximately 100 years. The Peoria and Bureau Valley Railroad was constructed just before 1854. It never operated in its own right, but was leased by the Rock Island for 999 years, beginning on April 14, 1854. On November 7, 1854, the Rock Island operated its first passenger train into Peoria. This was an excursion train which had originated at Chicago. The line was formally opened for regular passenger service from Peoria to Chicago and with connections to the balance of the system on February 1, 1855. At the time this service was opened by connections at Bureau, service was afforded with the Rock Island trains operating to and from the West. The Rock Island had begun operations out of Chicago in 1852 and had reached the Mississippi at the Tri-Cities in 1854. It is one of the highlights of our history that we had the first bridge of any character across the Mississippi. We [fol. 1767] were into Kansas City with passenger service by 1879. It appears we began our Peoria operations with one train each way each day. Our Peoria service has continued without interruption down through the years. At the present time we are operating two round-trips a day with Rocket service into and out of Peoria to Chicago, and in addition we have a bus operating between Peoria and Bureau, giving three round trips a day, which makes connections with trains coming to and from the West and

Chicago to afford additional service. Our Peoria Rocket service is set up to afford the maximum utility to Peorians particularly with an eye to affording what might be called commuter service to and from Chicago. Accordingly, our first Rocket leaves Peoria at 7 a.m. and is into Chicago at 9:40 a.m., an elapsed time of two hours and 40 minutes for a distance of 161 miles. Our last Rocket back to Peoria leaves Chicago at 7 p.m. and gets into Peoria at 9:40 p.m. As you will see, this gives an opportunity to have an entire business day in Chicago with both schedules going and coming at convenient hours. The Rocket trains are equipped with a diner so that the patron may eat his breakfast, luncheon, or dinner on the train for his greater convenience. I should also point out here that these schedules not only afford the traveler an opportunity to spend an entire business day in Chicago, but also to provide connections through the Chicago gateway with major trains operating in all directions on other railroads. While the foregoing are our [fol. 1768] principal passenger carrying trains, we have another train which is important to Peoria, namely, our trains 21 and 22. These are particularly important because of the mail and express service they provide. For instance, train 1 leaving Chicago at 11:55 p.m. and train 21 leaving Bureau at 3:30 a.m. provide a 5 a.m. arrival at Peoria in order to afford early morning delivery of mail and express traffic. From Peoria, our train 22 leaves Peoria at 12:01 midnight, connecting with train 2 at Bureau, arriving in Chicago at 5 a.m., affording the Peoria people early morning mail and express delivery to Chicago and for connections to the East. I have set out the six train schedules, the six bus schedules, and the two trains I have just mentioned, which are primarily mail and express trains although they do, of course, have coach service as well, on my exhibit marked H-86 for identification.

Q. Mr. Bruce, you have mentioned your Rocket service in this testimony you have just completed. Would you mind describing that in a little more detail?

A. Yes. The Rock Island was one of the first to acquire what was then new lightweight, streamlined, high speed passenger equipment, together with diesel operation. Our first train was acquired September 17, 1937. This was our

Peoria Rocket. In other words, the first train of this type which we acquired and which is one of the first of its kind in the country was put into service for the benefit of Peorians before we had similar service anywhere else on the system. This train was very well received and has enjoyed [fol. 1769] good patronage ever since its inauguration. This is the Peoria Rocket which is still in operation today except, of course, it has had replacement and expansion over the original cars. Today it consists of a diesel engine normally four coaches, and a parlor car with a dining-car as a separate car. On week-ends and holidays when additional traffic is anticipated, this is expanded by from two to four additional lightweight, high speed coaches. The coaches on this train, as I have said, are of the new type, high speed, lightweight, and equipped on the inside with what has been the latest in seating comfort for passengers. The seats are divided so that each passenger, in effect, has his own seat which is adjustable for three positions, and has a foot rest. The dining-car is equipped to serve complete meals to 32 people at one time. The parlor car has the usual accommodations found in the highest type equipment of this kind and also has drawing-room accommodations. This train, which was put in for practically the sole benefit of Peorians, represented an investment of $553,040.

Q. Is there anything in the way of new or different equipment for the Peoria service?

A. Yes, and I would like to talk about it right here. The Rock Island has purchased a Talgo type, lightweight, streamliner which is being placed in our Peoria service about February 1, replacing the present Peoria Rocket. [fol. 1770] This will be the first train of this type placed in regular daily service by any railroad in the United States. Here again we are following our policy of giving our Peoria friends the newest and best possible transportation. There will be a slight improvement in our Peoria schedules when this train goes into daily operation. We propose to make the turn of the morning train, which is to leave Peoria at 7 a.m. within a period of 45 minutes of Chicago, which will have this train back in Peoria at 12:50 p.m. The afternoon Rocket will leave on the same schedule as our present afternoon Rocket, namely, 3 p.m.

That schedule was arrived at by several personal visits by me to Peoria, meeting with the Peoria Chamber of Commerce and the Peoria and Pekin Transportation Club, as well as leading citizens of Peoria in order to determine just what schedule suited them best. On the new schedule, the afternoon train will arrive at Chicago at 5:35 p.m., will be turned immediately, and the early evening schedule from Chicago will leave at 6:30 p.m. instead of 7 p.m. as at present. This train will arrive back in Peoria at 8:50 p.m. instead of 9:40 p.m. as now, which will enable our Peoria friends to have a complete evening at home. This last change in our schedule again was made at the particular request of the Peorians so that they could have a complete evening at home. My exhibit marked H-87 for identification shows a picture of the exterior of the new Jet train and my exhibit marked H-88 gives an interior shot of one of the [fol. 1771] coaches. This new train is being purchased at a cost of about $750,000. This train was tailor-made for the Peoria-Chicago run.

Q. Mr. Bruce, have you been able to accommodate all those who wish to travel in and out of Peoria with the service you presently have available?

A. Yes, as I have already said, our present Rocket service is tailored specifically to meet the needs of Peorians, and, as I have mentioned, the new schedules for the new Jet Rockets again are set up to meet the wishes of the Peorians, and, as I have shown, we are making some changes over the present schedules for the sole reason that they were requested by the Peoria travelers. The four coaches and parlor car on week days have an excess capacity for those presenting themselves so that I know that we are providing adequate service on those days, and if there is any need for additional service, we can, of course, put on additional cars as the occasion demands. The same is true on week-ends. We put on additional cars to accommodate additional patrons on holidays. It has always been our policy to provide all of the service required by Peorians on all occasions down through the years. I am, of course, aware that there have been isolated instances when we have had no advance warning and where unusually heavy loads have presented themselves where we have not been able to find a seat for every passenger, but those cases are exceedingly rare, how-

ever, and are all due to the fact that they come as a com-
[fol. 1772] plete surprise for which we have had no time to provide the additional equipment. As an interesting comment on our policy of providing all of the service required by Peorians, I should like to point out the fact that we have maintained our passenger service into and out of Peoria down through the years, improving it and providing the latest available equipment, and we have taken care of the passengers which formerly had other service available to them which has since been discontinued. My exhibit marked H-89 for identification is a copy of a Union Depot timetable in effect on January 1, 1912. Those in Peoria know that the old Union Depot was just south of the Rock Island Depot and they also know that at the present time there is not a single passenger train operating in or out of that station. Yet on January 1, 1912, there were 116 trains per day operating in and out of that station. Among others, I call your attention to the trains which were operating to and from Chicago. I call your attention to the schedules of the Toledo, Peoria and Western, which are shown about six inches from the top. On the left-hand side they show four schedules with service to Chicago, and on the right-hand side they show five schedules with service to Chicago. The Toledo, Peoria and Western has no passenger service of any kind today. At that time it afforded its passenger service to Chicago by operating its own passenger trains via TP&W to Chenoa and the Alton to Chicago. In 1868, company owned palace sleepers were being operated via TP&W to Chicago, and on January 12, [fol. 1773] 1869, the first pullman sleeping cars were operated from Peoria via TP&W to Gilman, thence Illinois Central to Chicago. In 1880, the Wabash took control of the TP&W and the IC refused to handle through cars from Chicago to Gilman. Through cars were then operated via the Wabash from Forrest. In 1885, the TP&W was released from control of the Wabash, service was then performed TP&W Chenoa, thence Alton to Chicago. An actual date of discontinuance of this service has not been located; however, from local sources, it is indicated that it was on or about September 1926. Then there are the Chicago and Alton Railroad schedules, which, you will note, sets itself up specifically as the "Chicago Line," now the Gulf, Mobile

& Ohio. All of these schedules shown by the Alton have long since been discontinued and the Rock Island, of course, has provided the service. Of the 116 trains that served the Peoria Union Station, all have been discontinued. Of all these services, only two remain, namely, a CB&Q motor car which terminates at a small office near the Hiram Walker Distillery, and a New York Central train which terminates at Pekin, Illinois. The CB&Q also operates three bus trips from their office to Galesberg, Illinois. On the other hand, the Rock Island from its Fulton Street station now has six services inbound and six outbound, as compared with four in 1912. This shows that the Rock Island has provided the service for the benefit of Peoria which has been discontinued by the other carriers.

[fol. 1774] Q. Mr. Bruce, is the Peoria Rocket service at present earning its way?

A. With our present volume of traffic we have been operating at a profit on an out-of-pocket basis. For these six trains we are averaging $2.67 per train mile.

Q. What would be the effect on the earnings of these trains by the diversion of any substantial volume of these passengers?

A. This figure which I have just given you of train earnings is based on an average loading of 42,628 persons per year, plus head-end traffic. The Peoria-Chicago one-way coach ticket costs $3.77 and a round trip $6.80. The one-way first-class fare is $5.27; the round-trip first-class fare is $8.80; parlor seat one way 95 cents. Practically all of our Peoria passengers are for round-trips as they both go and return through the Rock Island service. This means that for practical purposes we can assume that each passenger taken out of Peoria represents the value of a round-trip ticket to and from Chicago. I am aware, of course, that there are some passengers who have only a local ticket to some intermediate point, but, on the other hand, there are many passengers who have tickets for beyond. It would only take a reduction of 60 passengers per day to reduce this profitable operation to a nonprofitable one on a bare out-of-pocket basis.

Q. Mr. Bruce, what has been your expectations for the future?

[fol. 1775] A. We have anticipated that we would continue to enjoy at least our present patronage. This is evidenced by the fact that we are just placing in service the new Jet Rocket which I have mentioned previously. If we could not look forward to a continued patronage at least as great as that which we have been enjoying, we could not justify the purchase of the new equipment nor could we have maintained in service a train like our Peoria Rocket.

Q. Mr. Bruce, have you had any occasion to concern yourself about the maintenance of the present volume of traffic?

A. Under the conditions under which we have been operating in recent years, I have no concern. We, of course, compete with private automobiles, and to a more limited extent the buses, and to a certain extent with the airlines. We have assumed that we will more than hold our own competitively with the inauguration of our new Jet Rocket. However, with this case which this Commission is hearing today an entirely new element is being introduced which gives us very grave concern and, should it materialize in a way in which we fear, it would jeopardize the service which we give to Peoria. By that I refer to the possible introduction of a new passenger line to and from Peoria, or the diminution of freight revenue which this line now enjoys.

Q. What is the basis of your concern, Mr. Bruce?

A. First, I should like to emphasize again that my state- [fol. 1776] ment about the number of passengers it would take to convert this from a profitable to an unprofitable run was based solely on a bare out-of-pocket basis. This line, of course, is used by both passenger and freight service. If, for any reason, the freight revenue which this line now enjoys was reduced substantially so that the line would have to depend upon the passenger earnings for any portion of its maintenance, supervisory or other costs not carried in the bare out-of-pocket passenger figures, but supported by the freight service, our passenger operation of course, would be in trouble. The passenger operation out of Peoria could not exist by itself. Mr. Davidson will testify as to the possible freight consequences of this acquisition, and so I am merely calling attention to that factor now. As a passenger man I am immediately con-

cerned with the potential loss of passenger traffic, as well as head-end revenue, the head-end traffic, of course, being a part of the passenger department earnings. By head-end I am referring to the mail, express, and baggage which are carried on the passenger trains. While I have understood that the Santa Fe and the Pennsylvania, and I should say that it is primarily the Santa Fe we are concerned with, have stated that they do not intend to inaugurate passenger service via the TP&W, at the same time the Santa Fe has made statements, and I have particular reference to quotations from its president, which indicate to me that they apparently intend to inaugurate passenger service some [fol. 1777] time after this acquisition, if it is approved.

Q. What is that based on concretely?

A. My Exhibit H-90 is a copy of an item taken from the magazine, "Trains," December 1955 issue. The item began on page 6 and is part of a section of the magazine entitled, "Railroad News and Editorial Comment" by David P. Morgan, its editor. I wish to call your attention to that portion which purports to give quotations from an interview with Mr. Gurley, president of the Santa Fe, particularly the following questions and answers:

"'What about transcontinental passenger trains operated via Peoria?

"'That would be a major job. It would be cruel to hold out any hope now,' said Gurley."

This same purported conversation as written up in a news item appearing in the Keokuk Gate City, a newspaper published in Keokuk, on the 15th of November, as shown by my Exhibit H-91. Similar newspaper statements have been appearing from time to time. On June 5, 1955, there was a comment in the Peoria Journal Star which I have reproduced as my Exhibit H-92; I call your attention to the caption, "Passenger Train from Santa Fe appears in Peoria." The article is about an inspection trip being made by Santa Fe and Toledo, Peoria and Western officials. I call your particular attention to the next to the last paragraph which refers to remarks of Mr. Coulter, who is now president of the Toledo, Peoria and Western, and who, I [fol. 1778] understand, is to be retained as president by the Santa Fe and Pennsylvania if their acquisition is suc-

cessful: "Coulter declined comment on the possibility of Santa Fe passenger trains serving Peoria, but agreed it was an interesting speculation not beyond accomplishment."

In the Peoria Journal Star, the lead article for Friday, December 30, 1955, was captioned, "Future of the Toledo, Peoria and Western." The next to thy last paragraph reads as follows:

"Santa Fe-Pennsylvania connection through Peoria via the Toledo, Peoria and Western is an opportunity this area is not likely to see again. Some Peorians are even speculating on the possibility that it might open the way to future transcontinental passenger service through Peoria."

This editorial is reproduced as my exhibit H 93. On July 8, 1955, appeared a feature article in the Peoria Journal Star which is reproduced as my Exhibit H 94. Among other things, the article says, "No passenger service is involved in the immediate transaction."

On July 9, 1955, appeared another under the byline of Leslie B. Ernest, Journal Star staff writer, which said:

"To the question of whether Peoria is to soon realize its long cherished hope of being located on a transcontinental railroad line with direct passenger service to both coasts, both railroad presidents were affable but adamant.

"'Careful consideration,' they said almost in unison, 'will [fol. 1779] be given to passenger service if the I.C.C. application is approved.'

"But both Gurley and James M. Symes, President of the Pennsylvania Railroad), were positive in asserting that routing of passenger trains through here over the tracks from the Pennsylvania terminal at Effner, Indiana, and into the Santa Fe at Lomax, Illinois, appears to be 'impractical in the intermediate future.'" This is exhibit H 95.

My Exhibit H 96 is a reproduction of an editorial appearing in the Keokuk Gate City for Saturday, July 16, 1955. It mentioned transcontinental trains and, among other things, states, in speaking of the acquisition: "Passenger as well as freight service should be enhanced." Of course, the Toledo, Peoria and Western has not had any passenger service for many years so if the Toledo, Peoria and Western passenger service is to be enhanced, it would have to be through some new service. While all of these

statements I have referred to deny any immediate inauguration of passenger service, they all leave the implication that it is not only to be hoped for, but anticipated as a result of the proposed acquisition.

Q. Would it be at all feasible for the Santa Fe in some manner to inaugurate or participate in passenger service in and out of Peoria?

A. Yes. This can readily be done as may be seen from the application which was filed by the Santa Fe and Penn- [fol. 1780] sylvania in this case. Attached to the application as Exhibit 6 is a map which shows the Toledo, Peoria and Western and its connections with the Santa Fe at Lomax, and again at Eureka, Illinois. The Santa Fe has nine trains operating to and from Chicago and the West over its line and through Lomax. The Rock Island has only two trains—Chicago to Kansas City and the West. Santa Fe could very well reroute two or more of those trains so that the route would be Chicago, Streator, Ancona, Eureka, where it would join with the Toledo, Peoria and Western though Peoria, and, out at Lomax on to the Santa Fe main line and, of course, from the West in the reverse direction. This rerouting would only add 22.2 miles to the Santa Fe mileage between Kansas City and Chicago. The Santa Fe is already the short line, Kansas City to Chicago, they having a mileage of 451.1. The Rock Island mileage, on the other hand, is 495. It would give the Santa Fe a mileage of 146 between Peoria and Chicago as against the Rock Island's 161 miles. In addition, as you can see from this exhibit attached to the application, the Santa Fe would only have the interference of Streator and Joliet between Peoria and Chicago so that its schedules could be very fast. Any schedules inaugurated by the Santa Fe between Chicago and Peoria would be high competitive with those of the Rock Island. The Santa Fe would have this advantage: That these would be trains which would be operating with very little additional cost since there would be only a rerouting involved with very little additional mileage. Ac- [fol. 1781] cordingly, any patronage they picked up would mean additional net revenue, whereas the Rock Island trains operating in and out of Peoria depend substantially on Peoria for their continued existence. I do not believe

that any trains operated by the Santa Fe through Peoria in this manner would generate any additional traffic since we provide so many schedules in and out of Peoria, but that it would merely mean a diversion and a dividing of traffic. Accordingly, if any patrons were picked up by the Santa Fe it would mean a reduction of patronage to the Rock Island. With the trains of the type the Santa Fe would probably reroute through Peoria it would be inescapable that they would pick up patronage in an amount sufficient to reduce the Rock Island below the profitable level I have heretofore referred to. Now I have talked about the Peoria to Chicago service in particular, but we would also have other traffic which would be very seriously endangered by any such rerouting. The Santa Fe today operates through Chillicothe as its nearest point to Peoria and affords no direct connection. I am aware, of course, that some people today drive up to Chillicothe to make use of the Santa Fe service to and from Chicago or to the West. This competition does not concern us, but if it were a direct service out of Peoria it would have a very damaging effect to the Rock Island revenue and consequently to the service we could make available. Peorians travel not only to and from Chicago, but they travel to and from the West. At [fol. 1782] the present time, because of our more convenient connections, we enjoy very favorable patronage for the long haul to the West. If the Santa Fe were to reroute trains through Peoria, it would mean a diversion of these long haul passengers.

Q. Is there any other reason why you are concerned about the proposal before the Commission?

A. Because of the foregoing facts, I would be greatly concerned about the acquisition of the TP&W by the Santa Fe jointly with the Pennsylvania without our inclusion without regard to any of the statements I first mentioned. The approval of the application as proposed, would place our entire Peoria passenger operation in jeopardy. In my position as head of the Rock Island Passenger Department I am particularly concerned because of our current investment in new equipment for the Peoria-Chicago run. Since the Santa Fe would have the ability to reroute trains through Peoria, and since it has a large number of trains

over its main line through Chillicothe, any number of which would be available for such diversion, and since it is a large and wealthy railroad with resources and equipment capable of giving us the most intense sort of competition, I feel strongly that if it had this opportunity and the ability to exercise this invasion, it would so imperil our operation that I could not have recommended, for instance, the purchase of the new equipment which we are just placing in operation.

Q. Mr. Bruce, is there anything further you care to say [fol. 1783] about the Rock Island service?

A. Indicative of the Rock Island's desire to serve Peoria is the fact that we have only recently refurbished our passenger depot. No other railroad since the disappearance of the Union Station and the Illinois Traction Depot has any passenger terminal in Peoria. I would like to also mention the fact that not only have we renovated our depot recently, but it is the first rail terminal in this country to have drive-in ticket selling facilities whereby the prospective passenger can transact his entire business without leaving his automobile. Also, for the convenience of our patrons, we are at present working on providing for parking space for those who wish to ride our trains at a convenient location near our depot. This, of course, is to be furnished as a courtesy to these patrons. Finally, I wish to re-emphasize the fact that if a competing carrier were to skim off some of the more lucrative long haul passengers either to the West Coast or other distant points, or to Chicago, which might be done through this proposal now before the Commission at a relatively low cost, it would place an impossible burden upon the Rock Island to continue to provide the over-all service it now affords and upon which Peoria has been depending. My Exhibit H-98 shows the patronage on the Peoria Rockets for the last ten years. You will note that after the war there is an increase for a while, and then as automobiles became more available after World War II, and with their ever increasing registrations, [fol. 1784] we have experienced a continuing falling off in patronage. I might say here that from my experience and observation in the railroad passenger business generally, our falling off in patronage of these Peoria Rockets has

not been as server as has been experienced by the industry generally. To me this indicates that our trains are serving their purpose very well and are well received in Peoria. However, it is because of this declining patronage due to competition with the private automobile and services already in the field that I view with particular alarm the possibility of dividing the passengers now available to us with another rail carrier. It also emphasizes the fact, as I have said previously, that there is no possibility of generating additional traffic, but only dividing that which is now available. The diversion, concerning which I have been testifying, might also extend into the mail and express patronage we now enjoy. I have mentioned the schedules we have set up on our trains 21 and 22. Again, I do not believe that there is any possibility of generating additional head-end business; that is, the mail and express into and out of Peoria, and an additional carrier will but bilute and divide this. This again will mean that we might not have enough revenue to support a train such as 21 and 22. Certainly they could not exist on their passenger revenue which is presently almost nonexistent. In passing, I should like to point out the fact that although these trains to and from [fol. 1785] Peoria are relatively heavily loaded as trains go, but a very small diversion of patronage can convert them from profitable trains to a losing proposition due to the fact that they are run in such short haul traffic. The maximum haul for the Peoria Rocket is, of course, the entire distance from Chicago to Peoria, or 161 miles. Even if the patron is going on to New York, we still only get revenue for the 161 miles. Because of the relatively small revenue per passenger it is necessary that the trains be heavily loaded in order to protect their earnings.

Q. The Rock Island and Santa Fe both operate out of the same station at Joliet for service between Chicago and Joliet, do they not?

A. Yes.

Q. However, they use different trackage between those two points, and different Chicago stations?

A. Yes.

Q. Does the Rock Island provide special commuter service between Chicago and Joliet?

A. Yes. We operate 25 commuter trains in and out of Joliet every day which operate to Chicago, and various intermediate points, and 17 trains on Saturdays, and 12 on Sundays.

Q. Is this operation generally profitable or unprofitable?

A. It is a burdensome and unprofitable operation.

Q. Does the Santa Fe operate any suburban trains between Joliet and Chicago?

[fol. 1786] A. No.

Q. Mr. Bruce, will you please refer to page 8 of your prepared testimony. In the answer you have given there you say there is no passenger service of any kind today on the TP&W. Would you elaborate on that a little bit, please.

A. The TP&W operate no regular schedule passenger trains and they own no passenger equipment. However, they do handle an occasional passenger in a caboose on a couple of their freight in mixed trains. Their annual report for 1954 shows the total passenger revenue of only $30.

Q. Will you turn to page 10 of your prepared testimony. There you give some computations. Would you please state what you used as the expense per train mile in arriving at that figure.

A. I got these figures from our operating people. They furnish me rough out-of-pocket expenses of all kinds at all times. I need them when there is a question of running a special train and we have to know whether it is a profitable or a loss operation. They gave me a figure of $1.85 or $1.95 per mile and I used the figure of $1.95.

Q. Will you please turn to page 15. There you have mentioned a number of articles appearing in various publications. Have you also an additional exhibit which has been identified as Exhibit 97 and which you believe bears on this transaction?

A. Yes, sir.

[fol. 1787] Q. And that is the article which has been identified as Exhibit No. 97?

A. Yes, sir.

Mr. Cassell: I offer Exhibits 86 through 98, inclusive, subject to cross-examination and tender the witness.

Exam. Albus: Cross-examination.
Mr. Thomas.
Mr. Thomas: None.
Exam. Albus: Mr. Lucas.
Mr. Lucas: Mr. Examiner, just one question.

Cross examination.

By Mr. Lucas:

Q. Mr. Bruce, in your investigation to the extent of present passenger service did you ascertain that there are tariffs covering some passenger service whatever may be the extent of it?

A. On the TP&W?

Q. That is right.

A. They have no passenger tariffs, to my knowledge I have never seen any passenger.

Q. Did you examine to the fact whether they do or do not?

A. No, I didn't.

Mr. Lucas: That is all.
Exam. Albus: Mr. Wheeler.

Cross examination.

By Mr. Wheeler:

Q. Mr. Bruce, do you know whether or not it is a com- [fol. 1788] mon practice among railroads and railroad officials to conduct inspection trips in normal passenger equipment or do they ordinarily use business cars?

A. If you have reference to inspection of passenger equipment it would be made in passenger equipment.

Q. I have reference to the type to which you have referred in your testimony in exhibits as was conducted by officials of the Santa Fe and the Pennsylvania of the TP&W property.

A. A trip of that kind, Mr. Wheeler, would be made in a business car, I would say.

Mr. Wheeler: That is all.
Exam. Albus: Mr. Thomas.

Cross examination.

By Mr. Thomas:

Q. I am not sure I understood your testimony, Mr. Bruce, on that score. Does your testimony suggest that the trip you referred to was not made in business cars?

A. Just which testimony, now, Mr. Starr, do you have reference to?

Q. As I understand it-

A. (Interrupting) The question I was trying to clear up is the fact that I made a statement that the TP&W did not operate any passenger service.

Q. Yes.

A. I find later that they do, that is, the 1951 annual reports showed a total passenger earning of $30. In arriv-[fol. 1789] ing at just where that $30 came from I find they do in two of their mixed trains handle passengers in the caboose. That's as far as the revenue is concerned.

Mr. Cassell: Right there, Mr. Bruce, in answer to Mr. Lucas you said they have no tariffs. They would have to have tariffs to collect revenue.

The Witness: That is correct. I have never seen the tariffs.

Mr. Cassell: That is what you meant to say?

The Witness: Yes.

By Mr. Thomas:

Q. What I wanted to get clear, Mr. Bruce, I didn't get any implication from your testimony or the exhibits that any inspection trip of the TP&W referred to there by Pennsylvania or Santa Fe officials was taken in regular passenger equipment as distinguished from business cars, did you so imply?

A. I didn't make the statement that there had been any so-called passenger trains operating during this inspection. The trains were referred to as passenger trains in the news items.

Q. You didn't mean to imply that they were not business cars?

A. No, sir, I did not.

Mr. Thomas: That is all.

Exam. Albus: Are there any further questions?

Further cross examination.

By Mr. Wheeler:

Q. Refer to Exhibit 92 for a moment, Mr. Bruce.

[fol. 1790] Exam. Albus: What is the reference?

Mr. Wheeler: 92 I have.

Mr. Cassell: That is B-7?

A. Yes, sir.

By Mr. Wheeler:

Q. Do you think that exhibit refers to business cars or to passenger train cars when it says three streamliner cars?

A. The quotation that I have reference to, I presume you have reference to the Peoria Journal Star of June 5, 1955, is that correct?

Q. Yes, sir.

A. The quote I was using was Mr. Coulter's, the reference to Mr. Coulter where he declined to comment on the possibility of the Santa Fe passenger trains serving Peoria but agreed that it was an interesting speculation not beyond accomplishment.

Mr. Cassell: Mr. Bruce, I believe that Mr. Wheeler was referring to the first line of that article.

The Witness: Passenger train from Santa Fe appears in Peoria, that is the headline reference.

Mr. Cassell: Do you know what kind of equipment was on that train?

The Witness: I did not see it. I could not say.

By Mr. Wheeler:

Q. Do you believe that the description there is applicable to passenger equipment or to business cars?

A. Well, the type cars that might have been used in this [fol. 1791] inspection, Mr. Wheeler, I am not concerned

about those cars. I am concerned with the possibility of passenger service.

Q. I understand what you are concerned about. It is what I am concerned about now.

A. Passenger train from Santa Fe appears in Peoria?

Q. Yes, sir.

A. I would think that they would be business cars.

Q. Business cars?

A. Yes, sir, if it is an inspection trip by Santa Fe and the TP&W. officials.

Q. Will you refer to Exhibit 92. Do you have it before you?

A. Yes, sir.

Q. Will you please read it, read it for yourself first. Have you finished reading it?

A. Yes, sir.

Q. Did you notice in there a distinction between three streamliner cars and an office car?

A. Yes, sir.

Q. Now, do you now believe that the three streamliner cars that are referred to therein were passenger cars or office cars?

A. Well, it makes quite a distinction there between Mr. Coulter's office car being switched out and returned and the two Santa Fe cars being switched to the main line to continue to Des Moines and the office car cut out. I still contend if it was an inspection trip there are such things [fol. 1792] as streamlined business cars. They could have been business cars, I don't know, I didn't see them.

Mr. Wheeler: I have no further questions.

Exam. Albus: Is there any further cross-examination?

Mr. Broker: No, sir.

Mr. Hoag: No, sir, no questions.

Exam. Albus: You are excused, Mr. Bruce, thank you very much.

(Witness excused.)

Mr. Thomas: Has he offered the exhibits?

Exam. Albus: No, he is going to offer them now.

Mr. Cassell: They have been offered subject to cross-examination.

Mr. Thomas: I want to offer an objection. The news items included in the exhibits may not be understood as evidence of the facts that appear to be stated in those news items.

Exam. Albus: Very well. Subject to that exception the exhibits marked for identification H-86 to and including H-98 are received in evidence.

(Intervenor's Rock Island, Exhibits Nos. H-86 through H-98, inclusive, Witness Bruce, were received in evidence.)

Mr. Cassell: Off the record.

Exam. Albus: Off the record.

(Discussion off the record.)

[fol. 1793] Exam. Albus: On the record.

Mr. Cassell: Mr. Miller, please.

HAROLD MILLER was sworn and testified as follows:

Direct examination.

Q. Will you please state your name, address, and by whom you are employed?

A. My name is Harold Miller. My address is 2265 One Hundred Twenty-third Place, Blue Island, Illinois. I am employed by the Chicago, Rock Island, and Pacific Railroad Company as statistician in the general auditor's office.

Q. As such, do you have access to the books and records of the Rock Island Railroad?

A. Yes, I do.

Q. How long have you been statistician?

A. Three years.

Q. How long have you been employed by the Rock Island?

A. Thirty-eight years.

Q. All of that time in the accounting department?

A. Yes.

Q. Did you work in the statistical department prior to assuming your present title?

A. I did.

Q. Please state the general nature of your duties?

A. I have prepared statements and statistics for pro-
[fol. 1794] ceedings before the Interstate Commerce Commission, the Illinois Commerce Commission, and various regulatory commissions of other states, and have appeared as a witness before these bodies. I also have made investigations of costs of various services performed by the Rock Island and its subsidiary companies.

Q. Have you worked up the out-of-pocket cost of the Rock Island's Rocket trains operating between Chicago and Peoria?

A. Yes, I have.

Q. What have you found to be the out-of-pocket cost per mile of those trains?

A. $2.08 per train mile.

Q. How did you arrive at that figure?

A. Using enginemen and trainmen wages, fuel, dining and buffet service on actual experience for 1954, repairs to diesel locomotives, passenger cars, lubricants and supplies on a system average based on either car or locomotive miles.

Q. Do you have the cost per passenger mile of train service in Illinois on the formula the Interstate Commerce Commission uses for the break between passenger and freight expenses?

A. Yes.

Q. What do you have for the cost per train mile for passenger service in Illinois?

A. The solely related is $4.24 per train mile. I took this from the report which we make every year to the Illinois Commerce Commission which uses the same formula and
[fol. 1795] accounting rules for this statement as does the Interstate Commerce Commission. These figures are for the year 1954. The 1955 figures are not yet available.

Q. In addition to the solely related or I.C.C. formula train-mile expenses in Illinois, do you have an additional amount which might be said to be that which would have to be added to obtain a fully distributed cost?

A. Yes. The apportionment would add $1.29, making a total of $5.53 for the fully distributed cost per train mile in the State of Illinois.

Q. How did you get your apportionment to add on to the solely related cost?

A. By taking the figures that were reported to the State under the "Apportioned to Passenger and Allied Service" column and dividing it by the total passenger miles made in the State of Illinois.

Q. Do you have in your annual report to the Illinois Commerce Commission an entry showing the fully distributed as well as the solely related expenditures?

A. Yes. The entry in the report shows the total apportioned expense. I merely had to divide by the train miles to get the cost per train mile.

Mr. Cassell: You may cross-examine.

Exam. Albus: Cross-examination, please.

Mr. Thomas: No questions.

[fol. 1796] Exam. Albus: Mr. Lucas.

Mr. Lucas: No questions, Mr. Examiner.

Exam. Albus: Mr. Wheeler.

Mr. Wheeler: No questions on cross.

Exam. Albus: Is there any cross-examination?

(No response.)

Exam. Albus: You are excused, Mr. Miller. Thank you very much.

(Witness excused.)

Mr. Cassell: Mr. Davidson.

Mr. Examiner, may we identify the exhibits?

Exam. Albus: Yes, sir.

Mr. Cassell: For the convenience of the parties you will find an index with symbol identification and reference to the prepared testimony.

I believe the first exhibit is 99.

Exam. Albus: 99 is right.

Mr. Cassell: May the exhibit which bears the symbol reference D-1, a map showing the Rock Island, Santa Fe, and TP&W be identified as Exhibit 99?

Exam. Albus: Yes, sir.

(Intervenor's, Rock Island, Exhibit No. H-99, Witness Davidson, was marked for identification.)

Mr. Cassell: The next exhibit, Decision of I.C.C. "Acquisition by TP&W Railroad" 124 I.C.C. 181, H-100;
[fol. 1797] A detailed map symbol D-3; H-101.

Exam. Albus: Right.

Mr. Cassell: Symboled D-4, a two-page add of the TP&W, H-102.

Exam. Albus: Right.

Mr. Cassell: Statement showing 1954 interchange with TP&W, D-5, Exhibit 103.

Exam. Albus: Right.

Mr. Cassell: D-6, statement showing the 1954 freight traffic in carloads which the TP&W delivered to or received from a connecting line and upon which the Rock Island secured a road haul, H-104.

Exam. Albus: Right.

Mr. Cassell: D-7, which is a copy of the I.C.C. decision, "Construction by TP&W R.R." 124 I.C.C. 278, H-105;

Symbol D-8 symbol is statement showing the 1954 carload freight traffic handled jointly by the Rock Island and TP&W, H-106.

Exam. Albus: Correct.

Mr. Cassell: Symbol D-9, statement showing the 1954 freight traffic in carloads which the Rock Island handled as the road haul carrier from or to Peoria, from or to points or junctions competitive with the Santa Fe System, H-107.

Exam. Albus: All right.

Mr. Cassell: D-10, a mileage exhibit, H-108;
[fol. 1798] D-11, net and gross revenue of Rock Island and Santa Fe for five years, H-109;

D-12, a map of the United States showing TP&W-Rock Island, M&StL and Monon, H-110;

D-13, Symbol "M" statement showing the 1954 carload freight handled jointly by the Rock Island and TP&W, H-111;

D-14 Symbol "ME" statement showing freight traffic in carloads, which the Rock Island handled jointly in road haul service via junctions with other carriers, H-112;

D-15 Symbol "MW" statement showing freight traffic, in carloads, which the Rock Island handled jointly in road haul service via junctions with other carriers, H-113;

Symbol D-16, Symbol "M-EX" statement showing freight traffic, in carloads, which the Rock Island handled jointly in road haul service with other carriers, H-114;

Symbol D-7, Symbol "MWX" statement showing freight traffic, in carloads, which the Rock Island handled jointly in road haul service with other carriers, H-115;

D-18 statement showing cities where railroad traffic offices are maintained as shown in official guide of railways, H-116.

May we go off the record?

Exam. Albus: Yes.

Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

[fol. 1799] R. C. Davidson was sworn and testified as follows:

Direct examination.

By Mr. Cassell:

Q. Please state your name, business address, and by whom you are employed.

A. My name is R. C. Davidson, my business address is La Salle Street Station, 139 West Van Buren Street, Chicago, Illinois. Prior to March 1, 1955, I was employed by the Rock Island as freight traffic manager in charge of administrative matters in the Rock Island freight traffic department. After my retirement I was recalled to resume work with the Rock Island, especially with relation to the preparation of this case.

Q. What has been the nature of your railroad experience, Mr. Davidson?

A. I have been in the railroad business since 1904, a period of 51 years. All of my experience throughout these years has been in freight traffic and all of it has been with the Rock Island. I began as a messenger and office boy in the year 1904. After I had been with the railroad about one year I became a clerk in the Rock Island tariff bureau. After I had been with the Rock Island some three years,

I was placed on one of the rate desks, which we had in those days, and worked on tariff preparations, general correspondence relating to the freight traffic department, and shippers' inquiries. In 1910 I became assistant to the assistant general freight agent and in that capacity I be- [fol. 1800] came entrusted with more important work relating to the matters handled by the assistant general freight agent which covered initiation of rates and other rate freight traffic matters.

My next assignment was to the staff of the assistant freight traffic manager. Again this was on the technical side dealing with rates and other phases of the freight traffic work. This assignment was in 1915.

In 1922, I became chief clerk to the vice-president-freight traffic manager. In this capacity, of course, I was working with all matters which came through the freight traffic department. The assignment which I held at that time no longer exists on the Rock Island. The work which I did is not performed by assistant freight traffic managers or other officers.

I held that position until 1924, when I became assistant general freight agent. As assistant general freight agent I had to be familiar with the solicitation efforts of the entire Rock Island system, not only on line, but off line. The problems I was dealing with required me to be familiar in a general way with traffic that moved over the Rock Island and the problems of the shipping public with whom we came in contact. I spent part of my time dealing with the shipping public.

In 1927, I was made general freight agent in charge of rate matters in Western Trunk Line territory. During the time I did this work, I, of course, was attending all of the [fol. 1801] various bureau meetings and working on the day-to-day rate adjustments and rate cases as they came along.

I continued in this rate work until 1935, when I was promoted to the position of assistant freight traffic manager. In this capacity, and also following my promotion in 1943 to the position of freight traffic manager, I did special assignments designated by the chief traffic officer, such as research matters and inquiries into finance problems, and

remained in that type of work thereafter. Of course, I continued to deal from time to time with shippers. I have worked on all of our branch line studies, studies which we have made to determine whether various branch lines should be abandoned or retained, studies to ascertain whether or not extensions of the railroad should be made, studies to determine whether or not various acquisitions would be profitable or unprofitable. In that work I have studied various railroads, large and small, to determine what their capacities were. All of this work, of course, has been done from the traffic potential. My work did not include operation problems as such, although naturally they did creep in. Not only did I make these studies for the benefit of our management to enable them to determine their policy questions, but when these studies have resulted in applications before this Commission for extensions, acquisitions, or abandonments, I have frequently appeared as the Rock Island witness to testify concerning the traffic potential and [fol. 1802] problems in general relating to the case in question.

In the course of this work I have made some 67 studies of railroads ranging in size from very small ones to Class I railroads. I have appeared in some seven acquisition cases, two extension cases, and sixteen abandonment cases. The result of this has been that for some twenty years I have devoted my time almost exclusively to the study of railroad lines.

Q. Will you please describe the Rock Island system?

A. The map, which has been marked Exhibit H-99 for identification, shows the Rock Island system in black. As shown by the Rock Island's 1954 annual report, Account 531, we have 7,895 miles of railroad. The Rock Island's eastern terminus is in Chicago. Its line then runs west to the Mississippi at the Tri-Cities of Rock Island, Moline, and Davenport, and down to Peoria, Illinois. We have very heavy mileage in Iowa with lines out to South Dakota and up to the Twin Cities of Minneapolis and St. Paul. Then we have the Denver line running west through Des Moines, Iowa, Omaha and Lincoln, Nebraska, to Denver and Colorado Springs, Colorado. We, of course, are one of the principal carriers serving the Kansas City gateway with

lines running through Kansas City and to the southwest where we tie in with the Southern Pacific at Santa Rosa, New Mexico to form a transcontinental line to the West Coast. The other main direction of our railroad is to the South through Oklahoma to Fort Worth and Dallas, Texas, and on down to Houston, Texas City, and Galveston, Texas. [fol. 1803] You will note that we also have a line through Oklahoma City to Memphis, Tennessee, and a line down from Little Rock, Arkansas, through Alexandria, Louisiana, to Eunice, Louisiana. As such, the Rock Island serves the vast middlewest plains territory from Lake Michigan and the Chicago gateway through the Kansas City gateway to the Rocky Mountains on the West, and from the Twin Cities on the north to the Texas Gulf Coast on the South. The Rock Island serves most of the important agricultural areas in the territory traversed and most of the principal cities.

Q. What is the nature of the traffic handled by the Rock Island?

A. The Central States produce for the company a heavy diversified tonnage of which the following commodities comprise the principal volume: Wheat and coarse grains, soy beans, flour, grain and cereal products, meat and packing house products, and products of industrial plants, such as cement, iron and steel articles, agricultural implements, road-building equipment, brick, glass, sugar, syrup, and starches, industrial sand, liquor and beverages, automobiles and rubber tires, coal, livestock, dairy products and vegetables are also transported in volume. The southwestern states likewise yield heavy volume business such as wheat, grain products, cotton, cotton-oil and products, livestock, lumber, petroleum, petroleum products, liquefied petroleum gas, helium gas, carbon black, bauxite ore, aluminum and alumina, paper, iron and steel including pipe, chemicals, [fol. 1804] barites, salt, fertilizer, and anhydrous ammonia, sulphate of ammonia, rice, sugar, and vegetables.

Q. What is the nature of the gateways and connections served by the Rock Island?

A. The company serves important gateways on the east at Chicago, Joliet, and Peoria, Illinois; St. Louis, Missouri; Memphis, Tennessee; and on the west at Denver and Colo-

rado Springs, Colorado; and Tucumcari, New Mexico; and on the north the Twin Cities of St. Paul and Minneapolis, Minnesota. I might also mention the important gateways such as Fort Worth, Dallas, and Amarillo, Texas, which are to the south. The Rock Island has over 200 interchange points with connecting lines, enabling competitive participation in the movement of business requiring joint line hauls. The location of our railway and the gateways which it serves permits us to participate; in volume traffic such as citrus and deciduous fruits, vegetables, canned goods, and forest products moving from the Pacific Coast states to destinations within the Middlewest and beyond through the eastern gateways. This position also permits the company to participate in the movement of traffic, largely manufactured goods, to the West Coast area.

Q. Will you please tell us something of the history of the Rock Island?

A. The Rock Island was a pioneer in railroad construction in this western territory. The Rock Island's first ser- [fol. 1805] vice was inaugurated with the completion of its line extending from Chicago westward to Joliet in 1852. Pushing westward across Illinois, the railroad reached the towns of Ottawa, La Salle, and Peru in the year 1853. In the year 1854, service was extended to Peoria and on west to the Mississippi at Rock Island, Illinois. The service to Peoria, Illinois was provided by the Peoria and Bureau Valley Railroad Company, incorporated in the year 1853, by the construction of a line southward from Bureau, Illinois. The Rock Island holds a 999 year lease on this railroad and owns more than 95 per cent of its stock. With the completion of service to Rock Island, Illinois, in the year 1854, extensions were made from time to time westward. The Rock Island reached Council Bluffs, Iowa, in 1869; Leavenworth, Kansas, in 1870; and Atchison, Kansas, in 1871. It got into Kansas City, Missouri, in 1879 through a contract with the Hannibal & St. Joseph Railroad starting at Cameron, Missouri. We were in St. Joseph, Missouri in 1886. Further extensions were made until the Rock Island system arrived at its present form.

Q. Are you familiar with the proceeding now before this Commission?

A. Yes.

Q. Are you familiar with the Toledo, Peoria & Western Railroad?

A. Yes.

Q. What is the basis of your knowledge of the TP&W? [fol. 1806] A. As I have said, I was called back by the Rock Island specifically to undertake a study of the TP&W and the effect this acquisition might have upon the Rock Island. One of the first things I did was to go over the TP&W from one end to the other on an inspection trip. This I did last summer. I began at the eastern terminus, Effner, Indiana, and by automobile rode as close as I could get to the right of way at all points and visited every station shown by the TP&W on its timecard. On the east end, Effner, Indiana to Peoria, Illinois, the highway in most places is quite close to the railroad so that I was actually able to see not only the stations, but also a good deal of the right of way. From Peoria west the line is through rougher territory and for the most part there are no parallel highways so that my inspection was for the most part limited to the stations or towns served by the TP&W. I wanted to be personally familiar with the territory served by the TP&W, the nature of the industries and towns it served, as well as have a concrete idea of its interchange facilities. The rest of my investigation was made from books and records, either of our own company or of I.C.C. reports or various publications, such as Poor's. I also had access, among other things, to the report that was made on September 28, 1943 to the Honorable Joseph B. Eastman, Director—Office of Defense Transportation, and to V. V. Boatner, Esquire, Director, Division of Railway Transport, Office of Defense Transportation, by Mr. John W. Barringer, reporting on [fol. 1807] the TP&W, of which he had been federal manager during 1942. I, of course, have also known something of the TP&W and its activities in a general way throughout the years of my railroad work, as it is a railroad with which we have had connections during all that time. In fact, it is probably that our connection with the TP&W

at Peoria was made in 1859, when the TP&W came to Peoria, and at Keokuk in 1878 when the Rock Island came in. The map to which I have already referred, Exhibit H-99 for identification, which is the map of the United States, showing, among other things, the Rock Island system, also shows by a red line the location of the TP&W. As can be seen, it is almost a straight east and west railroad going across the middle of Illinois from Effner, Indiana, to Keokuk, Iowa, and having connections, as I have said, with the Rock Island at Peoria in its center and Keokuk at its extreme west end. The TP&W began its present independent existence as a result of the approval by the Commission of the acquisition of its properties by George P. McNear in 1927. This acquisition is reported in the Commission's bound volume, "Acquisition by TP&W Railroad," 124 I.C.C. 181, and was decided March 15, 1927. My exhibit H-100 is a copy of this decision. This same decision gives you something of the history of the railroad. The old corporation was set up in 1887 to take over a prior corporation, the Toledo, Peoria & Western Railroad Company. It was shown to have been in receivership from July 2, 1917, until it was sold on [fol. 1808] April 30, 1926, to George P. McNear, Jr., a minority bondholder, for $1,300,000. This same decision on page 187 showed that the old company which was in receivership from 1917 to 1926, when it was sold at the bankruptcy sale, was "controlled jointly by the Pennsylvania Company and the Chicago, Burlington & Quincy Railroad through stock ownership." Since 1927, it has been operated as a neutral and independent railroad and was under the management of Mr. McNear himself until his death in 1947. After a short interim, Mr. Coulter came into the presidency in that same year and, of course, he is still its president. The TP&W has relatively little local business and is primarily an overhead railroad serving 16 connections in the transportation of through traffic. This can be demonstrated in two ways: First by viewing the property as I did you can visually see that there is very little industry on it. It does originate a good deal of grain as it has a good number of elevators along its line. And the other way is through looking at maps

and records. My exhibit marked H-101 for identification is a detail map which was drawn to show the railroad situation in the territory through which the TP&W runs. On this map the TP&W is shown in red. The dots along the TP&W indicate its 16 points of interchange with its various railroad connections. The TP&W itself has asserted its importance as an overhead railroad and that its importance lies in its 16 connections and this type of service. My exhibit marked H-102 for identification, is [fol. 1809] a two-page ad taken from pages 50 and 51 of the Traffic World for August 20, 1955. You will note that the caption across the top of the ad reads: "Connections are a vital advantage of transcontinental service," and then in regular print to the right: "Being able to divert cars to any part of the continent is a requisite of transcontinental service. TP&W makes this possible by direct connections with 16 railroads—more than you would expect to find in a length of track many times longer than the 239 miles across Illinois." On the left-hand side you will note it shows the symbols of the 16 railroads with which the TP&W interchanges traffic. I was present during the proceedings in Finance Docket 18752, which concern the acquisition of the Illinois Terminal properties by 11 railroads, including the Rock Island, and in that case E. H. Gaiennie, then vice-president-traffic of the TP&W, testified, as shown at page 493 of the record, that "roughly 75 per cent" of the traffic of the TP&W was through overhead business and only 25 per cent originated or terminated on line. As I have said, since 1927 the TP&W has been operating as an independent and neutral railroad with joint working arrangements with all its connections. There has existed a cooperative and friendly relationship throughout these years between the TP&W and the Rock Island and a substantial volume of road haul traffic has been interchanged annually between these two companies at Keokuk, Iowa, and Peoria, Illinois. The yearly average interchange for both points combined [fol. 1810] during the five-year period, 1950 to 1954, was 11,509 carloads, of which volume the TP&W delivered to the Rock Island 4,445 carloads and received from the Rock Island 7,064 carloads. Exhibit H-103 of ten

pages, of which the first page is a summary, shows the 1954 direct interchange by types of movement via Keokuk, Iowa, and Peoria, Illinois, separately. The total interchange at both points in that year amounted to 10,608 cars. This traffic did not all originate or terminate on the TP&W as 9,396 cars moved in "bridge" service over the TP&W via TPUW junctions with other railroads. As sheet 1 of this exhibit indicates by reference mark, the various routes by which these cars moved is shown on sheets following sheet 1. As stated, the figures in this exhibit are only those cars which were directly interchanged at Keokuk and Peoria. Analysis of all the 1954 joint Rock Island-TP&W traffic shows that in addition to the 9,396 cars directly interchanged, to which I have already referred, the TP&W interchanges a total of 1,312 cars with lines performing intermediate road haul service to or from the Rock Island; that is, these were cars which showed both Rock Island and TP&W in their routing, but were not interchanged directly between these two lines. Exhibit H-104 of nine pages shows the separate routes via which these 1,312 cars moved. The sum of these two figures is significant in two respects: They are significant from the mere size in that an interchange of 10,708 carloads is a material number of cars in any circumstances. Secondly, it indicates that the TP&W is [fol. 1811] a friendly and independent railroad in that this substantial volume of business was interchanged via the Rock Island without there being any evidence of undue preference for or against this connection for any other. Incidentally, if the figures of my Exhibit H-103 should be compared with the interchange exhibit introduced by the TP&W in Finance Docket 18752, it will be seen that my figures are slightly smaller than those shown by the TP&W for the same interchange. This is due to the fact that the TP&W counted switch cars whereas I only counted road-haul cars.

From my studies of the TP&W, which included not only the interchange with the Rock Island, but with all other railroads with which it connects, it appears that the natural function of the TP&W is that of a neutral

and independent bridge line working all 16 of its connections to afford the maximum opportunity to the shipping public in the selection of transportation routes, just as the TP&W itself has emphasized in its advertising, an example of which I have given as my Exhibit H-102.

Q. Why is the Rock Island interested in the proposal now before the Commission?

A. If you will refer to my Exhibit H-99, on that map you will see the Rock Island in the large black line and its trans-continental connection, the Southern Pacific, on to California from Santa Rosa, New Mexico, in a slightly [fol. 1812] smaller black line. The Santa Fe system is detailed in green. The Santa Fe, of course, is a larger system than the Rock Island, and except for our northern lines and our line into St. Louis and, of course, the line into Memphis, the Santa Fe parallels and overlaps the Rock Island service throughout its entire length. Between Chicago and Kansas City the short line mileage of the Santa Fe, with which the Rock Island competes, shows very graphically. Then west of the Missouri River on down throughout the entire southwestern portion of the Rock Island Railroad we compete not only at common points, but also for through traffic. And, of course, you will note that the same is true on the lines to the South from the Missouri River down through Texas to the Gulf. Furthermore, you will see that the Santa Fe has its own line of railroad all the way to the West Coast whereas the Rock Island system terminates at Denver, Colorado, and Santa Rosa, New Mexico, and must work through connections for the interchange of freight to or from the far West. This map also shows that the Rock Island and the Santa Fe are also very similarly situated in regard to the TP&W. There are two pertinent exceptions, however, one being that the Rock Island has a connection with the TP&W at Peoria, which the Santa Fe does not, and the other being that the Rock Island connection with the TP&W at Keokuk as against the Santa Fe's connection at Lomax affords the TP&W a longer haul and a greater division. In fact the Rock Island's connection at Keokuk affords the TP&W its maximum haul and division on traffic to and from the West.

[fol. 1813] Incidentally, while the Rock Island's connection with the TP&W is made with the TP&W's main line as shown from its annual report, and, as I have said, was effected in 1878, the TP&W did not have a connection with the Santa Fe until after the TP&W had made an application for it requesting approval for such a connection shortly after McNear obtained control, such authority being covered by the Commission's report in Construction by T.P.&W. R.R., 124 I.C.C. 278, having been submitted on March 16, 1927, and decided April 7, 1927. A copy of this report and order is reproduced as my Exhibit H-105. If you will look at this map, my Exhibit H-99, you will see that the situation of the Santa Fe and Rock Island is substantially the same both in regard to competition with the TP&W at Chicago and Joliet Gateways versus traffic which may move over the TP&W through Effner, Indiana, and for business as between themselves which may be interchanged with the TP&W at Keokuk or Lomax, as the case may be. Because of the competition which exists between the Santa Fe and the Rock Island, and because their relationship and the opportunity for the movement of traffic through the TP&W connections is substantially the same, the Rock Island is greatly concerned by the application which is now before the Commission. My studies indicate that almost three million dollars annually of Rock Island revenue is vulnerable to diversion if this application is approved without the inclusion of the Rock Island as an equal par-[fol. 1814] ticipant. The exhibits which I will now describe demonstrate the traffic which is vulnerable and which totals the three million dollars I have referred to. My Exhibit H-106 of sixty pages, identified with an "S" at the top of the first page covers traffic handled jointly by the Rock Island and the TP&W. This covers the traffic I have previously referred to, which 1954 total is included in the 9,306 cars interchanged directly and 1,312 cars interchanged through connecting carriers. Of course, it does not cover all of these cars; in fact the study relates to 6,358 cars and shows a total of $1,048,760.01 of revenue. The first two pages are summary sheets, the detail of which is shown in the following 58 sheets. I

have broken this portion of my study into ten groupings, each group covering a particular type of traffic. Along the left-hand column on the summary sheet a letter designation is given. In the center is a brief description of the type of movement covered in the group and on the right hand side is shown the number of cars in that particular group and on the extreme right, the revenue derived. In regard to the revenue, it should be understood that my figures show only the Rock Island division of the gross revenue. This exhibit was made up by going to the abstracts of the shipments in the Accounting Department. You will note on the succeeding pages the detail for the several groups is kept in a unit relating to its particular group. The detail shows the origin, destination, commodity, the number of cars in that particular category, [fol. 1815] and the Rock Island revenue. All of the traffic covered by this exhibit is susceptible to loss by the Rock Island to the Santa Fe since it is all competitive with the Santa Fe system. Let us take the third sheet, for example, which is a part of the detail of Group A covering traffic which moved from TP&W origins to Rock Island destinations, which were destinations also reached by the Santa Fe system. The first line covers two cars which moved from Canton, Illinois, to Kansas City, Missouri. The movement was Canton to Keokuk via TP&W, Keokuk to Kansas City via Rock Island. I have shown this as susceptible to loss because it could be moved TP&W to Lomax, although by this connection it gets a smaller division, Santa Fe, Lomax to Kansas City. Similarly, all of the other shipments in this group could move by either the Santa Fe or the Rock Island in connection with the TP&W. The second group, bearing the designation "B", covers movements from TP&W origins to destinations on Rock Island connecting lines, where the destination or junction points are also reached by the Santa Fe system. Again, referring to the detail on this, which is shown on the fourth page under the designation "B" in the upper right-hand corner, take the first shipment which originated at Cruger, Illinois, a point on the TP&W just east of Peoria and destined to Velasco, Texas. This moved TP&W, Cruger to Keokuk; Rock Island,

Keokuk to Kansas City, and then via a connection to Velasco, Texas. It could have moved Cruger, Illinois, to [fol. 1816] Lomax via TP&W and then Santa Fe, Lomax to Kansas City, a connection to Velasco, although the TP&W again would have gotten a smaller division. And so you can take each one of these ten groups of traffic and it can be seen that each group is a type of traffic for which a Santa Fe movement could be substituted for that of the Rock Island. On this exhibit, dates of shipment, waybill numbers, and car numbers are not shown. It can be determined, if necessary, by returning to the original waybills or their abstract, which would be in possession of both the TP&W and Rock Island accounting departments.

Q. Have your studies indicated that there is any other traffic which is in jeopardy if this application is approved in its present form without the inclusion of the Rock Island?

A. Yes. That relates to traffic to and from Peoria. The Rock Island was the first railroad to serve Peoria, Illinois, and for over 100 years by its investment in facilities there and general cooperation has aided the growth of that important city and its vicinity. The current value of the Rock Island properties in Peoria is approximately seven million dollars, which includes the value of the 47 miles of the Peoria and Bureau Valley Railroad extending from Bureau to Peoria. It includes the value of the Peoria Terminal and other facilities in the immediate Peoria vicinity and when I say "Peoria", I, of course, am not limiting myself to the corporate limits. However, I have not included the value of the RIP line, that is, the line [fol. 1817] which extends from Peoria to Rock Island through Orion and Colona. I have omitted that as that segment at the present time is not being used to any substantial extent for the handling of Peoria business, although, of course, it handles all of the local business in and out of Peoria, local to that line. The apprehension of the Rock Island regarding the loss of traffic and revenue should the Santa Fe and Pennsylvania succeed in their effort to alone control the TP&W Railroad is centered not only in the traffic which the Rock Island handles

jointly with the TP&W, but applies to traffic which the Rock Island handles into and out of Peoria via its own line of railroad. Incidentally, at this point I should like to make known that Peoria is served at the present time not only by the Rock Island and TP&W and Pennsylvania, but also by the Illinois Central, Nickel Plate, North Western, GM&O, Burlington, New York Central, Illinois Terminal, C&IM, M&StL, and the Santa Fe through its line to Pekin, which places it in the Peoria-Pekin industrial district, all of which has the same rate and through which service can be had through reciprocal switching. The traffic in mind is that which funnels through the Missouri River Gateways on the west or through Joliet and Chicago on the east. As stated previously, both the Rock Island and the Santa Fe serve these latter two points of Joliet and Chicago. They also serve the southwestern Missouri River cities of Kansas City, Missouri; Atchison, Kansas; and St. Joseph, Missouri. In addi-
[fol. 1818] tion, the Santa Fe reaches many common and junction points in the southwestern states which are also served by the Rock Island, and in the western states, such as Arizona and California, the Santa Fe serves many points which are also reached by the Southern Pacific Company with which the Rock Island works closely. All of this Peoria traffic to and from the East, as well as that from the west as referred to, is susceptible to loss by the Rock Island. I realize that in making this statement it may be questioned since the Santa Fe now serves the Peoria area in the manner I have previously related through its line into Pekin. The answer, as I see it, lies in the obvious conclusion that the Santa Fe in seeking jointly with the Pennsylvania authority to acquire the TP&W Railroad expects to improve its traffic opportunities and as Peoria, Illinois, is the most important city on the TP&W and possessing the greatest volume of traffic on the line, the Peoria area is the one place where the Santa Fe's expectations will be centered. At the present time, its line is indirect, coming down as it does from Ancona to Eureka, then by trackage rights over to Pekin Junction and thence down to Pekin over what is for the Santa Fe a very minor piece of railroad. In fact, I be-

lieve this entry into Pekin is as much an accident as any thing else inasmuch as my reading of the history of the Santa Fe indicates that when it decided to come east of Kansas City and get into Chicago in 1888, it did so in part by acquiring the Chicago & St. Louis Railway, which [fol. 1819] they were interested in, to provide a right of way into Chicago from the vicinity of Streator. The Chicago & St. Louis extended from Chicago to Pekin so, as I say, the Pekin entrance just happened to go along with the acquisition of the right of way which was used to get into Chicago. The Santa Fe today is not a strong competitor in Peoria. The origin of the Santa Fe's trackage into Pekin appears in "Steel Trails to Santa Fe", by Waters. On page 86, it is stated:

"If the Santa Fe were to enter Chicago, new tracks would have to lead the way. Strong hoped that the 'two streaks of rust' of the Chicago and St. Louis Railway could be purchased on favorable terms to provide an excellent right of way into Chicago from the vicinity of Streator. The C&SL extended from Chicago to Pekin, Illinois, hopefully en route to St. Louis. The venture had been launched in 1859 but did not float well. F. E. Hinckley, its most successful president, fought a hard but losing battle against creditors and competitors. The odds were too great, and the line deteriorated. When makeshift repairs rendered one part passable another section went bad. Hinckley was more than willing to talk terms with the Santa Fe. As early as October of 1886, a 'meeting of minds' had been reached, and actual sale occurred on December 15."

Consequently, since the Santa Fe apparently expects to improve its position, and if it is able to do so through its sole control with the Pennsylvania, a new competitive [fol. 1820] situation is created so that traffic which we presently enjoy may be lost. Apparently this is anticipated by more than ourselves. In the Peoria Journal Star on July 15, 1955, there appeared an editorial from which I read the following:

"All those who desire to see the sale become an actuality and the T. P. & W. become the link making possible fast intercontinental freight service should communicate im-

mediately with Governor Stratton and the Illinois Commerce Commission at Springfield."

Again, on December 30, 1955, in the Peoria Journal Star, in an editorial there was the following:

"The advantage to Peoria and all shippers on the T. P. & W. of being situated on such a transcontinental route are quite attractive."

In the Daily Gate City of Keokuk for Saturday, July 16, 1955, there was an editorial, which, among other things, said: "Huge trains will be speeding from East to West coasts and vice versa. * * * Passenger, as well as freight service should be enhanced."

All of this would seem to indicate that the Santa Fe anticipated an improvement of its competitive position in Peoria. It is one thing to have the Santa Fe competing through the indirect route that it now has, which is hardly a service route to the west from Peoria; another to be forced to compete with the Santa Fe in a more direct manner. Consequently, I feel that there is a large volume [fol. 1821] of Peoria business which is vulnerable to the Santa Fe, and to a lesser degree to the Pennsylvania, if this acquisition is approved. My Exhibit H-107, consisting of seven pages, including a summary page, shows the traffic which would be susceptible to diversion. The exhibit consists of a cover page which has the summary and shows the 1954 freight traffic in carloads, which the Rock Island handled as the road haul carrier from Peoria, Illinois, or to Peoria, Illinois, to or from points and junctions competitive with the Santa Fe system. These origins and destinations are segregated by stations. In the preparation of this exhibit I have not felt it necessary to burden the record with every origin or destination and exact commodity but have some of the details with me which may be inspected, and if that is not enough, the original waybills or abstract waybills can be examined. The study originated with the original or abstract waybills. This exhibit shows a total of 13,468 cars and $1,935,549.17 of Rock Island traffic susceptible to diversion. As in my previous exhibits the revenue shown is only the Rock Island revenue and not the gross revenue derived from

the shipments. In this study covered by my Exhibit H-107 which I have just referred to, I have included only the more direct competitive traffic. I have not included traffic where the Santa Fe might have been included in the routing in place of part of the Rock Island haul, but have taken traffic only where a direct competitive relationship [fol. 1822] existed, namely, an origin or destination or junction served by both the Rock Island and the Santa Fe. As in my previous exhibit, you will note that the summary is broken down into types of traffic. The first group covers a movement from Peoria to destinations on the Rock Island also reached by the Santa Fe System. Referring to the second page which covers the detail of these cars—in the left-hand column is shown the commodity grouping in which the traffic falls. For instance, the first item is Group I, that is to say, Products of Agriculture. The second column shows the destination; the third the number of cars and the destination was Chicago, Illinois, with 825 cars being involved. Accordingly, this means that there were 825 cars involved which had Group I commodities; namely, Products of Agriculture which produced $17,226.81 for the Rock Island which could have been routed Peoria to Chicago via the Santa Fe in place of the Rock Island. The second group is the reverse of the First Group; namely, from origins on the Rock Island which origins are also reached by the Santa Fe, with destination at Peoria. As with the first group the Santa Fe could have been substituted for the Rock Island and the haul. The third Group, which is lettered Group CC, covers shipments from Peoria which moved via the Rock Island and were interchanged by the Rock Island to connecting lines, either at a junction point also served by the Santa Fe, or to a destination point which was served by the Santa Fe. Referring to the page labeled "CC" which gives [fol. 1823] the detail, the first item shows that there were 53 cars having Group V Commodities; namely, manufacturers and Miscellaneous which moved from Peoria via the Rock Island to Amarillo for destinations in California, Arizona, and New Mexico. Amarillo is a junction served also by the Santa Fe and, of course, in addition, some of the destination points may also have been served

by the Santa Fe. As a matter of fact, the Santa Fe is our connection at Amarillo which handles movements into California, Arizona, and New Mexico. It is quite apparent that the Santa Fe could have been substituted for the entire movement on these 53 cars. The next group, as shown by the summary page and lettered "DD", covers shipments just in the reverse of what I have described. While it happened all the shipments which I have mentioned have been westbound movements, it is to be noted from the exhibit there were also several thousands of shipments moving to the east that would have been vulnerable.

Q. What then have you calculated to be the Rock Island traffic which is susceptible to diversion should this application be approved as requested by the Santa Fe and Pennsylvania?

A. My traffic exhibit, Exhibit H-106, covered joint Rock Island-TP&W traffic and involved 6,358 cars and $1,048,768.01 of revenue. My traffic exhibit, Exhibit H-104, covering traffic to and from Peoria covers 13,468 cars and $1,935,549.17, or a total of 29,826 cars producing $2,984,309.18.

[fol. 1824] Q. Do you believe there is any substantial possibility of this acquisition, as proposed, creating any additional traffic or providing better service than that now available?

A. No.

Q. Why?

A. This is not a case of a railroad being built into a new and undeveloped territory, where new traffic is to be tapped such as in a new coal field, a new lumbering region, or a line into a presently undeveloped area. The TP&W is presently operating across Illinois and through Peoria, and its plant will not be changed as a result of this acquisition. Accordingly, traffic-wise, there will be nothing to be tapped or brought in that is not already available. That is to say, no new traffic will be generated and the only thing that can happen is that the volume of the traffic presently available and moving via one carrier will be diverted to another or diluted and moved via several carriers. There will be no new routes made available as Peoria is presently an open

Gateway. The connections with the Santa Fe at Lomax and Effner with the Pennsylvania are available today without restriction. Accordingly, there can be no creation of additional routes by this acquisition in that regard. So far as the shipping public is concerned, there will be no service available as a result of this acquisition which could not be made available at the present time. From my inspection of the TP&W property it appears to be in a good operating [fol. 1825] condition and capable of providing all the service which is required by the shippers and the connections which the TP&W serves. This comes back again to the point that I made earlier that the function of the TP&W is as a direct "overhead" or "bridge" route, serving 16 connecting railroads as an independent and neutral line. Without regard to the attitude of the Santa Fe and Pennsylvania, it is inevitable that the neutrality of the TP&W will be impaired by the very existence of the purchase itself. Irrespective of the manner of operation, shippers are inclined to look upon the line of a controlled company as part of the road which exercises control, and this will have a very direct effect on their choice of routing.

Q. Do you believe that any conditions which the Commission might impose upon applicants would be an effective safeguard as against the diversions concerning which you have testified?

A. No.

Q. Why?

A. The TP&W solicitors now know that they are working solely for the interest of the TP&W. They know that both Rock Island and Santa Fe compete between the two gateways of Keokuk and Lomax. If this acquisition were approved in its present form, it is inconceivable TP&W solicitors, knowing that control of the TP&W would be half in the Pennsylvania and half in the Santa Fe, would solicit against its two owning lines. Wherever there is a choice he would favor the owning line as against other carriers [fol. 1826] who otherwise might participate in the traffic. This feeling would undoubtedly prevail through the whole TP&W organization. An investment of this size, which would be made by these two carriers, would effect control and would displace the neutrality of the TP&W even though

it is left as a separate corporation with separate officers and staff and without any undue interference by the new owners. This very minimum of destruction of neutrality would be sufficient to cause a very noticeable change in position.

Q. Mr. Davidson, have you prepared a mileage exhibit showing some of the principal rail mileages which involve the gateways and lines in this proceeding?

A. Yes. My exhibit marked H-108 for identification has set up a number of different mileages which may be of assistance to the Commission and to the parties in this proceeding. For instance, it enables you to see the competitive relationship of the Santa Fe and Rock Island between Kansas City and Chicago, and the position of the TP&W.

Q. Mr. Davidson, to supplement the testimony you have already given, do you have the interchange with the TP&W with the latest available figures?

A. Yes. For the first ten months of 1955, at Keokuk, the Rock Island delivered to the TP&W 2262 cars and received 2857. At Peoria, the Rock Island delivered 3156 cars and received 1297. The November and December figures were not available at the time these figures were [fol. 1827] obtained.

Q. Mr. Davidson, have you checked the annual reports of the Rock Island and the Santa Fe to ascertain a comparative gross and net revenue of these two railroads?

A. Yes. My exhibit marked H-109 for identification shows the net and gross of these two railroads for the last five years. This shows the breakdown between income derived from railway operations and other income.

Q. Mr. Davidson, in addition to your investigation and studies showing the relationship to the Rock Island of the proceedings now before the Commission concerning the Santa Fe and Pennsylvania acquisition, have you made similar studies concerning the request of the M&StL to acquire sole control of the TP&W?

A. I have.

Q. Would you describe the relationship of the M&StL to the TP&W versus that of the Rock Island?

A. First of all, I would like to refer to my exhibit marked H-110 for identification, which is a map of the United States

showing on it in black the lines of the Rock Island, in red the lines of the TP&W, in purple the lines of the M&StL, and in brown the lines of the Chicago, Indianapolis and Louisville Railway. From this map you can see the relative position of these several railways. While the Rock Island has a connection with the TP&W, at its extreme west end at Keokuk, and again in its middle at Peoria, the M&StL has but one connection, namely, at Peoria. While the map [fol. 1828] which I have just referred to, my exhibit marked H-110 for identification, permits a general over-all check of the M&StL, my exhibit marked H-101 for identification, being the large detail map, permits a more intimate view of the M&StL and TP&W inter-relation and that of the Rock Island in the immediate territory, particularly of the M&StL and TP&W. Since Peoria, Illinois, is the eastern terminus of the M&StL, and since the principal volume of traffic which the TP&W handles is that which passes over its line moving between, on the one hand, points and places east of the Indiana-Illinois State Line and the Ohio and Mississippi Rivers, and on the other, the great western empire west of the Mississippi River, obviously the interchange of traffic between the M&StL and the TP&W complements the TP&W for only that portion of the TP&W east of Peoria. On the other hand, the Rock Island-TP&W interchange complements the TP&W not only for the haul east of Peoria, but also east of Keokuk, and on freight interchanged with the Rock Island at Keokuk, the TP&W gets its maximum haul and revenue. The M&StL not only has no connection with the TP&W west of Peoria, but it is also in competition with it for movement to and from the west. West of Peoria the M&StL obtains its long haul on traffic from the northwest moving via the Twin Cities, M&StL to Peoria and thence TP&W for connections to the east, necessarily bypassing that portion of the TP&W from Keokuk to Peoria. On traffic moving from the central [fol. 1829] west and southwest, which might come either from the Pacific Coast, Texas, or the southwest and move through the Kansas City gateway, or the Omaha gateway, the long haul of the M&StL would be through its various connections as may be seen from my exhibit marked H-101 for identification, the Wabash at Albia, Iowa, which is just

west of Ottumway and southeast of Des Moines, and at Tara, Iowa, with the Illinois Central, Tara is northwest of Des Moines and immediately west of Fort Dodge. On the latter connection, traffic moving either through Omaha or Sioux City could be interchanged. It is interesting to note that in the Railway Guide the M&StL system map shows its connection with the Wabash and with the Illinois Central in a pronounced way which is generally used to indicate preferred connections. As I have said, the reason for this is apparent as it gives the M&StL its long haul on traffic from or to western origins or destinations. If the M&StL is to participate in the movement to and from this territory, it must compete with the TP&W to the exclusion of its western half from Peoria to Keokuk. As may be seen from these same maps, the Rock Island is in competition with the M&StL. The Rock Island has its own line of railroad from the Twin Cities of Minneapolis and St. Paul to Peoria. These maps show that for large segments of this route the M&StL and Rock Island are parallel. The Rock Island then is in competition with the M&StL on all traffic originating in the territory, Twin Cities to and [fol. 1830] including Peoria through which their lines operate, and, in addition, they are in competition for all the traffic from the northwest which funnels through the Twin Cities gateway. These lines are in competition for traffic moving to and from the intermediate territory and for overhead traffic destined to the south and east, traffic which can move either through the Chicago gateway or such gateways as Joliet, Depue and Peoria. Of course, traffic in the reverse direction is also competitive. As I have previously indicated, the M&StL participates in traffic to the west and southwest through its connections. The Rock Island, of course, also is vitally interested in traffic from the west and southwest, either through its own line of railroad or through connections.

Q. Have you analyzed the Rock Island traffic to see what might be susceptible to diversion to the M&StL should it acquire sole control of the TP&W?

A. Yes.

Q. Would you please describe the results of your study?

A. I made a study of the 1954 joint traffic which the Rock Island handled with the TP&W and its connections and found the volume of business which moved over routes or from points and places competitive with the M&StL and which might be diverted should the TP&W be acquired by the M&StL. My exhibit marked M-111 for identification, which bears the letter "M" at the top, consists of 54 pages. The cover page and page 2 are summary pages showing [fol. 1831] in ten different groups ten different types of traffic which might be lost. In the following 52 pages is to be found the detail from which these summaries were drawn. Taking the first group, which is lettered "(A)", this shows that from TP&W origins to Rock Island destinations, where the destinations are also reached by the M&StL, I found 24 cars producing $4,456.16 of Rock Island revenue. Again, my exhibit shows only the Rock Island division and not the gross revenue derived from the traffic in question. On page 3 is shown the detail. For instance, the first entry covers one car which moved from Canton, Illinois, via the TP&W to Keokuk, and Rock Island to Des Moines, Iowa. This could have moved Canton, Illinois, to Peoria, Illinois, via the TP&W, M&StL-Peoria to Des Moines. Similarly, in all of the other groups covered by this exhibit you can reroute the traffic covered to show an M&StL rather than a Rock Island participation in the movement. From the summary on page 2 of this exhibit you will note that I have found there are 5,189 cars which moved in 1954 in joint service with the TP&W and which produced $914,383.74 of revenue for the Rock Island, which might be diverted from the Rock Island to the M&StL.

Q. Did you find any other traffic in your analysis of the Rock Island traffic which you determined might be susceptible to diversion.

A. Yes. I believe that there is traffic susceptible to diver- [fol. 1832] sion should the M&StL be successful not only as to points served jointly by the TP&W, but the Rock Island would also suffer the loss of traffic which is handled entirely by the Rock Island line today with no participation by the TP&W. The traffic I have in mind is that which on the one hand has an origin or destination at points:

(a) Reached by the M&StL which are also reached by the Rock Island; also

(b) On road haul connecting railroads beyond competitive junction points;

and on the other hand the vast territory embraced within the states east of Lake Michigan, Indiana-Illinois State Line and the Ohio and Mississippi Rivers and which funnels through the Chicago, Joliet, Depue, and Peoria gateways. There are numerous Iowa and Minnesota cities which are served both by the Rock Island and the M&StL and which in and of themselves are important from the traffic they produce or as points of interchange with other carriers. Of these interchange points, Minneapolis, Minnesota Transfer, and St. Paul are the important points representing natural gateways to and from the great northwest. While the M&StL presently reaches Peoria and engages in the interchange of traffic there with other railroads, there are other important gateways via which the Rock Island handles traffic to or from the east and south, namely: Chicago, Joliet, and Depue, Illinois, and of which Chicago [fol. 1833] is the greatest in importance. Acquisition by the M&StL of the TP&W would place the M&StL in a more favorable position to engage in competitive traffic than it is at the present time with its line terminating at Peoria. Since the M&StL then would reach eastern railroads at eastern Illinois junctions or at Effner, Indiana, the entire route and junctions being competitive with the Rock Island routes and junctions I have just referred to.

Q. Have you prepared any exhibits to cover this traffic?

A. Yes. The traffic covered by my foregoing general remarks is set forth in four exhibits. Each of these four exhibits covers a different type of traffic which moved via the Rock Island in 1954. I should say as a preliminary remark that my study is based on six months, the second and fourth quarters of 1954, and not all of the twelve months. I took the second and fourth quarters as being the most representative. My exhibit marked H-112 for identification, which bears the symbols "(ME)" at the top, covers traffic originating at points common to the Rock Island and the M&StL. The cover sheet is a summary and on the follow-

ing pages is shown the detail. Again, as in my previous exhibit, you can take each one of the shipments and cars which are shown to have moved and substitute an M&StL movement for a Rock Island movement. The possibility of diversion to the M&StL is enhanced by its sole acquisition of the TP&W. This exhibit shows a total of 6,866 cars, producing a total of $1,192,561.50 of traffic susceptible to [fol. 1834] diversion. My exhibit marked H-113 for identification, which bears the symbol letters "(MW)" at the top, covers the same groupings as the exhibit which I have just described, except that it is for traffic in the reverse direction, namely, westbound. It is made in the same way and on the same basis. It shows a total of 2,107 cars, producing a total of $410,347.68 susceptible to diversion.

My next exhibit, which bears the symbol "(M-EX)", H-114 covers traffic crossing over the Rock Island eastbound; in other words, bridge traffic. This exhibit was drawn in the same manner, namely, the first page is a summary with the detail on the following pages. As an example of the type of traffic involved refer to the first page of the detail on this exhibit and the first item which shows two cars of traffic which originated in Minnesota destined to Indiana, which moved over the Rock Island from Albert Lea to Chicago. An M&StL move might be substituted. The exhibit shows a total of 6,890 cars, producing $652,183.30 of revenue. My exhibit marked H-115 for identification, which bears the symbols "(M-WX)" at the top, covers the same groups of traffic as the exhibit I have just referred to only in the reverse direction, namely, westbound. It is constructed in the same manner and shows a total of 2,931 cars, producing $373,343.48 of revenue for the Rock Island.

These last four exhibits cover a total of 18,794 cars and $2,628,435.96. Since these four exhibits are only from an [fol. 1835] actual six months, to project them to cover the entire year of 1954 it would mean doubling the cars to 37,588 and the revenue to $5,256,871.92. Accordingly, on the basis of my complete study of the 1954 business, the freight revenue susceptible to loss annually by the Rock Island by acquisition of the TP&W by the M&StL is as follows:

	CARS	R.I. REVENUE
Joint TP&W-Rock Island Traffic	5,189	$ 914,383.74
Rock Island traffic to or from points competitive with the M&StL or via competitive junctions, from or to eastern and southern territories	37,588	5,256,871.92
	42,777	$6,171,255.66

Q. Mr. Davidson, why did you take the year 1954 in making your studies?

A. It was a recent year and I believe that 1954 is a conservative year on which to base studies of this kind. The traffic consists should have been substantially normal as I am not aware of any particular distortions which would have been made by unusual conditions such as war, or any other abnormality which would cause traffic to flow in other than the pattern which we would expect to be normal year after year. Furthermore, it was a year in which the railroads had a smaller volume than that experienced in either 1953 or 1955 and consequently, it is a more conservative year. It would mean, if anything, my figures are understated. The present traffic moving would indicate [fol. 1836] that for the foreseeable future, traffic of like volume or greater might be anticipated, but what is more important for this case, the commodities, channels, and traffic patterns experienced in 1954 are representative.

Q. These statements which you have just made apply equally to all of your exhibits, both as to the M&StL and the Santa Fe, do they not?

A. Yes, sir.

Q. Will the M&StL by virtue of its proposed acquisition of the TP&W create any new traffic route or service not presently available?

A. No. The routes for the movement of traffic and the service which might be performed as a result of the application are all presently available.

Q. Will the proposed acquisition generate any new traffic?

A. No, I cannot see that it will as all of the facilities are presently available and no new territories are to be opened up such as new timberlands or new mines, nor will there be the creation of any new industrial areas. The proposed acquisition will generate no new traffic. Consequently, the only effect of the proposed acquisition can be to divert traffic presently available to the detriment of carriers such as the Rock Island.

Q. Mr. Davidson, in the Pennsylvania's Exhibit H-18, on page 1, are figures, which are set out again in the map on page 4, which show the interchange between the Rock Island [fol. 1837] and the TP&W both at Keokuk and Peoria. This study covers the twelve months ended June 30, 1955. In your own testimony you have similar figures for your study period of 1954, haven't you?

A. Yes, they are set out in Exhibit H-103. On the cover page of this exhibit these figures are shown. For Peoria there was a total of 1,335 cars received by the Rock Island from the TP&W, and 3,555 cars which the Rock Island delivered to the TP&W.

Q. Now as to these cars which were interchanged at Peoria, have you analyzed these figures to determine how many of them can be said to be cars that moved in competition with the TP&W?

A. Yes. I considered as competitive any car which the Rock Island interchanged with the TP&W at Peoria which moved from or to points served by both the Santa Fe and Rock Island Missouri River or west, including Denver and Pueblo (which is not a Rock Island point), or which moved via Kansas City with any railroad beyond Kansas City from or to points in Kansas, Oklahoma, Arkansas, Texas, or Louisiana, including Rock Island local points, or from or to points in the States of New Mexico, Arizona, and California.

Q. How many such cars did you find?

A. Of the 3,555 cars which we delivered to the TP&W at Peoria, 319, or 9 per cent, came from the territory I have just described. Of the 1,335 cars which the TP&W delivered to us at Peoria, 63, or 4.6 per cent moved to the territory which I have just described.

[fol. 1838] Q. Mr. Davidson, in yesterday's cross-examination of Mr. Foulks, were you present in the hearing room?

A. I was, yes.

Q. And have you had an opportunity to look at the transcript since then?

A. I did this morning.

Q. In response to Mr. Wheeler's questions he gave some mileages from the Twin Cities via Keokuk and via Bureau to Peoria.

A. He gave part of the mileage from Minneapolis to Keokuk which was 448 or 450 miles. He did not include the Keokuk to Peoria mileage of 113 miles. The sum of the two—I am mis-stating, let me start again.

The mileage from Minneapolis to Peoria which he gave via Bureau was 448 to 450 miles. He gave from Minneapolis to Keokuk via Des Moines, a distance of 410 miles. He did not include from Keokuk to Peoria the 113 miles, which would have made the through mileage via Keokuk 523 miles.

Q. And then the responses he gave to Mr. Wheeler were in error because of the failure to include the TP&W mileage and only to state the Rock Island?

A. That is correct. Mr. Wheeler asked him if the mileage, the route via Cedar Rapids and Bureau was circuitous, which was not the fact.

Q. With the additional mileage, then, the Keokuk route is the circuitous route?

[fol. 1839] A. That is right.

Q. Just for a matter of making the record clear, Mr. Davidson, does the TP&W have its own tracks through Peoria on its route across the State of Illinois?

A. As far as I know, except for the distance from Hollis to a point where they connect with the Burlington, that is, to the Burlington tracks, East Peoria Line. They use the Rock Island or the PT, rather from Hollis Junction to Iowa Junction, a distance of approximately five miles.

Q. So then for five miles they use Rock Island tracks rather than their own?

A. That's right.

Q. What is the PT?

A. Peoria Terminal.

A. That is a wholly owned switching subsidiary of the Rock Island road.

Mr. Cassell: Subject to cross-examination I offer Exhibits 99 through 116, inclusive, and tender the witness for cross-examination.

Exam. Albus: Cross-examination, please.

Mr. Thomas.

Cross examination.

By Mr. Thomas:

Q. Mr. Davidson, on page 12 of your prepared statement you refer to the exhibit introduced by the TP&W in Finance Docket 18752.

[fol. 1840] A. Yes.

Q. Do you know the number of that exhibit in that docket?

A. I think it was H-52.

Mr. Cassell: Wasn't that introduced in this proceeding by Mr. Witt?

The Witness: Yes, Mr. Witt introduced that, I believe.

Mr. Cassell: It is now in evidence in this case.

By Mr. Thomas:

Q. Mr. Davidson, are you familiar with the testimony of Mr. Foulks that Keokuk is the service route, the Keokuk branch from Eldon to Keokuk is the service route for Rock Island interchange with the TP&W on traffic moving through Denver and Kansas City?

A. As I remember his answer, he gave that as traffic flowing through principally Kansas City gateway.

Q. Have you seen a copy of his prepared statement?

A. I don't believe I have.

Mr. Cassell: Did you hear him testify?

The Witness: I heard him testify.

Mr. Thomas: Did he change that, Mr. Cassell?

Mr. Cassell: Sir?

Mr. Thomas: Did he change the language in his prepared statement when he read it?

Mr. Cassell: I don't know. I was just helping you out.

By Mr. Thomas:

Q. Did you hear Mr. Jenks' testimony?

A. I did, sir.

[fol. 1841] Q. On that same subject?

A. Yes.

Q. And didn't he say that Keokuk was the service route on traffic from the West?

A. I believe he did.

Q. And it is your understanding that Mr. Foulks confined himself to Kansas City, didn't mention Denver?

A. He may have mentioned Denver but I think he had reference particularly to the Kansas City gateway as the service route. He mentioned the instructions which had been placed at Kansas City for unrouted business. He may have included the Denver gateway in his comments but I didn't so understand it.

Q. Isn't there a substantial volume of traffic moving on the Rock Island through Kansas City and through Denver which is interchanged with the TP&W at Peoria as shown by your exhibits?

A. Not a great deal of business through Kansas City. There is some business through the Omaha gateway that is interchanged at Peoria. As I remember it, the traffic through the Kansas City gateway interchanged via Peoria is approximately nine per cent, a small number of cars relatively.

Q. You show on page CCC of your Exhibit H-103 down near the middle of the page 98 cars—

A. Yes.

Q. (Continuing) —moving Rock Island, Peoria, TP&W Farmdale.

A. That is correct.

[fol. 1842] Q. Don't a good number of those cars come through the Kansas City gateway?

A. I can't tell you as to those particular 98 immediately. I can furnish the information later if it is necessary.

Q. I think some of your other exhibits show that what I said is true, isn't that correct?

A. I know there is some business that moves through Kansas City that might move via Farmdale.

Q. What sort of a haul does the TP&W get when it interchanges traffic with you at Peoria and delivers it at Farmdale?

A. Rather a short haul.

Q. It is just across the river, isn't?

A. That is correct.

Q. Do you know why traffic is routed that way?

A. Probably because the lines that participated in the movement solicited it that way.

Q. One of those lines would be the Rock Island, would it not?

A. That is right. But I had reference more to the other lines.

Q. That wouldn't include the TP&W, would it?

A. It might.

Q. Do you know whether or not the TP&W has complained to the Rock Island about this traffic on which it gets a haul only between Peoria and Farmdale?

A. No, I do not.

Mr. Thomas: That is all.

[fol. 1843] Exam. Albus: Mr. Lucas.

Mr. Lucas: No questions, Mr. Examiner.

Exam. Albus: Mr. Wheeler, please.

Cross examination.

By Mr. Wheeler:

Q. Mr. Davidson, refer for a moment to page 34 of your testimony, isn't all the traffic there, the $6,171,000 of traffic that you refer to there as being susceptible to loss to the Rock Island susceptible to loss to it right now?

A. That is true. The first group $914,000 was traffic which was obtained for the Rock Island by the Toledo, Peoria and Western solicitors. We did not solicit the traffic that way. We solicited for a long haul. The balance

of the traffic and the revenues shown pending there which is traffic to or from points which are competitive between the M&StL and the Rock Island, and we believe that it is all susceptible to loss, based upon the statements which have been made in the record by Mr. Nelson that they propose to solicit traffic away from Chicago and the Minneapolis gateway and that the Rock Island would be one of the railroads from which they expected to get the traffic.

Furthermore, the soliciting points of the M&StL are in very good standing in my opinion to the public evidence by their success of the railroad since they came out of receivership some years ago.

Q. Mr. Davidson, just so there will be no doubt, I believe [fol. 1844] you answered, I want to make sure of this, that all of that traffic is susceptible to loss by the Rock Island at the present time.

A. It is all competitive, and consequently is subject to loss.

Q. Mr. Davidson, there has been a good deal of testimony of record by the various traffic witnesses who have appeared in this case that the originating carrier has a great influence or is able to influence greatly the routing of traffic. Do you agree with that statement?

A. I think there is some foundation to it, yes.

Q. Would you say that the terminating carrier similarly had an advantage with respect to the routing of traffic over a carrier which did not terminate the traffic?

A. There is an advantage there, yes.

Q. You have referred to Newton, Iowa, in one of your exhibits.

A. That is right.

Q. I take it you regard that as a representative destination?

A. Well, it is a point that is competitive with the M&StL.

Q. It is a representative competitive point with the M&StL?

A. That is right.

Mr. Cassell: Mr. Davidson, will you keep your voice up so people can hear.

By Mr. Wheeler:

Q. Mr. Davidson, doesn't the Rock Island require the delivery of traffic destined for Newton to be given to the Rock Island—I am talking about traffic now originating in the East—given to it at or east of the Mississippi River, [fol. 1845] at or east of the Mississippi River interchange point?

A. It may be the case, I am not sure.

Q. You are not sure?

A. No, sir.

Q. Do you not know that that's the only basis upon which they will accept the traffic and apply the through rates?

A. I just said I wasn't sure.

Q. If that is a fact, wouldn't that affect the statements or affect your exhibits with respect to Newton and with respect to the traffic?

A. With respect to part of the revenue, yes.

Q. It would affect it with respect to all of those at Newton, would they not?

A. I say partly.

Q. And points similarly situated?

A. I don't know of any such points.

Q. Mr. Davidson, you show a good bit of traffic interchanged with the MN&S Railroad.

A. Minneapolis North Field and Southern, yes.

Q. That traffic moves via the MN&S almost entirely on their solicitation rather than on Rock Island solicitation, does it not?

A. Well, I can't answer as to that. They are soliciting the business and we are maintaining an open policy with respect to the traffic routed that way, we don't work against [fol. 1846] it, so in a measure we are in favor of the route.

Q. You are in favor of your interchange with the Minnesota Transfer first of all, are you not?

A. Oh, yes, that is right.

Q. And the MN&S when it participates takes part of the revenue from you, does it not?

A. That is correct.

Q. Does the M&StL have a track connection with the MN&S?

A. I don't know, sir.

Q. You don't know?

A. No.

Q. You didn't ascertain that fact in connection with the preparation of these exhibits or your study?

A. No, I didn't. I included the traffic that moved via that route because it would clear through the Twin City gateway and therefor would be competitive to my idea just as much as the traffic moves through Minneapolis without the MN&S.

Q. You have included South St. Paul traffic, have you not, in your studies?

A. I believe there is some of that in there.

Q. Do you believe that the South St. Paul traffic is competitive from the standpoint of service over the M&StL as against the Rock Island?

A. Well, I wasn't looking at it exactly from that standpoint. The traffic was all competitive in a sense and there-
[fol. 1847] fore I included it.

Q. Do you know how much time would be incurred in switching from South St. Paul to the M&StL line?

A. No, I am not familiar.

Q. Do you know that the M&StL doesn't even try to solicit that traffic to South St. Paul?

A. No, I don't.

Q. Do you know that the M&StL doesn't try to solicit traffic via the MN&S?

A. I assume they do not.

Q. Mr. Davidson, do you regard traffic as being competitive if they are in a particular town if there is no reciprocal switching arrangement as between the Rock Island the M&StL?

A. No, I probably wouldn't. It all depends upon whether it is industry business or team track business.

Q. You included a substantial amount of team track business in your study?

A. I imagine so.

Q. Mr. Davidson, do you regard the M&StL as being competitive with the Rock Island service-wise on shipments from the East into Des Moines?

A. Oh, I think they are fairly competitive, yes.

Q. Do you regard 24 hours difference in time as being competitive?

A. Well, some traffic is not susceptible to as fast service [fol. 1848] as others.

Q. What kind of traffic would you refer to now as traffic that, as to which a 24-hour time differential would not eliminate the competition?

A. Of course I don't know that the difference is 24 hours, but the dead freight probably could, we will say, stand the 24-hour—

Q. You say could stand?

A. Could stand.

Q. In dead freight you refer to what?

A. Other than perishable.

Q. What is your service from Chicago to Des Moines?

A. Well, I am really not an operating man. I am not posted as to the individual schedules.

Q. Why do you tell your shippers your time schedule then when you solicit traffic?

A. Well, I am not soliciting traffic myself.

Q. What do your employees, or the employees of the Rock Island tell them with respect to that service?

A. I am not prepared to answer.

Q. Don't you know that the Rock Island advertises an overnight Rocket service from Chicago to Des Moines?

A. I know they have done so in the past.

Q. But you don't know whether that is true today?

A. No, I do not.

[fol. 1849] Q. Can the M&StL compete against that service, Mr. Davidson, in—

Mr. Cassell: Mr. Examiner, I object. We had an operating man on the stand yesterday who was thoroughly conversant with the operating facts. He tried to give the various schedules. He was available for cross-examination and all of these facts could have been brought out specifically through that witness, operating questions should have been asked an operating witness of that kind.

Exam. Albus: It seems to me this witness is doing all right. If he doesn't know he will tell him.

By Mr. Wheeler:

Q. Isn't service an important consideration in the solicitation of traffic, Mr. Davidson?

A. Yes, over-all picture I think the answer is yes.

Q. Isn't it the most important consideration?

A. Well, there is a difference of opinion about that. I am disposed to agree with you.

Q. Isn't it true, Mr. Davidson, that most of the industries in Des Moines are located on Rock Island tracks?

A. We have a goodly number there.

Q. In fact, isn't Des Moines known as a Rock Island town?

A. Well, we have been so classed, I believe.

Q. Mr. Davidson, are you familiar with the high switching charge which the Rock Island charges the M&StL at Estherville, Iowa?

[fol. 1850] A. I don't know what the measure of it is if that is what you mean.

Q. If there is a high switching charge at Estherville, Iowa, charge by the Rock Island, wouldn't that make the M&StL non competitive as to the industry located off its lines?

A. I wouldn't know. It would all depend upon whether the M&StL absorbs the switching charges.

Q. Well, if the switching charge is very high the M&StL would have no incentive to get that traffic or take that traffic, would it?

A. I don't know. If I were on the Rock Island a matter of switching charge wouldn't deter me from soliciting the freight.

Q. Even though you got the freight and absorbed the switching charge your traffic would be non compensatory?

A. Well, I wouldn't know that until I made some test myself.

Q. You wouldn't know until you knew what that switching charge was, would you?

A. No, I would not.

Q. Did you ascertain that switching charge in making your study?

A. I did not, no.

Q. Of the traffic that you originate, Mr. Davidson, what per cent goes through Chicago as compared to Peoria?

A. Are you talking about—

Q. (Interrupting) By Chicago I include Joliet and Depue, Illinois.

[fol. 1851] A. Are you talking about all the traffic which the Rock Island handles, is that what you mean?

Q. Through the two gateways, considering Chicago-Joliet and Depue as against Peoria, what is the relationship?

A. Oh, I would say the greatest portion moves through Chicago without a doubt.

Q. Now, doesn't your Exhibit 112 also show that traffic originating at points competitive, as you have used that term, between the Rock Island and the M&StL in the states of Iowa and Minnesota go primarily through Chicago, Joliet and Depue as against Peoria?

A. Well, that is the way the traffic moves but there is no requirement that the traffic must move that way. It could move through the Peoria gateway.

Q. Now, that is true despite the fact, Mr. Davidson, that there is better service via Peoria on the M&StL at the present time than there is via the Rock Island at Chicago?

A. I don't think that I understand your question. I heard what you said but I don't know what you led from.

Q. Well, let me ask this question. Isn't the service on the M&StL between the Twin Cities and Peoria faster than the service between the Twin Cities and Chicago via the Rock Island, speaking of freight service?

A. Again I am not familiar with the respective operating schedules of the two lines.

[fol. 1852] Q. Turning to page 17 of your testimony, Mr. Davidson. There is a reference there to the RIP line. Does that stand for Rock Island, Peoria?

A. That's right.

Q. Mr. Davidson, when you were head of the traffic department of the Rock Island—

Mr. Cassell: I think you have promoted him.

A. I wasn't head of the traffic department.

By Mr. Wheeler:

Q. When you were with the traffic department of the Rock Island did you request that that line be improved in order to improve the Rock Island's service?

A. I did not myself.

Q. Do you know whether any consideration was given to improving that line in order to improve service?

A. I wouldn't know, sir.

Q. Mr. Davidson, when you decrease or eliminate the time in transit differential between truck and rail deliveries, don't the rail deliveries become more competitive with the truck deliveries?

A. Oh, I think that's so.

Q. When you are more competitive service-wise with the trucks don't you have a better chance to get traffic from the trucks?

A. If you mean by that the service is comparable to the trucks I'd say yes.

Q. And the same thing would apply, would it not, of the [fol. 1853] inroads of the trucks into traffic now enjoyed by the rails, if your service is improved those inroads would be less?

A. I think that is so.

Q. The RIP line could be improved, could it not, and speed up your service?

A. I suppose if the management concluded that that was the thing to do they would have done so before.

Mr. Wheeler: I have no further questions.

Exam. Albus: Thank you very much.

Is there any further cross-examination?

(No response.)

Exam. Albus: Redirect.

Redirect examination.

By Mr. Cassell:

Q. Mr. Davidson, Mr. Thomas has asked some questions concerning goods going through Farmdale. Couldn't those cars also be routed by the shippers in giving routing in junction points?

A. That is right.

Q. It was suggested by Mr. Thomas, he asked if you did have the breakdown, you said you could secure it.

Mr. Cassell: Mr. Examiner, in order that the record may be complete to secure that breakdown and furnish it as an exhibit.

Exam. Albus: Late filed exhibit?

Mr. Cassell: If I may.

Exam. Albus: You have 15 days within which to do that, [fol. 1854] is that sufficient?

By Mr. Cassell:

Q. Is that sufficient, Mr. Davidson?

A. Yes.

Q. Will you make a note and do it?

A. Yes.

Exam. Albus: Thank you.

By Mr. Cassell:

Q. In regard to some of the questions asked by Mr. Wheeler what other carriers are in Des Moines other than the Rock Island?

A. Well, there is the North Western, the Milwaukee, the Wabash, and the M&StL, Des Moines Central Iowa, Fort Dodge, Des Moines and Southern, and then there's a couple of terminal lines there.

Q. Did you hear the testimony of Mr. Nelson?

A. I did.

Q. He is in charge of the M&StL freight traffic department?

A. I did, yes.

Q. Did you hear his direct testimony, which is reported on page 1275, wherein he stated, "These interchange points will provide additional traffic to the unified lines of the M&StL and TP&W, this would create traffic, new traffic, via these lines which currently moves principally through the Chicago gateway and which to a large extent moves via the direct Chicago-Twin Cities lines"?

A. I heard that, yes.

Mr. Wheeler: Mr. Examiner, I am going to object to any [fol. 1855] further questions along this line solely because they go beyond the cross-examination of this witness.

Mr. Cassell: I don't believe they do. You cross-examined concerning the $6,000,000 that he has shown.

Mr. Wheeler: O.K., if that is what it relates to.

Exam. Albus: Very well, proceed.

By Mr. Cassell:

Q. And did you hear the cross-examination of Mr. Nelson as well—

A. I did.

Q. (Continuing) —by myself?

A. I did.

Q. Wherein he said on page 1306.

"Q. The traffic you are talking about that you expect to get that is now moving via the Chicago gateway and other gateways, that is now moving by other carriers, isn't it?

"A. Not altogether, we get some.

"Q. The traffic you expect to get?

"A. Would be new traffic.

"Q. New traffic to you?

"A. Yes.

"Q. But it is not new traffic to railroads, is it?

"A. That is correct.

"Q. That is traffic presently moving by other railroads, isn't that true?

"A. Yes.

[fol. 1856] "Q. So that you expect to divert traffic from other railroads to yourself?

"A. Yes.

"Q. Then it is not new traffic but diverted traffic?

"A. That is correct."

Exam. Albus: How much of this are you going to read?

Mr. Cassell: Until I get down to the Rock Island.

By Mr. Cassell:

Q. Skipping:

"Q. The Rock Island is one of those roads, isn't it?

"A. Yes, we compete. We also have connections with you."

Did you hear those statements?

A. I did.

Q. And the following questions:

"Q. That's right, and the Rock Island serves the Twin Cities, doesn't it?

"A. It does."

Would any of that traffic to which Mr. Nelson is referring be included in the $6,000,000 you have referred to on page 34 of your prepared statement?

A. Would any of that traffic be included in the $6,000,000?

Q. Yes.

A. It would, yes.

Exam. Albus: One minute, please.

Mr. Wheeler: Mr. Examiner, I move to strike the witness's answer on the grounds that this is something that he [fol. 1857] just can't possibly know. These are facts within the knowledge of Mr. Nelson and not this witness.

Exam. Albus: The motion is overruled.

By Mr. Cassell:

Q. Just in the light of Mr. Wheeler's objection is there traffic included in that $6,000,000 of the character described by Mr. Nelson?

A. Yes.

Q. He asked you about ~~team~~ track traffic up at the Twin Cities, would you think there would be much team track traffic involved?

Mr. Wheeler: Mr. Examiner, I didn't limit team track traffic to the Twin Cities by any manner or means.

By Mr. Cassell:

Q. Or any place else?

A. Relatively I would say it was small contrasted to the industry business.

Mr. Cassell: That is all.

Recross examination.

By Mr. Wheeler:

Q. How about elevators local to your lines, Mr. Davidson, isn't their business substantial?

A. Yes. Generally speaking, we do not class elevators at common points any differently than we do other industries at common points.

Q. Is grain out of an elevator on the Rock Island, say at Livermore subject to reciprocal switching?

A. It depends on whether the traffic were, the grain was grown in the vicinity it could be switched to the Rock Island [fol. 1858] but grain generally at small towns is subject to transit, and the railroad upon whose rails the industry is located usually requires a haul, line haul.

Q. Now I am talking about elevators on your lines, on the Rock Island. Are they subject to reciprocal switching?

A. The tariff doesn't provide that the switching charge will not apply to or from the elevator.

Mr. Wheeler: I have no further questions.

Exam. Albus: Are there any further questions?

(No response.)

Exam. Albus: You are excused, Mr. Davidson. Thank you very much, sir.

The Witness: Before I leave the stand I would like to make a couple of corrections on page 15—

Exam. Albus: Very well.

The Witness (continuing): —about the sixth line the number of cars should be ninety-three ninety-six instead of ninety-three zero six.

Then on page 24 there is another typographical error, the second answer it reads 29,826 cars; it should read 19,826 cars.

Exam. Albus: Is that all from Mr. Davidson?

Mr. Cassell: Yes, sir.

Exam. Albus: You are excused.

(Witness excused.)

RE-OFFER OF EXHIBITS IN EVIDENCE.

Mr. Cassell: I would like to re-offer Exhibits 99 to 116, [fol. 1859] inclusive.

Exam. Albus: Is there any objection to those exhibits?

(No response.)

Exam. Albus: Let the record show that they are received at this time.

(Intervenor's, Rock Island, Exhibits Nos. H-99 to H-116, inclusive, Witness Davidson, were received in evidence.)

Mr. Cassell: Mr. Examiner, I have for distribution now Exhibit H-85, which was identified on the record yesterday, of which we had no copies other than the original exhibit.

Exam. Albus: Yes.

Mr. Cassell: That is available for distribution.

Exam. Albus: Thank you very much. May I have a copy, please.

Mr. Cassell: I also have available for identification—I am also tendering for identification and offering at this time a copy of the resolution which was referred to at the time the Rock Island presented its petition to amend its petition in regard to the M&StL, in which we asked to participate and be included. This is the supporting resolution which I said would be furnished at a later time.

Exam. Albus: Very well.

Mr. Cassell: May it be identified?

Exam. Albus: It may be identified as Exhibit H-117 and [fol. 1860] is received in evidence.

(Intervenor's, Rock Island, Exhibit No. H-117, Mr. Cassell, was marked for identification and received in evidence.)

Mr. Cassell: The resolution supporting the petition in regard to the M&StL, the Rock Island's petition for inclusion is marked, then, for identification as Exhibit 117?

Exam. Albus: That is correct, and it was received in evidence.

Mr. Cassell: I also would like to have marked an extract from the by-laws of the TP&W as Exhibit 118.

Exam. Albus: It may be so marked.

(Intervenor's, Rock Island, Exhibit No. H-118, Mr. Cassell, was marked for identification.)

Exam. Albus: Is there any objection.

Mr. Lucas: What is the purpose of that, may I ask?

Mr. Cassell: The purpose of that is to show the operation of the board of directors on the TP&W at the present time and how the corporation business would be affected through its board of directors.

Exam. Albus: The extract of by-laws of the TP&W is marked for identification as H-118 and is received in evidence.

(Intervenor's, Rock Island, Exhibit No. H-118, Mr. Cassell, was received in evidence.)

Mr. Cassell: That completes the Rock Island presentation.

[fol. 1861] Mr. Wheeler: Mr. Examiner, I think there was marked for identification but I don't believe received, Exhibit H-73, and I have had additional copies made of that for all counsel. This is the information that Mr. Lucas furnished me.

Exam. Albus: Very well.

Is there anything further.

Mr. Wheeler: I would like to ask Mr. Lucas to stipulate for the record in the absence of the one study, the further information that we asked of him with respect to the total revenues, freight revenues received from the Dupont Company, I would like him to stipulate for the record, if he will, that the Dupont Company is one of their largest shippers.

Mr. Lucas: Mr. Examiner, that comes under the statutory prohibition and the policy situation to which I referred, and I am not willing to so stipulate.

Exam. Albus: Very well, there will be no stipulation unless everybody is agreeable to it.

Mr. Broker.

Mr. Broker: Just to clear the record in this respect, the Nickel Plate is still required to furnish some information as to interchange between the Rock Island and the Nickel Plate, breakdown between switching and line haul cars and that is being worked up.

Exam. Albus: That will be a late filed exhibit?

Mr. Broker: Yes, sir.

[fol. 1862] Exam. Albus: Very well. When it is received it will be given an exhibit number.

Mr. Broker: In addition, we still have to furnish resolutions, as you know.

Exam. Albus: Very well.

Mr. Broker: Now, our Exhibit H-2, which is the general information that is ordinarily included in an application was made applicable in the M&StL case, but I notice that the opinion of counsel refers specifically to the Santa Fe-Pennsylvania application. Now, if it can be agreed that that opinion applies in the other case, well and good, otherwise we would like to file a separate opinion of counsel.

Mr. Cassell: I have the same problem, of course, in the Rock Island's.

Exam. Albus: Is there any objection to that, Mr. Wheeler?

Mr. Wheeler: No, sir.

Exam. Albus: Thank you.

Mr. Broker: Which is it?

Mr. Wheeler: I have no objection to its applying to both.

Exam. Albus: Both applications.

Mr. Broker: Thank you very much.

Mr. Wheeler: Mr. Examiner, there is one thing more I would like to request of the Pennsylvania which I forgot to, and that is the compensation—

Exam. Albus: Off the record.

[fol. 1863] (Discussion off the record.)

Exam. Albus: On the record.

Mr. Wheeler: I would like to have it stipulated that we can refer to this publication put out by the Commission showing the salaries of various officials of the railroads. I would like to ask Mr. Lucas to furnish for the record in the event it is not included in that the salaries paid to the managers of the various divisions of their railroads that were put in evidence by Mr. Symes, that is, the regions.

Mr. Lucas: For what purpose do you have in mind, Mr. Wheeler?

Mr. Wheeler: I want to show the comparison between those salaries and the salary paid to Mr. Coulter. It is relevant to testimony that was given also by Mr. Heineman.

Mr. Lucas: Mr. Examiner, it seems to me that we are

going very far afield but if that seems to be of some interest to the Commission, why, we'd be willing to furnish it.

Exam. Albus: Thank you very much.

Mr. Broker: I say off the record.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Mr. Wheeler: May we refer to that other document I referred to, does anybody have any objection to that?

Exam. Albus: You may refer to that.

[fol. 1864] Exam. Albus: Is there anything further?

Mr. Thomas: Mr. Examiner, while we are discussing these questions, it has already been stipulated that the parties involved may refer to the Form A reports of each other?

Exam. Albus: Yes.

Mr. Thomas: I was going to suggest that if the briefs are filed before the Form A for '55 is out for any road the parties be permitted to refer to the so-called R. & E. reports which are monthly cumulative reports.

Exam. Albus: That is satisfactory.

Is there anybody present who desires to testify and who has not had an opportunity to do so?

Mr. Thomas: We have some witnesses.

Exam. Albus: At this time all exhibits identified which may not have been received are received right now.

There have been so many of them that I don't know if they have all been received in the record or not. If they haven't, they will be received at this time.

Now, for the rebuttal.

Mr. Lucas: Mr. Clutz, will you take the stand, please.

[fol. 1865] John Jacob Clutz was sworn and testified as follows:

Exam. Albus: All right, Mr. Lucas.

Mr. Lucas: Mr. Examiner, may there be marked for identification a blue bound document which has just been distributed which carries no title page but the index refers to boxcar shortages.

Exam. Albus: That may be marked for identification Exhibit H-119.

(Applicant's, Pennsylvania, Exhibit No. H-119, Witness Clutz, was marked for identification.)

Direct examination.

By Mr. Lucas:

Q. Mr. Clutz, has there been prepared under your supervision during your sojourn here in Peoria the document which has been marked for identification Exhibit H-119?

A. There has.

Q. You are familiar with the contents of the document?

A. I am.

Q. And both the material appearing on page 1 and the graphs that follow were prepared under your supervision and direction?

A. They were.

Mr. Lucas: That completes the direct, Mr. Examiner.

Exam. Albus: Is there any cross-examination?

Mr. Broker: May I just look at this, please?

I don't have any objection.

[fol. 1866] Mr. Cassell: I don't have any objection to it.

Mr. Wheeler: I would like to ask a question.

Exam. Albus: Yes, sir.

Cross examination.

By Mr. Wheeler:

Q. Refer to page 6 of your exhibit. Wouldn't the relative showing of the Santa Fe-Pennsylvania and any other smaller line, any other line that was smaller than they, be the same as that shown on Exhibit 6?

A. Not necessarily.

Q. Why do you say that?

A. It is true that the more cars that are loaded on a line the smaller the percentage is, the smaller the TP&W shortages would be as a percentage of those loadings.

Q. In other words, if you took a very short line, this

might go through a 100 per cent, might it not?

A. Oh, yes.

Q. So this exhibit really just shows the relative size of the Pennsylvania and Santa Fe as compared to the M&StL with respect to boxcar loadings, doesn't it?

A. It shows what—

Q. (Interrupting) Doesn't it show that, in fact?

A. It shows that also.

Q. Now turn to page 4. This is not related, is it, to boxcar ownership of the properties involved?

A. No, that is correct.

[fol. 1867] Q. So that if a line such as the M&StL were not receiving from other roads the share of boxcars that it is entitled to by reason of its ownership, that would not be shown by this exhibit?

A. This exhibit simply shows the boxcar shortages as reported by each of the roads as a percentage of the boxcar loadings as reported by that.

Q. And this exhibit would not be affected in any way by additional ownership on the part of the M&StL, would it?

A. It might or it might not.

Q. Well, how might it?

A. If the additional ownership resulted in their having more cars available for loading they would.

Q. If that did not, if the M&StL had twice the ownership of cars in—

A. (Interrupting) These are all 1955.

Q. In 1955, this would not, this exhibit would not be affected one iota, would it?

A. It might well be, depending on whether that resulted in their having more cars—

Q. (Interrupting) I want to know whether it would. I don't want to know whether it might well be or anything of the kind. I want to know if this exhibit would have been affected in the slightest if the M&StL had four times the boxcar ownership in 1955 that it did have.

[fol. 1868] A. I still say it might have been. In other words, this relates reported shortages to reported loading. It is conceivable that if the M&StL owned more boxcars than it did it would have had more cars available for loading, have had higher loadings and lower shortages.

Q. Well, what it comes down to, does it not, is that this relates solely to boxcar loadings on line and not to boxcar ownership?

A. It so states.

Q. What is the significance of this loadings on line? In other words, to what is this exhibit directed, what testimony of record is this exhibit directed to, what testimony put in by the M&StL is this exhibit directed to, what is it designed to rebut?

Mr. Lucas: It is directed toward the—

Mr. Wheeler: I would like to get the statement from the witness.

Exam. Albus: Counsel can answer that.

Mr. Lucas: If he prefers the witness, that is quite all right with me, I do too, as a matter of fact.

A. There was considerable testimony to the fact that the Pennsylvania and the Santa Fe had greater boxcar shortages than the M&StL.

By Mr. Wheeler:

Q. Does this exhibit in any way refute that?

A. No, it shows the actual figures.

[fol. 1869] Mr. Wheeler: Mr. Examiner, I object to the acceptance in evidence of this exhibit as not being in refutation of any evidence placed in the record by the M&StL or any other party to this proceeding so far as I know. This is further direct. It is not rebuttal.

OFFER IN EVIDENCE

Mr. Lucas: I haven't offered it but I will now offer it nunc pro tunc so he can get his objection in.

I offer the Exhibit H-119.

Exam. Albus: Do you still object to it?

Mr. Wheeler: I object to it because I don't think it is proper rebuttal. The witness says it doesn't refute anything that has been put in evidence here by the M&StL.

Exam. Albus: The objection is overruled.

It is received now.

(Applicant's, Pennsylvania, Exhibit H-119, Witness Clutz, was received in evidence.)

Mr. Lucas: That is all.

Exam. Albus: You are excused, Mr. Clutz.

(Witness excused.)

Mr. Thomas: I want to call Mr. Pattison.

C. L. Pattison was sworn and testified as follows:

Direct examination.

By Mr. Thomas:

Q. Mr. Pattison, I want to hand you a couple of exhibits, H-31 and H-29 in this proceeding, you will note that those [fol. 1870] exhibits show that—let's take H-29—

By Mr. Thomas:

Q. Mr. Pattison will you state your full name.
A. C. L. Pattison.
Q. Your address?
A. 2000 East Washington, East Peoria.
Q. What position do you hold with the TP&W?
A. I am comptroller of the TP&W Railroad.

Mr. Thomas: I referred Mr. Pattison to Exhibits H-29 and H-31, which were introduced by the M&StL in this proceeding.

By Mr. Thomas:

Q. The record shows that the figures representing cars interchanged between the M&StL and the TP&W, I mention specifically the 11,999 cars shown in column B of Exhibit H-29 and the same number of cars shown on Exhibit H-31.

I further direct your attention to the situation, let me point out that Mr. Swanson, who introduced those two exhibits, testified that those cars were obtained from Exhibit H-51 in the so-called Illinois Terminal case. Was that

Exhibit H-51 prepared under your supervision and direction?

A. Yes, sir.

Q. Did that exhibit reflect the total interchange for the year 1954 between the M&StL and the TP&W?

A. Yes.

Q. And for other years?

A. Yes.

Q. Were there included in those figures cars as to which [fol. 1871] the TP&W had only a switch movement?

A. Yes.

Q. And no road haul?

A. That's right.

Mr. Thomas: That is all I have of Mr. Pattison.

Exam. Albus: Is there any cross-examination?

Mr. Wheeler: I just want to clarify something.

What was the number of that exhibit in this hearing?

Mr. Thomas: H-31.

Mr. Broker: Mr. Witt introduced it but I can't recall the number.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Mr. Wheeler: Mr. Examiner, there has been a reference here to an Exhibit H-51 in the Illinois Terminal case. I think it might be proper for counsel to stipulate that that is Exhibit H-60 in this docket.

Mr. Cassell: It has also sometimes been referred to as H-52 of the Illinois Terminal case.

Exam. Albus: It may be so stipulated.

Mr. Thomas: I agree.

Exam. Albus: Is there anything further?

By Mr. Wheeler:

Q. Mr. Pattison, do you have with you information which would show the number of cars involved in that Exhibit [fol. 1872] H-60 which did not involve a line haul by the TP&W?

A. Any particular year?

Q. 1954.

A. I don't have all of the cars that were given switch movement but I know that there were at least 1,240 cars, that were a particular type of move.

Q. If the M&StL figures indicate that it is somewhere between eleven and twelve hundred would you think that was in error?

A. To a degree.

Q. What range would you think?

A. I would say it was somewhere between twelve and thirteen hundred.

Mr. Wheeler: That is all.

Exam. Albus: You are excused, sir.

(Witness excused.)

Mr. Thomas: I will call Mr. Mahoney.

J. J. MAHONEY was sworn and testified as follows:

Direct examination.

Exam. Albus: Proceed, please.

Mr. Thomas: Mr. Mahoney has been sworn?

Exam. Albus: He was sworn before.

This is the same Mr. Mahoney who testified on direct, isn't it?

Mr. Thomas: Yes.

[fol. 1873] Mr. Examiner, I have two exhibits here which I would like to have identified.

Exam. Albus: Very well.

Mr. Thomas: One begins, "Freight Car Surpluses."

Exam. Albus: That may be marked for identification H-120.

(Applicant's, Santa Fe, Exhibit No. H-120, Witness Mahoney, was marked for identification.)

Mr. Thomas: The other one has the caption "Eastward" in the upper right-hand corner.

Exam. Albus: Very well, that is H-121.

(Applicant's, Santa Fe, Exhibit No. H-121, Witness Mahoney, was marked for identification.)

By Mr. Thomas:

Q. Mr. Mahoney, did the M&StL maintain guaranteed schedules at the Nemo connection prior to July 10, 1950?

A. Yes, sir. Prior to December 1941 we had an agreement and a guaranteed schedule with the M&StL with a connection at Nemo which provided for the M&StL to hold at Nemo until 8:45 p.m. for our connection from the west handling the perishable traffic. In December 1941 Mr. Conley, then the transportation officer of the M&StL, cancelled that agreement providing for a 8:45 p.m. hold for the Santa Fe at Nemo.

Q. Did you reach an agreement with the M&StL on July 10, 1950 about the establishment of a cut-off time at Nemo?

A. Yes, on July 10, 1950, made an agreement with Mr. Rux representing the M&StL that the M&StL would hold [fol. 1874] at Nemo until 8 p.m. for the perishable traffic delivered in the evening, and that hold would provide a connection at Peoria with the Nickel Plate trains 62 and 68, the big 4 trains, 94 and 90, and the PRR SL-30.

Q. Has there been any change since July 10, 1950, in the agreed cut-off time at Nemo of 8 p.m.?

A. No, sir, it is still 8 p.m.

Q. Have any complaints come to your attention in connection with this established cut-off time?

A. No, sir, not to my knowledge.

Q. Have any attempts been made by the M&StL to renegotiate this cut-off time?

A. No, sir.

Q. Has it come to your attention that the M&StL broke this guaranteed schedule by breaking their connection with the Nickel Plate at Nemo?

A. Yes.

Mr. Broker: Excuse me, break in connection with the Nickel Plate at Nemo?

Mr. Thomas: At Peoria, pardon me.

A. At Peoria.

Yes, we have a record in our claim office at Los Angeles that on October 2, 1943, N. Helwig, the resident vice-president of the M&StL at Los Angeles, notified Mr. R. C.

Neal, traffic manager of the Sunkist Growers, Incorporated, [fol. 1875] that effective immediately the connection between the M&StL and Peoria and the Nickel Plate at Peoria, the Nickel Plate train departing at 2:30, would be broken for traffic routed to Buffalo. Now, insofar as the Santa Fe is concerned, all through '50 and '53 we have continued to apply the 8 p.m. guaranteed connection at Nemo. We have never broken that connection because of the M&StL connection with the Big 4 and the Pennsylvania.

Q. In your answer, Mr. Mahoney, I thought you said 1943 at one point. Did you mean—

A. (Interrupting) I mean October 1953.

Q. Mr. Mahoney, to your knowledge has the M&StL ever protested to the Santa Fe about Santa Fe cut-off times either eastbound or westbound at Nemo?

A. No, we have exchanged correspondence with Mr. Rux since about 1950, I think, when he took over, and he has asked me on several occasions, in fact, quite often, as to what time our trains pass Nemo for the west and what time they pass for the east, but insofar as filing a protest against our times that has not been done.

Q. Will you refer to Exhibit which has been identified as H-120.

A. Yes.

Q. And explain what it shows.

A. The figures in this exhibit were drawn from an A.R.C.S. 44-A report. It shows the shortages and the [fol. 1876] surpluses of the several types of cars. In the column to the left-hand it will be noted that the M&StL reported a shortage of boxcars starting the week of February 12 and continued throughout the balance of the year. Now comparing that boxcar situation with Mr. Schroeder's statement in his prepared statement—I think it was pages 19 and 20—he shows a surplus of boxcars in 1954 and 1955 each month except six months, and that surplus ranged from 13 to 97 cars in 1955. That is a daily average surplus according to the statement Mr. Schroeder stated.

Now, in addition to the other types of cars shown in the

CS-44 report in regard to shortages and surpluses they balance out with the CS-44 report but the boxcars do not.

Q. Will you refer to an exhibit which has been identified as Exhibit 121, Mr. Mahoney.

A. Yes.

Q. And explain the schedules shown there, pointing out where the information doesn't appear on the face of the exhibit the railroad which operates the train whose number is shown.

A. Yes, this exhibit is introduced in these proceedings for the purpose of showing the over-all elapsed time from Kansas City to Effner in each direction via the Lomax gateway compared with that of the Nemo gateway. I think the figure in the statement is self-explanatory.

Q. Let me ask you one or two questions, Mr. Mahoney.

A. Yes, sir.

[fol. 1877] Q. Is the Lomax gateway shown on the first page?

A. No; it is on the second page of the exhibit. It shows connection with both trains, M&StL 96 and M&StL number 20.

Q. Pardon me, I don't think you got my question, Mr. Mahoney. I said is the Lomax gateway shown on the first page.

A. Pardon me, yes, it is. Schedule through the Lomax gateway is shown on the first page of the exhibit.

Q. And the schedules through Nemo on the second page?

A. Yes, sir.

Q. And the trains shown by certain numberings would you run down through those numbers and indicate the railroad which operates the train, just to make it clear, it doesn't show on the face of the exhibit in all cases.

A. Santa Fe No. 40 on the first page leaves Kansas City at 5 a.m.—

Q. (Interrupting) Isn't that 140?

Exam. Albus: 140.

A. (Continuing) —arrives at Lomax at 8 p.m.

By Mr. Thomas:

Q. Mr. Mahoney, I think it would be enough just to

indicate the railroad which operates the train. I think the schedules themselves are self-explanatory.

A. Well, the TP&W operates the train from Lomax to East Peoria and also from East Peoria to Effner.

Now, on the second page the M&StL operates between Nemo and Peoria and the TP&W from Peoria to Effner.

[fol. 1878] Q. And the Kansas City to Nemo is what line?

A. Santa Fe.

Q. Have you anything further to say about that exhibit?

A. Yes, I want to say just this, in Mr. Schroeder's proposed schedules shown on page 16, trains operated under his proposed schedules, that the trains departing Lomax both in the morning and evening would miss the Santa Fe connection.

Mr. Cassell: Page 16 of what?

The Witness: Mr. Schroeder's prepared statement.

Mr. Cassell: Thank you.

By Mr. Thomas:

Q. Mr. Mahoney, on this page for arrival at Lomax, for example, what is shown, is it the scheduled time or the actual time?

A. It is the agreed time entered into with the TP&W Railroad. It is not their timetable schedule.

Q. I see. Thank you. Is that true also as to Nemo?

A. No, Nemo operates their timetable schedule.

Mr. Thomas: Thank you. That's all.

Exam. Albus: Cross-examine, please.

Cross examination.

By Mr. Wheeler:

Q. Mr. Mahoney, if you had been in Mr. Schroeder's place would you have taken the time schedule that was published by the TP&W as likely to be accurate?

A. Well, I think Mr. Schroeder's experience as a railroad man prompts him to say that freight trains shown [fol. 1879] in an employees' timetable is not to be recognized as the actual departures of a train.

Q. With respect to the M&StL that's not the case, is it?

A. No, because you do that, you operate on that schedule.

Q. On the basis of our own experience Mr. Schroeder might think that other railroads operated that way, too?

A. I don't think so because he's had lots more experience other than the M&StL.

Q. Mr. Mahoney, do you know whether or not these schedules could be adjusted, that is, the schedules that Mr. Schroeder put in, to meet the agreed schedules between the TP&W and the Santa Fe, as shown on your Exhibit 121?

A. I think that could be arranged.

Q. Yes?

A. Yes, sir.

Q. Mr. Mahoney, refer to Exhibit 120 for a moment, if you will.

A. Yes, sir.

Q. As I understand it, you don't have any personal knowledge with respect to the facts shown on this exhibit?

A. These figures were taken from the reports of the AAR.

Q. So that if there was an error in reporting to the AAR, that error would be reflected in this exhibit, would it not?

A. Yes, sir.

Q. And if there were an error on the part of the AAR in reporting the figures that they received that would be [fol. 1880] reflected in this exhibit, would it not?

A. That would also be reflected.

Mr. Wheeler: I have no further questions.

Exam. Albus: You are excused, Mr. Mahoney.

(Witness excused.)

OFFERS IN EVIDENCE

Mr. Thomas: May I offer exhibits H-120 and H-121.

Mr. Wheeler: I object to Exhibit H-120 on the grounds that I have previously indicated.

Exam. Albus: The objection is overruled.
Exhibits are both received.

(Applicant's, Santa Fe, Exhibits Nos. H-120 and H-121, Witness Mahoney, were received in evidence.)

[fol. 1881] Mr. Thomas: Mr. Coulter, please.
Mr. Coulter has already appeared and testified.
Exam. Albus: Yes. He has already been sworn.
Mr. Thomas: Shall I proceed?
Exam. Albus: If you will, please.

J. Russel Coulter was sworn and testified as follows (in rebuttal):

By Mr. Thomas:

Q. Mr. Coulter, did you hear Mr. Nelson's testimony about the plans of the M&StL to develop traffic between the northwest and the southeast via the TP&W junctions east of Peoria?

A. Yes.

Q. Could the M&StL participate in that traffic without ownership of the TP&W?

A. Yes. I would like to say that the TP&W schedules are already synchronized with every connection on its east end and there is no reason why the traffic, if there is any more, could not be so moved now. Our company has these interchanges east of Peoria on a scheduled basis for north-south traffic and business is moving that way. If there is any additional business to be moved via those routes, there is no reason why it cannot be moved today if the M&StL would adjust its schedules to fit.

For the past several years, I have repeatedly sent our Vice-President in charge of Traffic to Minneapolis at least twice a year to confer with the traffic officials of the M&StL [fol. 1882] to get them to have a schedule from South St. Paul to Peoria direct that would compete with the Illinois Central connection at Albert Lea.

This not only would give to shippers the fastest service but accord the M&StL the long haul into Peoria and at the same time give the TP&W more traffic.

The TP&W inaugurated these discussions five years ago with little success. The M&StL could, if they wished, put the schedules on tomorrow and we could both jointly solicit this traffic. Their train No. 20 coming into Peoria should make a connection with our train No. 20 eastbound at 2:00 a.m., and we would be very happy if they could make this service possible which we requested five years ago. Of course, there is also a great improvement that can be made in the M&StL schedule northbound.

Q. You have heard Mr. Schroeder's testimony. Do you have any comments about it?

A. Several years ago I approached the M&StL, and suggested an arrangement whereby the M&StL might use the Burlington from a point at Farmington, Illinois, to our line at Canton, Illinois, and use the TP&W into Peoria and use our yard to break up trains. This would avoid their heavy grade westbound as well as the high water they are subject to in the Kickapoo Valley in Peoria. Mr. Devins was then Operating Vice-President of the M&StL.

From a study I made, we would not have had to increase [fol. 1883] the capacity of our East Peoria Yards to take care of the M&StL. I reviewed this informally with Mr. Heineman about two or three months ago, so the unification of terminals with the TP&W now being suggested is not a new idea.

On October 1, 1946, the TP&W crews were restricted from entering the M&StL Yard when the interchange tracks were full. This caused us to miss some of our own connections. In November, 1948, we proposed that the M&StL join us in building a new interchange track. Negotiations proceeded very slowly, and finally, in October, 1951, Mr. Devins said some satisfactory arrangement would be considered. Again the negotiations were slow, and only through our persistency, an interchange track was finally built in December, 1953.

My purpose in citing these past instances is to show that we have tried to get the M&StL to cooperate on freight train service and we have tried to interest them in the past in a better interchange in Peoria. It will be noted that it took five years of effort on our part to resolve this inter-

change improvement and, even now, we haven't succeeded in the other important matter to which I just referred.

If Mr. Schroeder has any suggestions for economy between the two lines, we will be very happy to sit down and talk about it.

Now, from my knowledge of the property and operations of the TP&W, I would like to make these general comments about the economies proposed by Mr. Schroeder from the [fol. 1884] standpoint of improvement in service. We have now on the TP&W a maximum speed of 49 miles per hour for our freight trains and we use it. Their schedule shows about 30 miles per hour.

From the standpoint of maintenance of way, we are building up the property and we must continue to build it up and every dollar that is being spent on the physical property needs to be spent now and in the future. We have been welding long strings of rail, utilizing multiple power ballast tampers, truck equipped section gangs, house trailer equipped B. & B. gang, and other modern techniques for several years.

Mr. Schroeder also speaks of running power through. This can be done without unification. Diesel power is now being run through on other railroads. Through Peoria the Chicago & North Western and Litchfield & Madison are good examples of this. Of course, the schedules have to be synchronized. It is impossible to do this with the present schedules of the M&StL, but if study develops any real advantages, we would be very happy to consider pooling power if proper schedules and utilization could be worked out.

To maintain our motive power, and to keep the power in condition to meet our various services, we must continue to spend the same amount of money that is now being spent, and if any savings are to be realized in this respect, apparently they must be made on the M&StL. The same comment is also true with respect to freight car repairs. [fol. 1885] Q. Are you familiar with Mr. Devins' testimony regarding the possibility of providing direct access to the Illinois River near Hollis for loading coal on barges? Will you comment on that?

A. Mr. Devins said that if the M&StL acquired the TP&W, it would be an opportunity to provide direct contact with the Illinois River at a place not far from Hollis. Presumably he had in mind land owned by the TP&W, accessible to river transportation. If we decided to load coal there, we would have to build tracks, docksite, coal tipple, et cetera. There would also be some dredging. We have looked into this a number of times but because of the low rate on coal on such a haul, the economics did not support it.

Q. Did you hear Mr. Swanson's testimony to the effect that traffic moving from the east through Peoria and handled by the M&StL from Peoria to Nemo and thence over the Santa Fe would be subject to diversion to the TP&W if the Santa Fe-Pennsylvania application were approved?

A. Yes.

Q. What have you to say regarding this?

A. A substantial part of this traffic is traffic which came into Peoria via the TP&W and interchanged at Peoria to the M&StL for Nemo and beyond via the Santa Fe. The Santa Fe had already attempted to route that traffic via Chicago and failed. If the TP&W were able to influence that traffic, you would have it routed via Keokuk or [fol. 1886] Lomax to gain the long haul, but, here again, the TP&W had failed. I can see no reason why this traffic would be lost by the M&StL if the TP&W were acquired by the Santa Fe-Pennsylvania.

Let me say that in my traffic experience I have found that shippers like to favor small railroads with a part of their traffic, and in this particular situation it is obvious they have included two small railroads in their routing in order to divide their business to meet solicitation and friendship requirements. They certainly did not make such routing from a service standpoint.

For example, let us take a loaded car from the East. Assume that this car came off the Pennsylvania at Effner and was routed TP&W to Lomax, instead of being interchanged with the M&StL at Peoria for Nemo. The car leaves Effner at 8:15 a.m., and moves into Peoria at 11:00 a.m. for delivery to the Santa Fe at Lomax at 5:45 p.m.,

and the car is rolling to Kansas City that night. In contrast, if the car was routed to the M&StL on the route used by the TP&W and M&StL through Nemo, it would come into Peoria at 11:00 a.m., but would not leave Peoria until 1:15 a.m. the next day because the M&StL has no train service before then. In the reverse direction, the service through Lomax and Effner is substantially faster than the service through Nemo-Peoria-TP&W to Effner. I figure the difference is from 11 to 14 hours.

[fol. 1887] Q. Will you now comment on similar traffic referred to in Mr. Swanson's testimony moving from the East through Peoria to the M&StL and thence via interior junctions north of Nemo to the West?

A. The M&StL and the lines connecting with the M&StL north of Nemo obtain this routing in spite of the solicitation of the Santa Fe for that traffic from Chicago, and in spite of the solicitation of the TP&W for the movement from Peoria to Keokuk or Lomax, where such routing would be competitive. I cannot see how the ownership of the TP&W by the Pennsylvania and Santa Fe would change the volume of traffic now moving. The Santa Fe was not included in the haul before and, in my opinion, could not change the situation by virtue of ownership in the TP&W. The TP&W had attempted where it could to get the haul from Peoria to Keokuk or Lomax and failed. Sale of the TP&W to the Pennsylvania-Santa Fe would not improve its status with respect to the solicitation of this traffic. To the extent any of this traffic was interchanged from the TP&W to the M&StL at Peoria, the same service disadvantages applies as compared to the result if the traffic had stayed on the TP&W through Lomax where that route was competitive.

From my experience I know that this traffic cannot be pressured into Pennsylvania-Santa Fe routing. The same situation applies in the reverse movement. Therefore, this business would not be lost so long as the M&StL continues [fol. 1888] the same kind of a solicitation job that is being done today or does not further impair its service.

Q. Did you hear Mr. Swanson's testimony about traffic moving from the East through Peoria and the M&StL to

points north of Nemo on the M&StL that are also served by lines connected or connecting with the TP&W?

A. Yes.

Q. What have you to say about this?

A. All I can say about this is that I cannot see how the ownership of the TP&W by Pennsylvania-Santa Fe would change the competitive conditions that now exist today. None of the connecting lines obtained this traffic against the M&StL, although I assume they attempted to get it. The TP&W also failed. I would have no reason to believe that changed ownership would give either the connecting lines or the TP&W any greater advantage than now applies. The same thing would hold true with respect to traffic moving in the opposite direction.

Q. Did you hear Mr. Swanson's testimony with respect to traffic moving to and from Peoria via M&StL either to or from local points on the M&StL north of Nemo or through junctions north of Nemo?

A. Yes, and I would give exactly the same answer that I gave with respect to the previous question. If the M&StL obtains that traffic to and from Peoria today, and the TP&W or the Santa Fe is not included in the haul, it is [fol. 1889] obvious that changes in the ownership of the TP&W would not give any greater leverages to the TP&W or Santa Fe than they now have to influence the routing of this traffic.

Q. Mr. Coulter, would that same reasoning apply to situations where that traffic moved through junctions north of Nemo with other connections of the M&StL?

A. Are you on the wrong page?

Q. No. That was a double-barreled question and you answered before I got through with it.

A. I am sorry. Yes.

Q. What effect do you think the granting of the Santa Fe-Pennsylvania application will have on the traffic of all other carriers in this case?

A. It is my firm conviction that all of the railroads in this case will benefit from the acquisition of the TP&W by the Pennsylvania Railroad and the Santa Fe, and this specifically includes the M&StL, the Nickel Plate, and the Rock Island. With the Santa Fe announcing that they

will put Lomax and Chicago on the same basis, it seems to me that the TP&W will have a reservoir of traffic available to their solicitation efforts which they have not had before. This means that we will be able to bring through the Peoria gateway on the TP&W more traffic than at present. This increased traffic will be available to the Nickel Plate through Peoria, as well as the New York Central through Sheldon. Such traffic now moves through Chicago, [fol. 1890] where the Nickel Plate and the New York Central have to compete with the Erie, C&O, B&O, Grand Trunk, PRR and Wabash, and any other carriers I may have missed in that area.

On westbound traffic, with the Pennsylvania Railroad announcing that it plans to put Effner and Chicago on the same basis, there will be available to the TP&W solicitation additional traffic reservoirs. This means that when we take this business into Peoria, this traffic will also be available to solicitation by the M&StL, which does not reach Chicago.

This traffic will also be available to the Rock Island at Peoria or Keokuk, while it is now only available to the Rock Island at Chicago, but where the Rock Island has to compete with the Santa Fe, Milwaukee, CNW, Burlington, Chicago, Great Western, or any other carriers I may have missed. Of course, this would also be true of the Burlington. The lessening of competition, therefore, through the Peoria Gateway by the Pennsylvania coming west and the Santa Fe going east should redound to the benefit of all the lines that appear in this case and to the benefit of this community and will tend to put this gateway on a more competitive and efficient basis than ever before in its history.

While I have talked about the diversion of traffic that now moves through the Chicago gateway, it is obvious also that the build up of the Peoria gateway and placing it on a more efficient basis will also serve to divert traffic now [fol. 1891] moving through the St. Louis gateway and all of the carriers that I heretofore mentioned with respect to Chicago traffic would have opportunities of tapping this additional volume in a somewhat similar degree to that which I have detailed with respect to Chicago traffic.

Q. What have you to say with reference to the position that must be maintained by the TP&W under ownership by the Santa Fe-Pennsylvania to maintain a sound and efficient property?

A. The future development of the TP&W depends on retaining close relationship with its many connections with which it presently works, and which need the TP&W as much as the TP&W needs them, to provide a fluid and flexible transportation system to and from the Peoria District and via Peoria as a primary gateway. It will be in the best interest of the TP&W to maintain their close relationships with their connections and this will continue to be our policy if the Santa Fe-Pennsylvania application is granted.

I would like to add, Mr. Thomas, that that was taken almost word for word from the end of Mr. Witt's direct testimony, Vice-President of the Nickel Plate's direct testimony.

Mr. Broker: Except for the last sentence.

The Witness: Except for the last sentence.

Mr. Broker: Thank you.

By Mr. Thomas:

Q. Mr. Coulter, there was a reference here this morning to a newspaper item describing an inspection trip over [fol. 1892] the TP&W on June 5 by Santa Fe officials. Did you accompany them on that trip?

A. Yes.

Q. What kind of cars did they travel in?

A. Office cars.

Q. Were they streamlined in appearance?

A. Yes.

Q. Did the officials of the M&StL make a similar trip over the TP&W?

A. Yes.

Q. Did they travel in that type of equipment, too?

A. Yes.

Q. And the Pennsylvania?

A. Yes.

Q. A news item was referred to—

Mr. Thomas: I will try to save some time without referring to it.

Exam. Albus: All right.

By Mr. Thomas:

Q. Mr. Coulter, there was an exhibit, I think Exhibit 92, which contained a newspaper item which appeared to quote you regarding the possibilities of—here it is—regarding the possibility of Santa Fe passenger trains serving Peoria and the story said that you declined to comment but agreed that it was an interesting speculation "not beyond accomplishment". Did you make such a statement?

[fol. 1893] A. I don't recall making such a statement. I recall making statements when anybody would ask about passenger service to discourage them very definitely about any passenger service being put on the TP&W by the Pennsylvania-Santa Fe, and I go back to Mr. Gurley's remark, who, I believe, was quoted as saying it would be cruel to hold out such an aspiration.

Q. Mr. Coulter, based on your experience as an executive of a small railroad and your earlier railroad experience, would you have an opinion as to whether or not an unified traffic organization such as proposed herein by the M&StL would be likely to obtain as much traffic as the separate efforts of the M&StL and the TP&W under their present organization?

A. I would say that under a separate organization they would get more traffic.

Q. Why is that?

A. I think a good illustration of that is the Quanah, Acme & Pacific, which is owned by the Frisco, which has its own soliciting organization, and the Frisco has seen fit to keep it that way because they feel that if it was taken into the Frisco organization they would lose traffic.

Q. Mr. Coulter, has the performance of the Rock Island under its schedules through the Keokuk gateway always been satisfactory to the TP&W?

A. No.

Q. Have you ever complained about their service?

[fol. 1894] A. Yes.

Q. Did you make such a complaint in 1953 or thereabouts?

A. In 1953 I wrote a letter to Mr. Farrington, then President of the Rock Island, and I said to him as courteously as I could, I thought his line from Eldon to Keokuk was deteriorating, and I had some suspicion that he might be going to abandon it. Then I asked him if it was for sale, and if it was for sale we might be interested in acquiring it.

Q. Do your forces solicit TP&W haul on traffic moving via the Rock Island eastbound?

A. Yes.

Q. Where do they try to get the traffic?

A. Keokuk.

Q. Do they ask the shipper to insert Keokuk as a junction?

A. Yes.

Q. Did you hear the testimony yesterday by Mr. Foulks about the instructions to Rock Island employees to route traffic through Keokuk when that traffic comes from the Kansas City or Denver gateways?

A. I heard his testimony on that, and I was greatly surprised, because we on the TP&W had never heard it before. I am very happy to hear it.

Q. In your past experience as President of the TP&W have you had occasion to check to see whether or not traffic origins moving on the Rock Island from points west of [fol. 1895] Kansas City or Denver has come to your line for interchange via Peoria when Peoria was not named as the junction for interchange with the TP&W?

A. Yes, and that's what worried me yesterday with what seems to be in conflict with Mr. Foulks' testimony. We have had several cars that come into Peoria routed Rock Island, TP&W, Nickel Plate where we get, you might say, a glorified switch haul. We have been arguing with the Nickel Plate and the Rock Island about it, and to destinations east of Cleveland about that. We get about $7 a car for our haul versus about $50 had the business been delivered to us at Keokuk.

Mr. Thomas: That is all on direct.

Exam. Albus: Cross-examine.

Mr. Olson: May we have a recess first before we cross?

Exam. Albus: We will recess until 10 minutes to 12.

(Short recess.)

Exam. Albus: The hearing will please come to order. Cross-examine.

Mr. Wheeler: Mr. Examiner, I want to state at the outset that I do not think that I will be prepared to conclude my cross-examination prior to a recess in which I have time to sit down with one of my witnesses for a matter of 20 minutes to a half an hour with respect to some of the testimony that's been given by Mr. Coulter. In the light of that I would like to pass at this time until after the luncheon [fol. 1896] recess, but if that's not acceptable, why, I will proceed with as much as I have at this time.

Exam. Albus: Is there any other cross-examination of Mr. Coulter?

Mr. Cassell: No cross.

Mr. Broker: No cross.

Mr. Davis: No cross.

Exam. Albus: Off the record a minute, please.

(Discussion off the record.)

Exam. Albus: On the record.

Mr. Thomas: May the reporter copy into the record a copy of a letter dated February 7 addressed to me from Mr. Wheeler requesting certain information?

Exam. Albus: Yes, it may be copied.

(Letter of February 7 above referred to is as follows:)

"Peoria, Illinois

February 7, 1956

"Mr. Starr Thomas
Atchison, Topeka & Santa Fe RR Co.
Chicago, Illinois.

"Dear Mr. Thomas:

"We would appreciate your providing the following information for the record in Finance Dockets Nos. 18991 and 19086 now pending before the Interstate Commerce Commission.

"(1) The total number of revenue cars interchanged in [fol. 1897] Chicago during each of the past five years:

"(a) Received from the Pennsylvania Railroad Company

"(b) Delivered to the Pennsylvania Railroad Company

"(c) Received from the Wabash Railroad Company

"(d) Delivered to the Wabash Railroad Company

"(e) Received from other carriers (exclusive of the Pennsylvania and Wabash)

"(f) Delivered to other carriers (exclusive of the Pennsylvania and Wabash).

"(2) Traffic solicitation expenditures shown in I.C.C. Accounts Nos. 351 to 359, inclusive, for each of the past five years.

"(3) The number and location of Santa Fe traffic solicitation offices and the number of employees in each office who spend all or a part of their time on freight solicitation.

"(4) The beneficiary or the real party in interest for whom each of the nominees shown on page 9 of the Santa Fe application is acting.

"(5) Number of revenue cars received from and delivered to the New York Central at Streator, Illinois, during each of the past five years.

"(6) The number of revenue cars received from and delivered to the other carriers at Joliet, Illinois during each of the past five years.

"Sincerely,

[fol. 1898] "WHEELER & WHEELER

(Signed) Edward K. Wheeler
"By Edward K. Wheeler"

Mr. Thomas: I want to state for the record that the Santa Fe will furnish to Mr. Wheeler the item (1) of that letter.

Then as to Item (2), we can furnish the expenditures charged to the accounts there named, but there are no time studies available for the past five years to distinguish traffic solicitations from others charged to those accounts.

As to Item (3) we can give the number and location; traffic offices are in the record on the back of Mr. Duffy's map exhibit, and we will furnish the number of employees engaged in solicitation, although not by agencies. I mentioned that to Mr. Wheeler, and he said that would serve his purpose.

Exam. Albus: All right.

Mr. Thomas: As to Item (4), we do not have the information and have no way of obtaining it.

As to Items (5) and (6), we will furnish that information.

May we do that by an exhibit two weeks after the hearing?

Exam. Albus: Yes.

Mr. Thomas: I have made a request of Mr. Wheeler, and it is merely a summary and a restatement of what the M&StL has already agreed to furnish.

Exam. Albus: That is all right.

Mr. Thomas: Have you seen that?

[fol. 1899] Mr. Olson: Yes.

Mr. Thomas: Could you tell me whether you will furnish that? Can we have that copied in the record and whether you are willing to furnish it the same way, by an exhibit filing in two weeks?

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Mr. Thomas: Mr. Examiner, I have handed a letter to Mr. Wheeler, and Mr. Olson here has the letter in his hand, and I want him to state for the record, first I want the letter copied into the record, and will ask him to state whether he will furnish the information requested in an exhibit to be filed in a couple of weeks.

Exam. Albus: Very well.

Mr. Olson: I understand that as to some of this material they do not have the full information for the full five years, that we can provide it for one or two years. As to that, if

it is satisfactory with Mr. Thomas, we will provide it in that form.

Mr. Thomas: Will you give us the information for the full five years to the extent you can?

Mr. Olson: That it is available.

Mr. Thomas: And break it down the best you can, and for the more recent period broken down.

[fol. 1900] Exam. Albus: The letter may be copied into the record.

(Letter of February 11 addressed to Mr. Wheeler above referred to is as follows:)

"February 11, 1956

"Mr. Edward K. Wheeler
Messrs. Wheeler and Wheeler
Hotel Pere Marquette
Peoria, Illinois

"Dear Mr. Wheeler:

"I would appreciate your providing the following information for the record in Finance Dockets Nos. 18991 and 19086, now pending before the Interstate Commerce Commission:

"1) M&StL's loaded car interchange separately with each connecting carrier at Peoria for the past five years.

"a. Where the interchange is effected through a switch connection instead of directly, show the connecting line-haul carrier and not the switch connection.

"b. Show separately those instances where the connecting carrier at Peoria has only an originating or terminating switch movement.

"2) Number of the 9,891 revenue carloads bridged eastbound and westbound Nemo-Peoria during 1954 as shown in Schedule 1 of Exhibit H-32, which are interchanged with the TP&W.

"Very truly yours,

"Starr Thomas"

[fol. 1901] Mr. Lucas: May I just clear something that is open on the record. I made a request of Mr. Wheeler, which is now merged in what Mr. Thomas has asked for.

Exam. Albus: That is fine.

Mr. Thomas: May this letter be copied into the record?

Exam. Albus: It may be copied into the record.

Mr. Lucas: Mr. Examiner, off the record.

Exam. Albus: Off the record.

(Discussion off the record.)

Exam. Albus: On the record.

Mr. Lucas: Mr. Examiner, there has been distributed four separate sheets that serve the purpose of bringing down to date in the application of the Santa Fe and Pennsylvania docket 18991 Exhibits 8-A and 8-B and 9-A and 9-B of the application, and for convenience, if the one that is identified as the Pennsylvania Railroad Company General Balance Sheet, December 31, 1955, might be marked as—

Exam. Albus: 122.

(Applicant Pennsylvania's Exhibit No. 122, Witness Lucas, was marked for identification.)

Mr. Lucas: And if the next one might be marked, which is General Balance Sheet, December 31, 1955, Pennsylvania Company, as Exhibit No. 123.

Exam. Aibus: 123.

(Applicant Pennsylvania's Exhibit No. H-123, Attorney [fol. 1902] Lucas, was marked for identification.)

Mr. Lucas: And the next in order would be The Pennsylvania Railroad Company Income Account and Earned Surplus Statement for the year 1955.

Exam. Albus: 124.

(Applicant Pennsylvania's Exhibit No. H-124, Attorney Lucas, was marked for identification.)

Mr. Lucas: And the final one is income account and earned surplus statement for the year 1955 for the Pennsylvania Company.

Exam. Albus: 125.

(Applicant Pennsylvania's Exhibit No. H-125, Attorney Lucas, was marked for identification.)

OFFERS IN EVIDENCE

Mr. Lucas: I offer those in supplementing the application and bringing it down to the end of the year 1955.

Exam. Albus: Thank you very much.

Let the record show that the exhibits marked for identification H-122 through H-125 are received in evidence.

(Applicant Pennsylvania's Exhibits Nos. H-122, H-123, H-124, and H-125, Attorney Lucas, were received in evidence.)

Exam. Albus: At this time we will take a recess until 12:30.

(Short recess.)

[fol. 1903] Exam. Albus: The hearing will please come to order, gentlemen.

We will continue with the cross-examination of Mr. Coulter.

Mr. Wheeler, please.

Cross examination.

By Mr. Wheeler:

Q. Mr. Coulter, I have asked this of other witnesses who have appeared on the stand, that is, traffic witnesses, do you agree that the testimony that's been given by them that the originating line is in a position to substantially influence the routing of traffic?

A. I wouldn't say substantially.

Q. As compared to another line that does not originate the traffic or terminate the traffic does the originating carrier have a greater influence on routing?

A. Yes.

Q. Now, does the terminating carrier also have greater influence on the routing of traffic than a carrier that is not the originating nor terminating line?

A. Well, that would depend whether the terminating carrier had the service route.

Q. Well, I am assuming all conditions to be equal.

A. If they had the service route there would be an influence there.

Q. Mr. Coulter, is the TP&W now soliciting traffic for movement through the interchanges that you mentioned on page 1 of your

[fol. 1904] for movement over those, over the M&StL beyond Peoria?

A. Yes.

Q. Where and what traffic are you so soliciting?

A. We are soliciting any traffic for the TP&W where the shipper says he wants to give the M&StL a haul from Peoria to Nemo, we don't interfere with that.

Q. Mr. Coulter, referring specifically to these interchanges that you mentioned in your testimony on page 1, and specifically the interchanges east of Peoria, to which Mr. Nelson referred and which he said would be placed on an integrated service basis if the M&StL acquired control of the TP&W.

A. Now, the question is what?

Q. As to those interchanges are you now soliciting traffic through those interchanges for movement beyond Peoria over the M&StL?

A. Yes.

Q. Will you please name specifically one solicitation for that movement?

A. Well, the meat that I spoke about in this document from South St. Paul that the M&StL are now turning over at Albert Lea we have been soliciting that movement through Peoria. Then our southeastern connections east of Peoria.

Q. Give me another example.

A. Well, there are very many, Mr. Wheeler. It would consist of all traffic where the M&StL had an influence or [fol. 1905] was the originating line.

Q. Is there any traffic or any substantial volume of traffic moving that way at the present time?

A. I don't know.

Q. Don't you know that there is not?

A. No.

Q. Why don't you know, Mr. Coulter?

A. Because I haven't the facts in front of me.

Q. If there were substantial movements through those interchange points wouldn't you know of it?

A. It depends upon what you term substantial. We are a small railroad.

Q. But substantial to the TP&W I am speaking of.

A. Substantial to the TP&W?

Q. I am sure those would come to your attention, would they not?

A. I think so.

Q. Mr. Coulter, isn't there a switching now involved in such a movement at Peoria?

A. Switching between the M&StL and the TP&W?

Q. Yes, sir.

A. And we perform it, yes.

Q. With whom did your vice-president in charge of traffic talk with at M&StL with respect to this South St. Paul movement?

A. Mr. Leek.

[fol. 1906] Q. Mr. Leek?

A. Former vice-president of the M&StL.

Q. Are you familiar with the manner in which the M&StL delivers or receives traffic from South St. Paul?

A. No.

Q. Do you know that it involves substantial terminal switching and an intermediate carrier?

A. No.

Q. Do you know that that process takes 10 hours?

A. No.

Q. To get from the South St. Paul to the M&StL line?

A. No.

Q. In Minneapolis?

A. No.

Q. Do you know, Mr. Coulter, that the Chicago lines make the run from South St. Paul to Chicago in from 12 to 14 hours?

A. Yes.

Q. Do you think that a service that would take 27 hours would be competitive with a service that took 12 hours?

A. No.

Q. Mr. Coulter, you referred in your direct statement, you made the following statement in your direct testimony, "Of course there is also a great improvement that can be made in the M&StL schedule northbound." Isn't it a fact, Mr. Coulter, that the M&StL has the fastest service be-
[fol. 1907] tween Peoria and the Twin Cities?

A. Not to my knowledge.

Q. Don't you know that their schedule is four to five hours shorter than any other schedule between Peoria and the Twin Cities?

A. I don't know that.

Q. Mr. Coulter, you also referred to an arrangement you suggested whereby the M&StL might use the Burlington from the point at Farmington to TP&W lines at Canton, and then use the TP&W into Peoria, and use TP&W yard to break up trains. Such an arrangement would involve securing trackage rights over the Burlington, would it not?

A. Yes.

Q. Do you know how much greater the mileage would be on such a route as against the present mileage?

A. I know it would be longer. You must understand these discussions were preliminary. It was an idea. And the subject was dropped because I think there was a lack of interest at that time on the M&StL. I do know that it would be longer and I do know something about the M&StL grade also out of Peoria.

Q. Mr. Coulter, do you think that that idea had never occurred to the M&StL themselves prior to your suggestion of it?

A. I don't know.

Q. Do you know whether or not the M&StL made a careful study of the use of that line?

[fol. 1908] A. When?

Q. I say do you know.

A. No.

Q. Do you know what considerations determined the M&StL not to put that into effect—

Mr. Thomas: Let me make one objection. I don't want to take time. When the witness has said I don't know anything about what the M&StL did and you ask these further ques-

tions then you are simply covering something that has already been covered.

Exam. Albus: The witness may answer.

A. What is the question?

(Question read.)

A. No, I don't, but I do know in a conversation with Mr. Heineman three months ago, it was a rather interesting subject to him.

By Mr. Wheeler:

Q. Do you know whether the Burlington has agreed to give the M&StL. trackage rights?

A. No, sir.

Q. Mr. Coulter, wouldn't the use of that line, as you suggested, leave a segment of line between Peoria and Farmington completely without rail service?

A. If it was abandoned.

Q. Do you think it would be efficient to put into effect the alternate route you propose and still maintain t' [fol. 1909] present route?

A. The efficiency of the route was never studied, it was just an idea, as far as we are concerned.

Q. Now, Mr. Coulter, you state on page 3 of your testimony, "We have now on the TP&W a maximum speed of 49 miles per hour for our freight trains and we use it." Their schedule, referring to the M&StL, as put in the record by Mr. Schroeder, shows about 30 miles per hour. Did you mean to imply that you average 49 miles per hour on your freight trains?

A. We do on one train many times.

Q. Over the length of the run?

A. Yes.

Q. Do you on all trains?

A. No.

Q. As a matter of fact, on one of your trains your time is almost double that of the other, is it not?

A. Using timecard schedules?

Q. I am just asking you, sir.

A. If you are using timecard schedules as has already been testified here as an operating max we have timecard schedules, but what we do with our freight trains is quite different because of late connections, et cetera.

Q. At times does one of your trains take almost twice as long as the other?

A. A local train would.

[fol. 1910] Q. You understand, do you not, that the 30 mile speed limit referred to by Mr. Schroeder is an average speed and not a maximum speed?

A. Yes.

Q. Now, with reference to the testimony you gave about the access to the Illinois River for the loading of coal on barges, that was given by Mr. Devins, isn't there a switching charge applicable now to that movement if it moved from the mines on the M&StL to the point designated on the TP&W?

A. No.

Q. There would be no switching charge involved?

A. To the river, you say?

Q. Yes, sir.

A. No.

Q. To the coal loading docks on the P&PU there would be a switching charge, would there not, Mr. Coulter?

A. Yes.

Q. And that would be eliminated if the TP&W were owned by the M&StL, would it not, and the operation referred to by Mr. Devins was put into effect?

A. The switching charge would be eliminated, yes.

Q. Mr. Coulter, you say there we have looked into this a number of times but because of the low rate on coal on such a haul the economics did not support it. I assume that you are referring to the economics to the TP&W, are you not?

[fol. 1911] A. The economics of both railroads.

Q. Of both railroads?

A. Yes.

Q. And that included the switching charge?

A. No.

Q. It did not. Do you conclude from your testimony or mean to imply by your testimony that the M&StL may not

have a different view of the economics of that move in the event they acquired the TP&W?

A. May not have a different view?

Q. Yes, sir.

A. I think if they have a different view they are wrong.

Q. But they might have a different view, might they not?

A. Yes.

Q. Do you know whether or not the M&StL has made a pretty complete study with respect to that operation?

A. No.

Q. On traffic originating on the Pennsylvania, Mr. Coulter, and moving through Peoria, would the Pennsylvania or the Santa Fe be more influential in the routing of that traffic?

A. I think the TP&W would be more influential; neither the Pennsylvania nor the Santa Fe.

Q. Isn't that in contradiction of your earlier testimony that the originating road is quite influential on the movement of traffic?

[fol. 1912] A. Not at all because the shipper will give the originating line a haul. He may even short haul them, but he will give them a haul, there is an influence there, but whether the originating carrier gets the full haul the length of his railroad is another matter.

Q. Does the shipper usually try to give the originating carrier his long haul?

A. I wouldn't say that is a controlling factor.

Q. All other things being equal isn't that the case, Mr. Coulter?

A. Yes.

Q. Ignoring the TP&W for a moment, if traffic originates on the Pennsylvania and moves over the TP&W or through Peoria, would not the Pennsylvania have greater influence on that traffic and in the routing of that traffic than the Santa Fe?

A. Not entirely.

Q. I don't think that's really an answer. Would it have greater influence or not?

A. If it came from an industry on the Pennsylvania?

Q. Yes, sir.

A. Served by the Pennsylvania?

Q. Correct.

A. Influence would be greater.

Q. Thank you. Mr. Coulter, when you say the Santa Fe had already attempted to route that traffic via Chicago and failed, you do not wish to imply that you have worked for [fol. 1913] the Santa Fe in their traffic department, do you?

A. No.

Q. That is merely your opinion, is that correct?

A. Based on many years of experience.

Q. Now, you say in your answer on page 5 the traffic moving from the East through Peoria and handled by the M&StL from Peoria to Nemo and thence over the Santa Fe, that as to that traffic the Santa Fe had already attempted to route that traffic via Chicago and failed. Wouldn't that depend in some measure on the point of origination?

A. You are coming westbound now?

Q. Yes, sir.

A. No.

Q. That would apply to all eastern originations?

A. If they had a route.

Q. And regardless of whether the route was circuitous?

A. Yes.

Q. Then you add, "If the TP&W were able to influence that traffic it would have routed it via Keokuk or Lomax to gain the long haul but here again the TP&W had failed." Then you conclude, "I see no reason why this traffic would be lost by the M&StL if the TP&W were acquired by the Santa Fe-Pennsylvania." Now, Mr. Coulter, if that traffic originated on the Pennsylvania Railroad and they because of their 50 per cent ownership in the TP&W sought to have [fol. 1914] it routed via Lomax, wouldn't their influence for that routing be added to the routing of the TP&W and the Santa Fe?

A. No.

Q. It would not?

A. It would not.

Q. Why not, sir?

A. Because that traffic would be subject to solicitation by the TP&W through Effner as of today as against the Pennsylvania's policy of the long haul through St. Louis,

so the factor of the TP&W solicitation is in there, and that's why the business moves through Effner and then M&StL.

Q. So that you think that despite the fact that the Pennsylvania, that the business originates on the Pennsylvania, that its influence on that traffic would add nothing to the solicitation efforts of the TP&W and the Santa Fe, is that correct?

A. That is correct.

Q. Now supposing this would mean—Mr. Carpi said in his testimony that the Pennsylvania tries to get it for St. Louis—

A. Correct.

Q. (Continuing) —but failing that they take a benevolent position toward Effner. Now, assume with me, Mr. Coulter, that that benevolent influence toward Effner changes to a positive influence in favor of Effner by reason of their ownership in the TP&W. Under those conditions would the influence of the Pennsylvania add anything to the influence [fol. 1915] now exerted by the TP&W and the Santa Fe?

A. No.

Q. Why not?

A. Because, as I said before, this benevolent influence of the Pennsylvania through the Effner gateway, which is the present policy, but they do want their haul Chicago or St. Louis, again I say that the influence of the TP&W soliciting force is greater with the eastern shippers in this case than is the Pennsylvania because we get the business.

Q. Well, now, Mr. Coulter, doesn't that end with this, then, that the ownership of the, by the Pennsylvania of the TP&W will not alter the shipments via Effner?

A. It will alter it.

Q. Why?

A. Because they propose to put Chicago and Effner on the same basis, on a parity, which is not the case today.

Q. Now on a parity on that basis but you agree when they shift their policy it makes a difference to Effner, is that correct?

A. Yes.

Q. If they shift their policy to solicit for Effner would that make a further difference?

A. It would, but they are not going to do it.

Q. Now, supposing they exercise their influence to get the TP&W the long haul clear to Lomax, would not that be helpful to the efforts of the TP&W to get that long haul? [fol. 1916] A. May I explain that, now, Mr. Wheeler?

Q. I'd like you to answer that first and then explain.

A. The answer for it is no, and the reason for it is that the Pennsylvania's influence doesn't extend that far and it won't under this application.

Q. You say the Pennsylvania's influence doesn't extend that far and I just don't understand that.

A. Because they want the haul to St. Louis and they can't get it.

Q. Supposing, Mr. Coulter, you, I believe have testified that—certainly Mr. Carpi did—that if they don't get the haul to St. Louis, that if they can't influence the traffic there, assume that that is the case with respect to this particular traffic, and the Pennsylvania then seeks to influence the traffic all the way to Lomax instead of just to Peoria, and this is a shipment that originates on the Pennsylvania, industries served by them, is it your testimony that that influence will not have any effect on the routing of that traffic?

A. It will not have any effect on that traffic west of Effner.

Q. West of Effner?

A. Yes, west of Effner.

Q. And why not?

A. Because the reason that the shipper inserts Effner and the TP&W is on account of the TP&W solicitation not on account of the Pennsylvania's solicitation.

[fol. 1917] Q. I am not talking about now, Mr. Coulter, I am talking about the future.

A. Future?

Q. Yes.

A. In the future they say they will put Effner and Chicago on the same basis, on a parity.

Q. I am not asking you that either, Mr. Coulter, I am asking you to assume with me that the Pennsylvania, dictated to by self interest arising out of their ownership in the TP&W exerts influence on a shipper on their lines

to haul traffic coming through the Effner interchange clear through to Lomax instead of to Peoria, will not that influence be effected?

A. I can only answer that question by saying I could not comprehend such an assumption.

Q. Well, if that happens, will it not have—

A. (Interrupting) If it happens?

Q. Yes, sir.

A. If?

Q. Yes, sir.

A. I don't know.

Q. You don't know?

A. I don't know.

Q. Do you think the Pennsylvania solicitation efforts are influential?

A. For themselves, yes.

[fol. 1918] Q. Do you think they are influential for their subsidiaries?

A. No.

Q. You do not?

A. No.

Q. Why not?

A. Because having spent some years around the country I have never run across any Pennsylvania influence on Wabash business. That is one example. That is one I know most about.

Q. I believe the testimony of Mr. Carpi is that they haven't exercised that influence for the Wabash?

A. That is what I just said.

Q. So that your testimony, your answer is based on an assumption that they do not exercise influence at the present time to get routings via their subsidiaries?

A. That is based on my experience.

Q. Do you think that if an originating carrier and a terminating carrier use their influence to secure the routing of traffic over an intermediate line that influence will have any effect on the routing?

A. If they do?

Q. Yes, sir.

A. It might have some effect.

Q. Wouldn't that effect be considerable?

A. Not if they say the intermediate line is to remain neutral.

Q. I don't follow your answer, Mr. Coulter. Would the [fol. 1919] neutrality of the intermediate line have any bearing on the results of the influence exerted by the originating and the terminating carrier?

A. Yes.

Q. In what respect?

A. If the originating and terminating carriers owned an intermediate line they are on strict neutrality for that intermediate line and say whatever is good for that intermediate line is good for us, then that intermediate line is not subject to pressure from, in this case, the Pennsylvania or Santa Fe.

Q. I was afraid you didn't comprehend my question. If the Santa Fe originates traffic and the Pennsylvania terminates that traffic and both the Santa Fe and the Pennsylvania go to the shipper and the receiver of that traffic and exercise their greatest influence to have that traffic routed from Lomax to Peoria, do you think that in and of itself would have an effect or would tend to have the effect of having that traffic routed from Lomax to Peoria?

A. I do not. I think it would be resented.

Q. And why?

A. Because the shipper is not, in my opinion and based on my experience, is not going to let the Pennsylvania and Santa Fe pressure them into traffic that way.

Q. Don't you believe that a parent has a right to solicit traffic for routing over a subsidiary?

[fol. 1920] A. They have the right, yes.

Q. Are you familiar with the Missouri Pacific System?

A. Yes.

Q. Are you familiar with the fact that the Missouri Pacific seeks to get routing for its subsidiaries, the Gulf Coast and the IGN?

Q. They might on the Gulf Coast and IGN but I don't think they would on the T&P.

Q. Let's stick to the Gulf Coast and IGN for the moment.

A. I consider the Gulf Coast and IGN part of the Missouri Pacific.

Q. You do?

A. Yes.

Q. Why do you so consider it?

A. Because they have the same president, as I understand it, and the same staff, whereas the Texas and Pacific have an entirely different organization, their own soliciting organization, their own president, et cetera.

Q. And you don't think that there is any cooperation between the solicitation efforts of the Missouri Pacific and the T&P?

A. I think they are acquainted.

Q. Don't you, in fact, know, Mr. Coulter, that the Missouri Pacific does and successfuly does solicit it for the T&P?

A. No, I don't, Mr. Wheeler, and I will tell you why.

[fol. 1921] Q. Would you believe if Mr. Balmer so testified before the Commission he was in error?

A. No.

Q. Would you believe if Mr. Neff so testified before the Commission he was in error?

A. No.

Q. Mr. Coulter, are you aware that the Kansas City Southern solicits traffic for the L&A?

A. Yes.

Q. Do you think that those properties and their solicitation efforts are effective?

A. Yes.

Q. Aren't they considered a number one property?

A. Yes.

Q. Do you think that the efforts of the Kansas City Southern to begin traffic for the L&A are effective?

A. Yes.

Q. Are you familiar with the solicitation efforts of the Southern Railway on behalf of its subsidiaries?

A. No, I am not.

Q. Are you familiar with the efforts of the New York Central solicitation efforts on behalf of its subsidiaries?

A. No.

Q. You don't know whether they are effective or not?

A. I don't know whether they are effective.

[fol. 1922] Q. You don't know whether they encounter shipper resistance or not?

A. No, I don't.

Q. Mr. Coulter, you say here, "Let me say that in my traffic experience I have found that shippers like to favor small railroads with a part of their traffic." Isn't it also true that shippers favor giving railroads their maximum haul, the originating carrier?

A. If the service and other factors are equal.

Q. If the service and other factors are equal don't shippers generally want as few lines in their hauls as possible?

A. No.

Q. You don't believe that that's the rule?

A. I don't believe that that's the rule, no.

Q. When you say it is not the rule are you thinking about the Alphabet Route that has been mentioned here?

A. And others.

Q. Aren't they the exception rather than the rule?

A. I don't think so.

[fol. 1923] Q. Isn't car tracing easier if fewer of the railroads are involved in the route?

A. From what I have seen, no.

Q. Are you referring to your experience with the Frisco as well as your experience here?

A. Yes.

Q. Now, Mr. Coulter, you gave an example at the bottom of page 5 of your testimony of a loaded car from the East and concluded that the M&StL service, Peoria to Nemo was vastly inferior to that of the TP&W to Lomax, did you not?

A. Yes.

Q. Do you think that that is a fair and full statement of the facts?

A. Yes.

Q. Mr. Coulter, does not the M&StL principal business from the TP&W come to it around 10 p.m. in the evening?

A. Yes.

Q. Is that the schedule to which you referred in your testimony?

A. Yes.

Q. Now, doesn't the M&StL, doesn't the traffic that comes into the TP&W around 10 p.m. in the evening depart on No. 19, M&StL train No. 19, and arrive at Nemo after 3 a.m.?

A. Traffic that comes in on the TP&W at 10 p.m.?

Q. Yes, sir.

A. We don't have any train coming in at 10 p.m.

[fol. 1924] Q. I am speaking of traffic that is delivered to the M&StL around 10 p.m. by the TP&W.

A. Yes.

Q. And doesn't that No. 19 make the same Santa Fe connection that the TP&W does?

A. No.

Q. At Lomax?

A. No.

Q. Didn't Mr. Mahoney so testify?

A. I didn't hear him say that.

Q. Did you look at the schedules that he put in evidence?

A. Not too exacting.

Q. You don't know, then, that the M&StL has a train out in the evening over which its principal business between Peoria and Nemo is carried that makes connection with the same Santa Fe train that the TP&W does at Lomax?

A. I think it does not.

Q. You think it does not. And that's the basis upon which you made this statement?

A. Yes.

Q. Isn't the interchange to which you refer in your testimony, the volume of that interchange very light?

A. M&StL Nemo.

Q. The one to which you referred—

A. (Interrupting) What page are you on?

[fol. 1925] Q. I am on pages 5 and 6.

A. Yes, I think it would be light.

Q. Isn't a volume business on another train, No. 19, of the M&StL?

A. I don't know what your No. 19 is, I am sorry.

Q. Doesn't the volume, the principal volume of traffic

handled on that run by the M&StL move on another train other than the one you have described in your testimony?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No.

Q. Now, Mr. Coulter, your testimony on page 6, commenting on Mr. Swanson's testimony, and referring to the service between the M&StL, the comparative service between the M&StL, and the TP&W with the Santa Fe, based on the same information that we have discussed heretofore in connection with the prior page of your testimony, does it not?

A. Yes.

Q. It assumes no Pennsylvania influence for the long haul on the TP&W from Peoria to Keokuk or Lomax?

A. Correct.

Q. Did you hear Mr. Carpi's testimony with respect to captive traffic?

A. No.

Q. Did you hear Mr. Gurley's testimony with respect [fol. 1926] to what would happen when the Santa Fe applied its utmost efforts in connection with the traffic movement?

A. I don't recall that testimony.

Q. The traffic that now moves over the M&StL to points beyond Nemo, that is, from Peoria or to Peoria, from and to points beyond Nemo, insofar as they are served by the Rock Island, for instance, traffic to and from points that are also served by the Rock Island, could move to Keokuk over the TP&W and thence via the Rock Island to that destination, could it not?

A. No. I think there is a line there east of Keokuk where the Rock Island might have a back haul. I don't say that all traffic that can move to the Rock Island from the TP&W can move through Keokuk.

Q. Well, can traffic move from the TP&W to the Rock Island?

A. Yes.

Q. For movement to northwestern points?

A. Yes.

Q. You have heard the testimony with respect to that

being a service route, have you not, that is, a route from. I think it is Eldon, to Keokuk?

A. Well, the service route is through Keokuk and Eldon going to the Southwest in California, lower California.

Q. And Des Moines?

A. Yes.

Mr. Thomas: I think the record will show what was testi-
[fol. 1927] fied about that.

Mr. Wheeler: I think I am entitled to check this witness.

Exam. Albus: Proceed.

By Mr. Wheeler:

Q. Do you understand that a local point is one use, in railroad terminology, is a point served only by one railroad?

A. That is my understanding of it.

Q. Mr. Coulter, is it your testimony that the placing of Lomax and Chicago on a parity would not adversely affect Nemo?

A. I don't have any knowledge what the Santa Fe has plans to do at Nemo.

Q. Well, assume they do nothing at Nemo but they place Lomax on a parity with Chicago in their solicitation efforts, would that have an adverse effect on Nemo?

A. I think it might.

Q. In answering or in your prepared testimony, Mr. Coulter, did you assume—what did you assume with respect to the Pennsylvania's attitude traffic-wise, solicitation-wise, in what way did you think that the Pennsylvania's attitude toward the TP&W traffic-wise would change in the event that their application is granted?

A. Because—

Q. (Interrupting) I asked you in what way.

A. In this way, putting those two gateways on the same basis of parity—

[fol. 1928] Q. (Interrupting) You mean what two gateways?

A. Effner and Chicago.

Q. Yes?

A. Means less resistance to our solicitors.

Q. In what way do you distinguish between parity and having a benevolent attitude toward a gateway?

A. In this way, that the railroad that has two gateways, such as Effner and Chicago, are not provoked, if we get the haul through Effner.

Q. That is the benevolent attitude?

A. Benevolent.

Q. What is the difference if they are on a parity?

A. That is it.

Q. You think they are synonymous, then?

A. I think they are synonymous.

Q. Do you understand that the Santa Fe opposes the Lomax gateway as against Chicago now?

A. I testified they give us passive resistance.

Q. And you think that is going to change, as you understand the testimony of Mr. Duffy?

A. I know it is going to change, they are under oath.

Q. I just want to know what you understand.

A. Yes.

Q. And it is going to go from passive resistance to what?

A. Benevolent.

[fol. 1929] Q. To benevolent?

A. Association.

Q. Mr. Coulter, do you think that the Nickel Plate and its officers should be able to evaluate the effect of control by the Santa Fe and Pennsylvania on their traffic through Peoria?

A. They can evaluate but they might be mistaken.

Q. Do you think they would be in a better position to evaluate that effect than you?

A. No.

Q. I take it you would give the same answer with respect to the Rock Island and the Burlington?

A. Correct.

Q. Now, I believe you stated previously that your answers throughout here assume that the Pennsylvania would not solicit for the TP&W long haul from Peoria to Lomax or Keokuk, is that correct?

A. Yes.

Q. And would the same be true with respect to the Santa Fe?

A. Yes.

Q. What is your policy with respect to the use of the Nemo gateway today or the Nemo route, the Peoria to Nemo route, Mr. Coulter?

A. Our policy is to use Lomax, but if the M&StL has an influence in getting the traffic with us from Effner, Sheldon to Peoria, we go along with them.

[fol. 1930] Q. Can you equate that in terms of benevolence or parity or any of the terms that have been used here by Mr. Duffy or Mr. Carpi?

A. The only way to equate it would be the vigorous solicitation of the M&StL.

Q. Now, thinking in these terms: Does your policy toward the Peoria and Nemo route, is it similar to the benevolent policy that the Pennsylvania has between Effner and Chicago?

A. No, we are not that benevolent.

Q. Is it one of passive resistance, as you used the term or as Mr. Duffy, or as you said Mr. Duffy indicated as between Lomax and Chicago?

A. It would be somewhat along that line, yes, sir.

Q. Now, Mr. Coulter, you referred to a Quanah and something else railroad.

A. Acme and Pacific.

Q. Do you believe that the operation of that railroad is comparable, truly comparable, to the TP&W?

A. Yes.

Q. You do?

A. Yes.

Q. With what railroads does that railroad connect?

A. Santa Fe and Frisco.

Q. Any others?

A. There might be one or two others, I am not sure.

Q. As a matter of fact, there are only the two, are there not?

[fol. 1931] A. I think only the two.

Q. They connect those two railroads?

A. Yes.

Q. That railroad connects the Frisco and the Santa Fe?

A. Yes.

Q. Does it have a gateway in the middle of it?

A. No.

Q. Mr. Coulter, if the M&StL substantially increased the number of offices that were soliciting business for the M&StL and the TP&W, do you think that would increase or might have a tendency to increase the business over the two lines?

A. It might.

Q. If you eliminate joint facilities, repair facilities, and the like, don't you believe you would make a savings, Mr. Coulter?

A. Yes.

Mr. Wheeler: I have no further questions.

Exam. Albus: Are there any further questions of Mr. Coulter?

Mr. Cassell: No, sir.

Exam. Albus: You are excused, sir. Thank you very much.

(Witness excused.)

Exam. Albus: Is there any additional evidence to be introduced?

JAMES A. SWANSON was sworn and testified as follows:

Direct examination.

[fol. 1932] Mr. Wheeler: Will you take the stand, Mr. Swanson.

By Mr. Wheeler:

Q. Mr. Swanson, there was read into the transcript at pages 1,547 and 1,546 a traffic loss study prepared by you, and I believe you stated with Mr. Nelson of the M&StL, is that correct?

A. That is correct.

Q. In the light of your cross-examination and more particularly in the light of the testimony that has been given here by Mr. Coulter, do you believe that any changes

should be made in your estimate of losses or your study as it was read into the record?

A. No. I am convinced that with the Pennsylvania-Santa Fe acquisition these estimates are accurate in my best judgment.

Mr. Wheeler: I have no further questions.

Exam. Albus: Is there any cross-examination?

Mr. Thomas: No cross.

Exam. Albus: You are excused, Mr. Swanson. Thank you.

(Witness excused.)

Exam. Albus: Is there anything further?

Did counsel waive a proposed report in this case?

Mr. Cassell: No, sir.

Mr. Broker: No, sir.

Exam. Albus: Let the record show there will be a proposed report by the Examiner.

Do you desire to file briefs?

Mr. Cassell: Yes, sir.

[fol. 1933] Mr. Lucas: Yes, sir.

Mr. Broker: Yes, sir.

Exam. Albus: Briefs will be due simultaneously on April 2, 1956. There will be no reply briefs at this stage.

If nothing further appearing the hearing is closed.

(Whereupon, at 1:30 p.m., Tuesday, February 14, 1956, the hearing in the above-entitled case was closed.)

VOLUME V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 12

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vs.

UNITED STATES OF AMERICA, ET AL.

No. 27

SOUTH DAKOTA, ET AL., APPELLANTS,

vs.

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No. 28

MINNESOTA, ET AL., APPELLANTS,

vs.

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No. 12 filed December 1, 1958
No. 27 filed January 2, 1959
No. 28 filed January 8, 1959
Probable Jurisdiction Noted March 9, 1959

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EXHIBIT H-4

FINANCE DOCKET NO. 18991
EXHIBIT NO. H-4

BEFORE THE

Interstate Commerce Commission

Application of the Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and The Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	Finance Docket No. 18991.

BASIC MAPS

AT PRR A

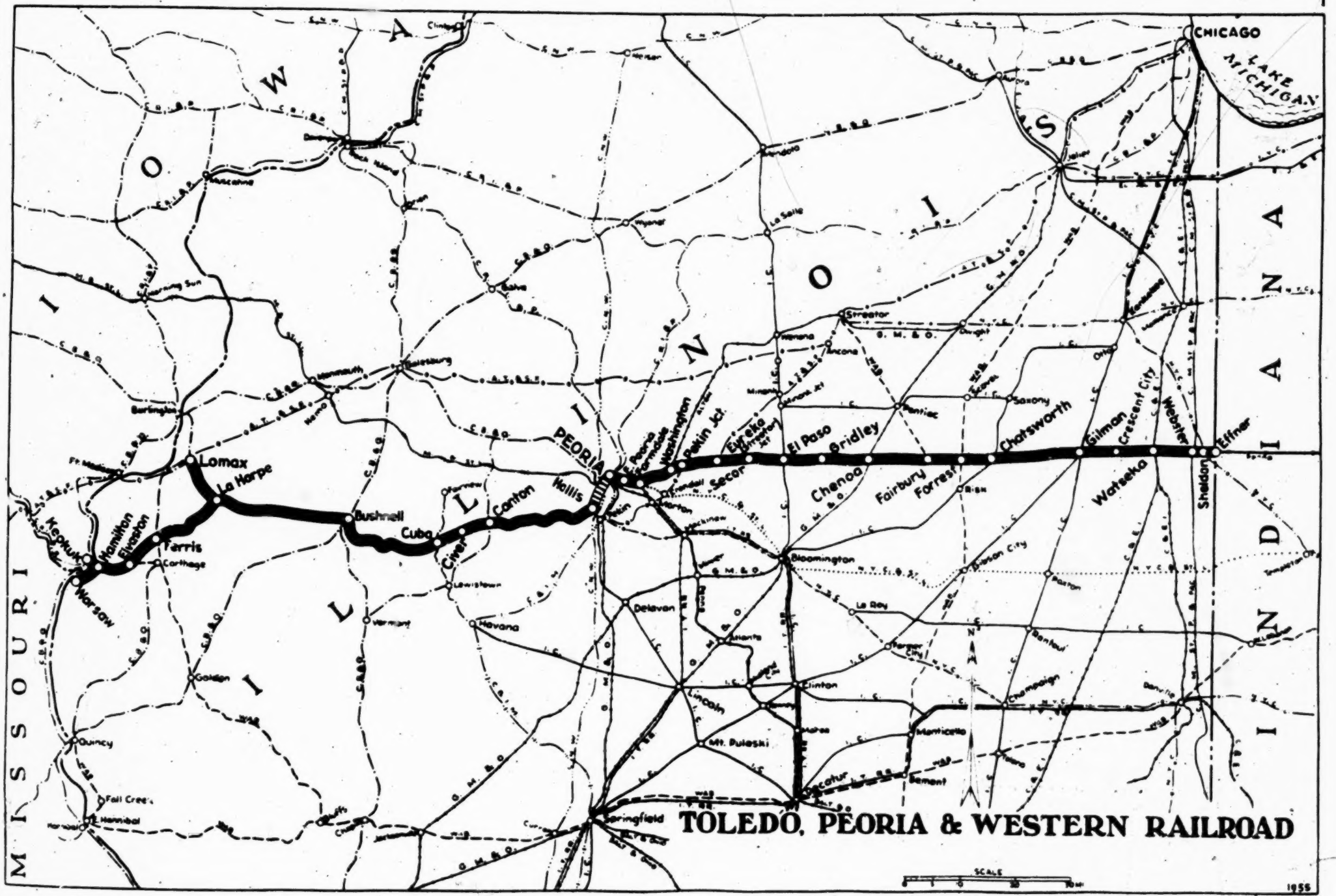
1934

NOTE TO PRINTER:

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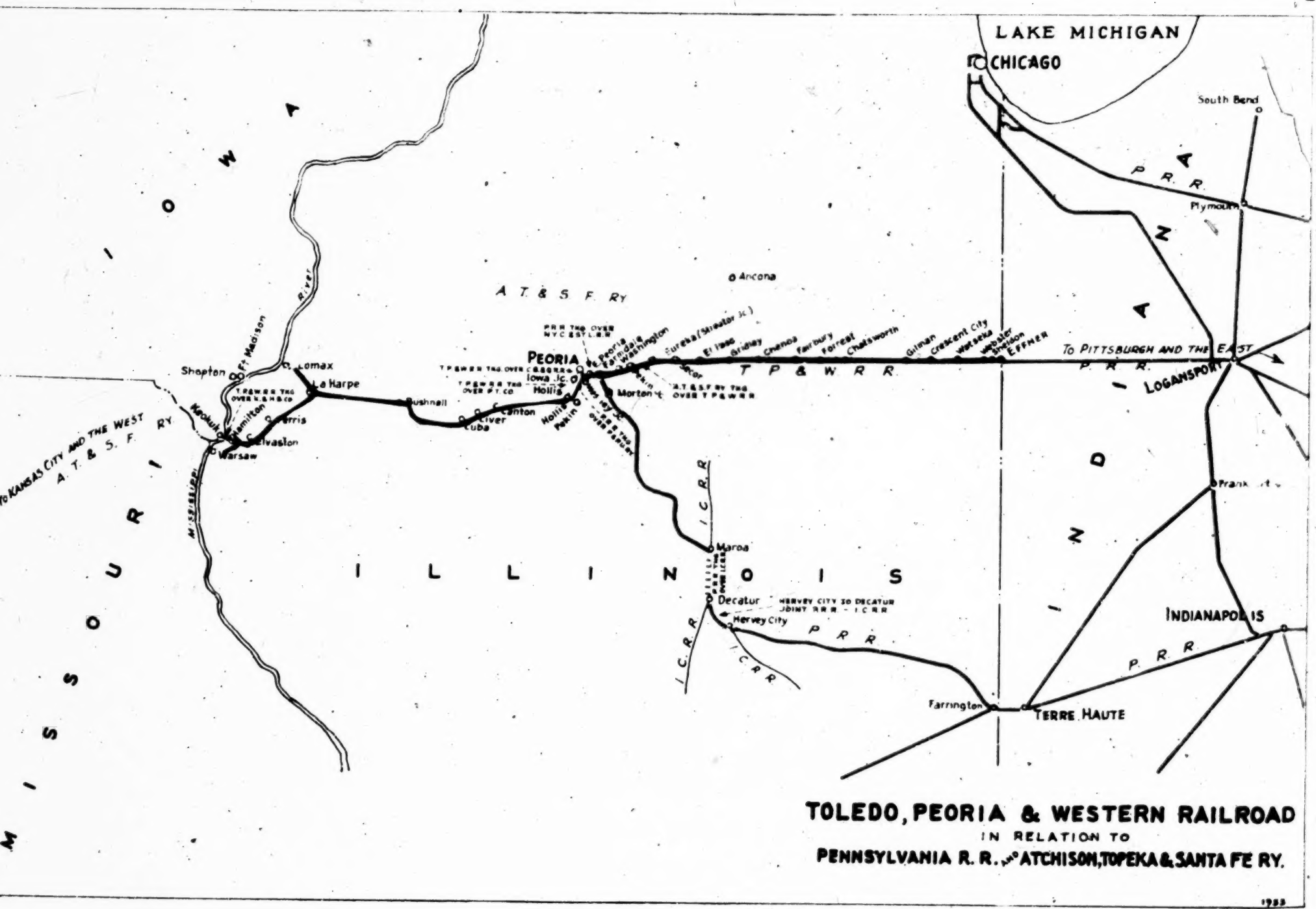
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CHICAGO
LAKE MICHIGAN
IOWA
ILLINOIS
INDIANA
MISSOURI
PEORIA
Lomax
La Harpe
Bushnell
Cuba
Canton
Hollis
Secor
El Paso
Bridley
Chatsworth
Gilman
Crescent City
Webster
Elfinr
Sheldon
Streator
Chenoa
Fairbury
Forrest
Watseka
Bloomington
Pontiac
Saxony
Hamilton
Elvaston
Ferris
Carthage
Keokuk
Warsaw
Quincy
Fall Creek
Hannibal
Golden
Havana
Delavan
Lincoln
Clinton
Champaign
Mt. Pulaski
Monticello
Decatur
Bement
Springfield
TOLEDO, PEORIA & WESTERN RAILROAD
SCALE
1936

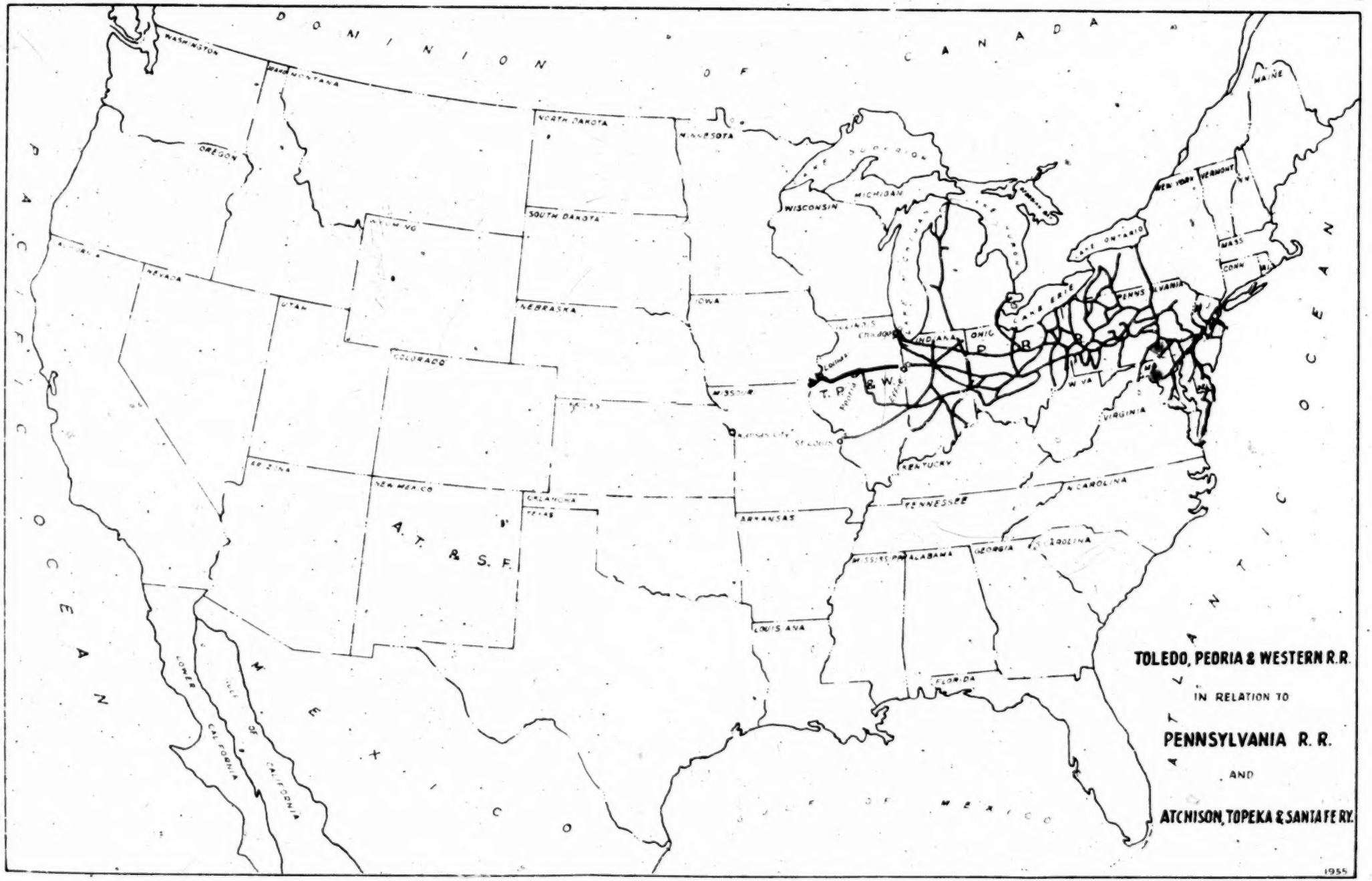
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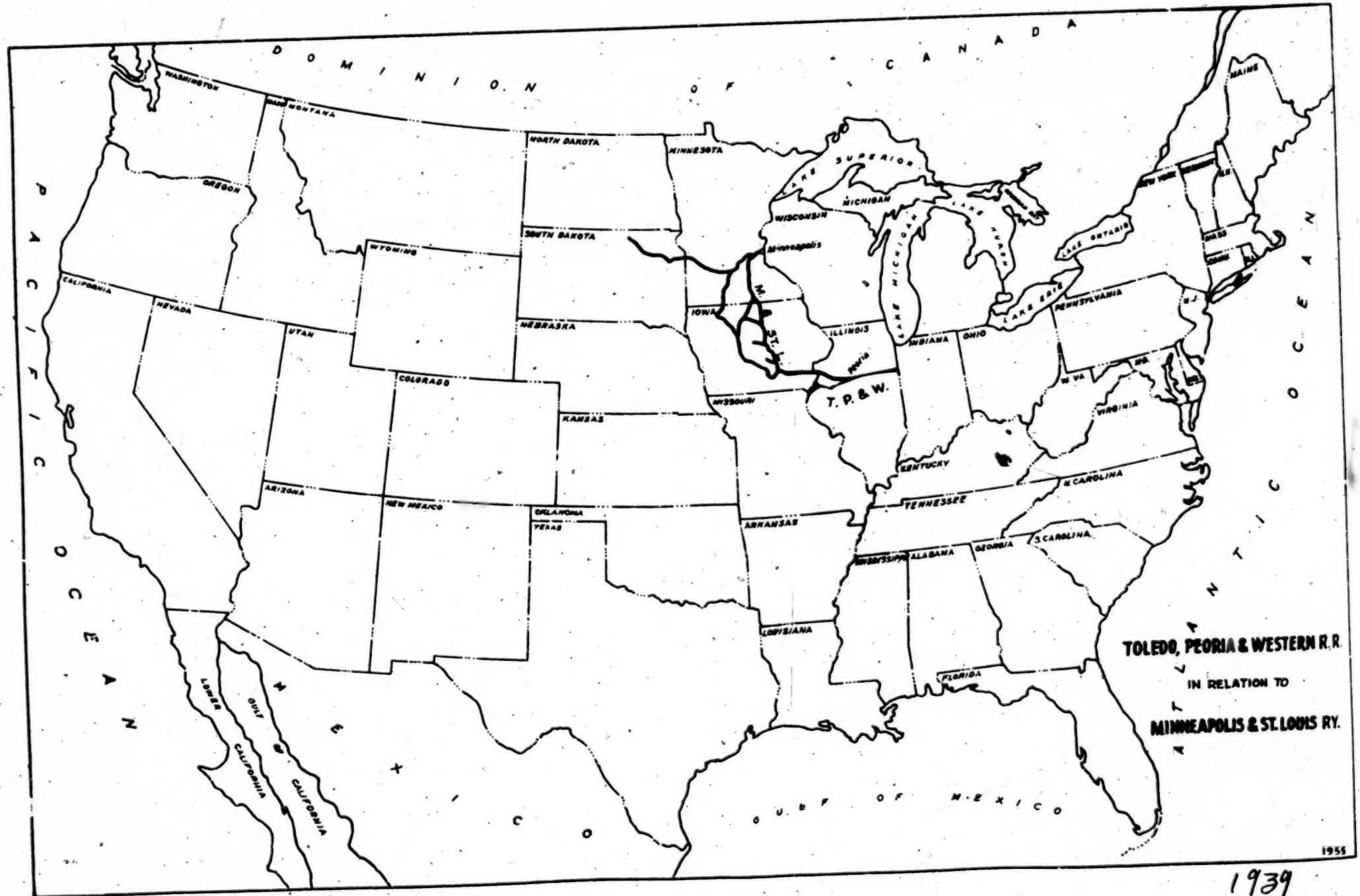

LAKE MICHIGAN
CHICAGO
South Bend
P R R
Plymouth
I N D I A N A
Ancona
A T & S F Ry
PEORIA
Peoria
Farmdale
Washington
Eureka (Shiraton Jct)
El Paso
Gridley
Chenoa
Fairbury
Forrest
Chatsworth
Gilman
Crescent City
Watseka
Webster
Sheldon
Effner
T P & W R R
To PITTSBURGH AND THE EAST
P R R
LOGANSPORT
Iowa Jct
Hollis
Morton
Pekin
A T & S F Ry
Shopton
Ft Madison
Lomax
La Harpe
Bushnell
Cuba
Canton
Hollis
Pekin
Hamilton
Harris
Nauvoo
Alvaston
Warsaw
To KANSAS CITY AND THE WEST
A. T. & S. F. RY
MISSISSIPPI RIVER
I L L I N O I S
I C R R
Maroa
Decatur
HERVEY CITY TO DECATUR
JOINT R R R - I C R R
Hervey City
P R R
I C R R
Farrington
TERRE HAUTE
INDIANAPOLIS
P R R
TOLEDO, PEORIA & WESTERN RAILROAD
IN RELATION TO
PENNSYLVANIA R. R. AND ATCHISON, TOPEKA & SANTA FE RY.
1933

1937

[fol. 1938]



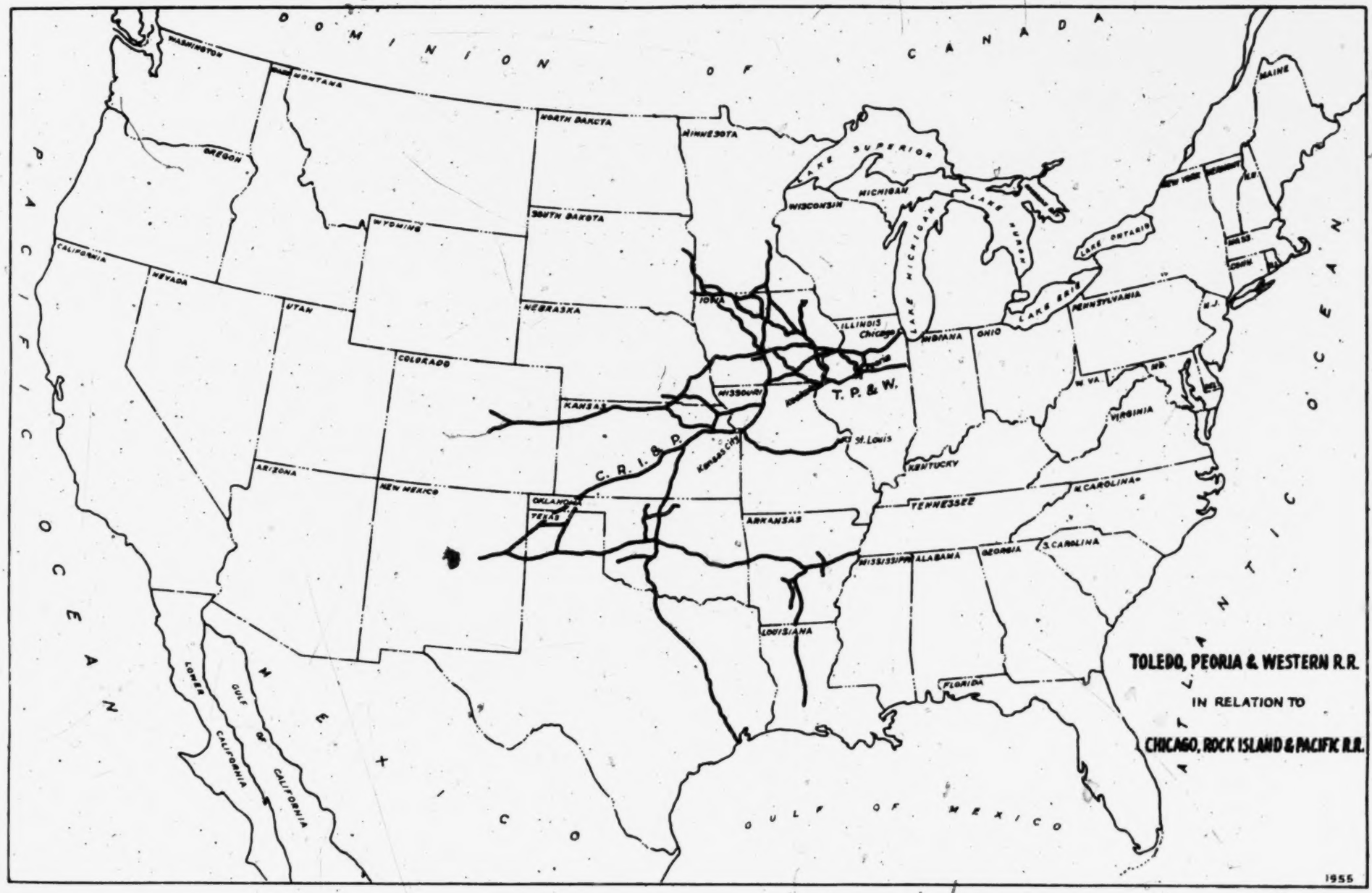
1938


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WASHINGTON
MONTANA
NORTH DAKOTA
MINNESOTA
OREGON
SOUTH DAKOTA
WYOMING
CALIFORNIA
NEVADA
UTAH
NEBRASKA
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ARIZONA
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OKLAHOMA
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NEW YORK
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N.J.
LAKE SUPERIOR
LAKE MICHIGAN
LAKE HURON
LAKE ERIE
LAKE ONTARIO
Minneapolis
M. & St. L.
Peoria
T. P. & W.
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ATLANTIC OCEAN
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GULF OF CALIFORNIA
GULF OF MEXICO
TOLEDO, PEORIA & WESTERN R.R.
IN RELATION TO
MINNEAPOLIS & ST. LOUIS RY.
1955

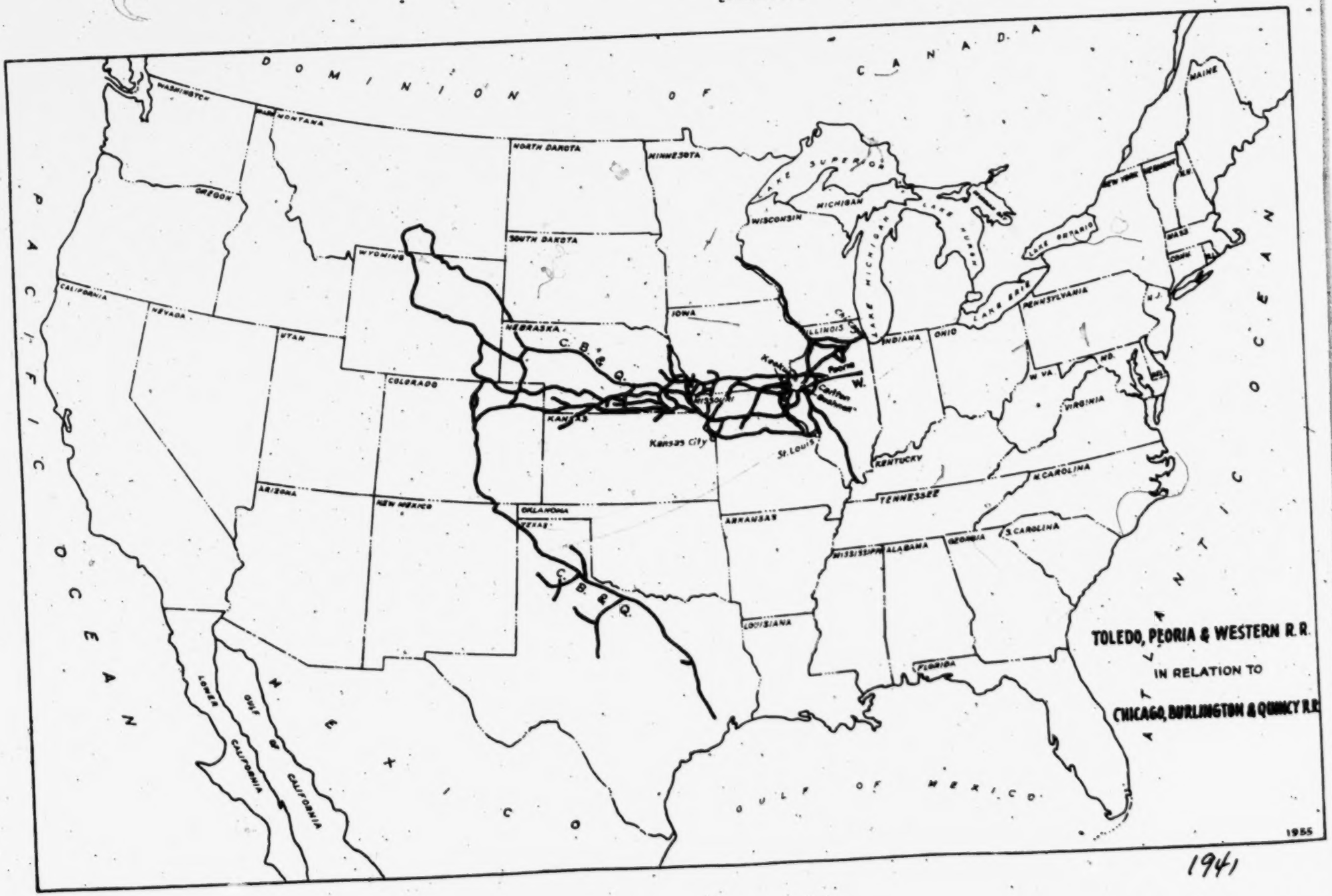
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[fol. 1940]

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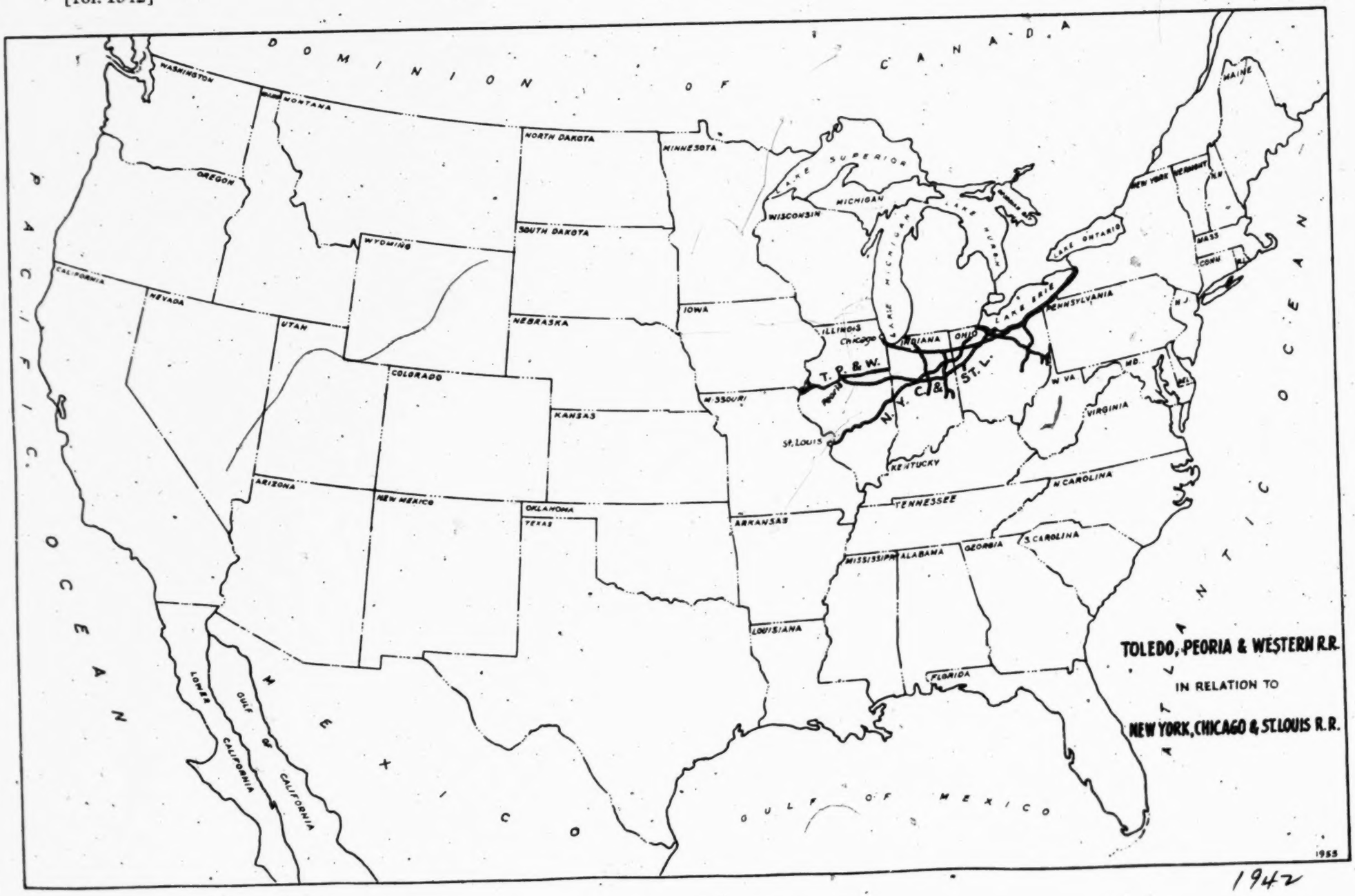


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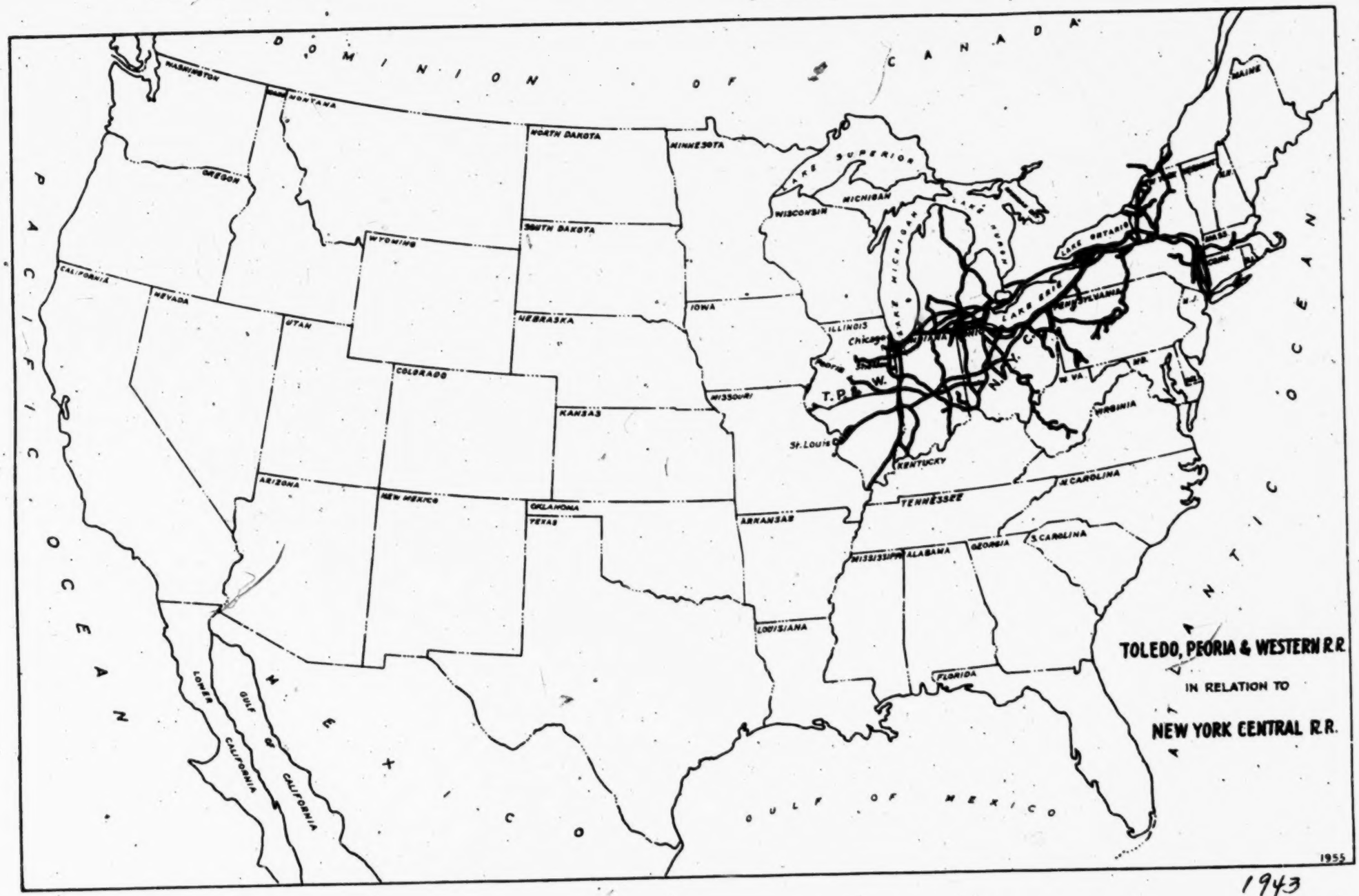

DOMINION OF CANADA
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LOWER CALIFORNIA
GULF OF CALIFORNIA
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C. B. & Q.
Kansas City
St. Louis
Peoria
Toledo
Chicago
TOLEDO, PEORIA & WESTERN R.R.
IN RELATION TO
CHICAGO, BURLINGTON & QUINCY R.R.
1955
1941

[fol. 1942]

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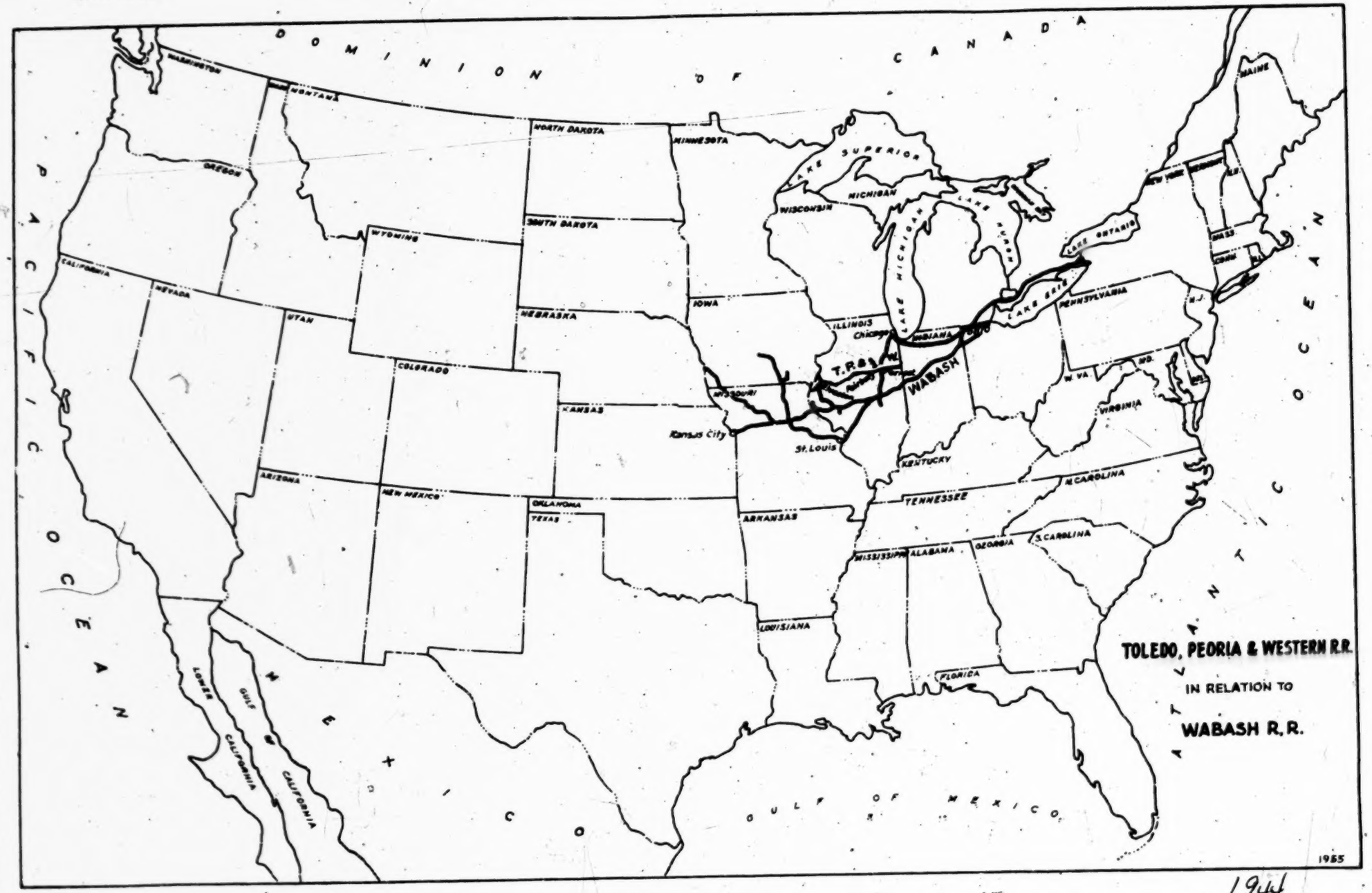
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ATLANTIC OCEAN
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GULF OF CALIFORNIA
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WISCONSIN
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T. P. & W.
St. Louis
KENTUCKY
TENNESSEE
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GEORGIA
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MAINE
TOLEDO, PEORIA & WESTERN R.R.
IN RELATION TO
NEW YORK CENTRAL R.R.
1955

1943

[fol. 1944]

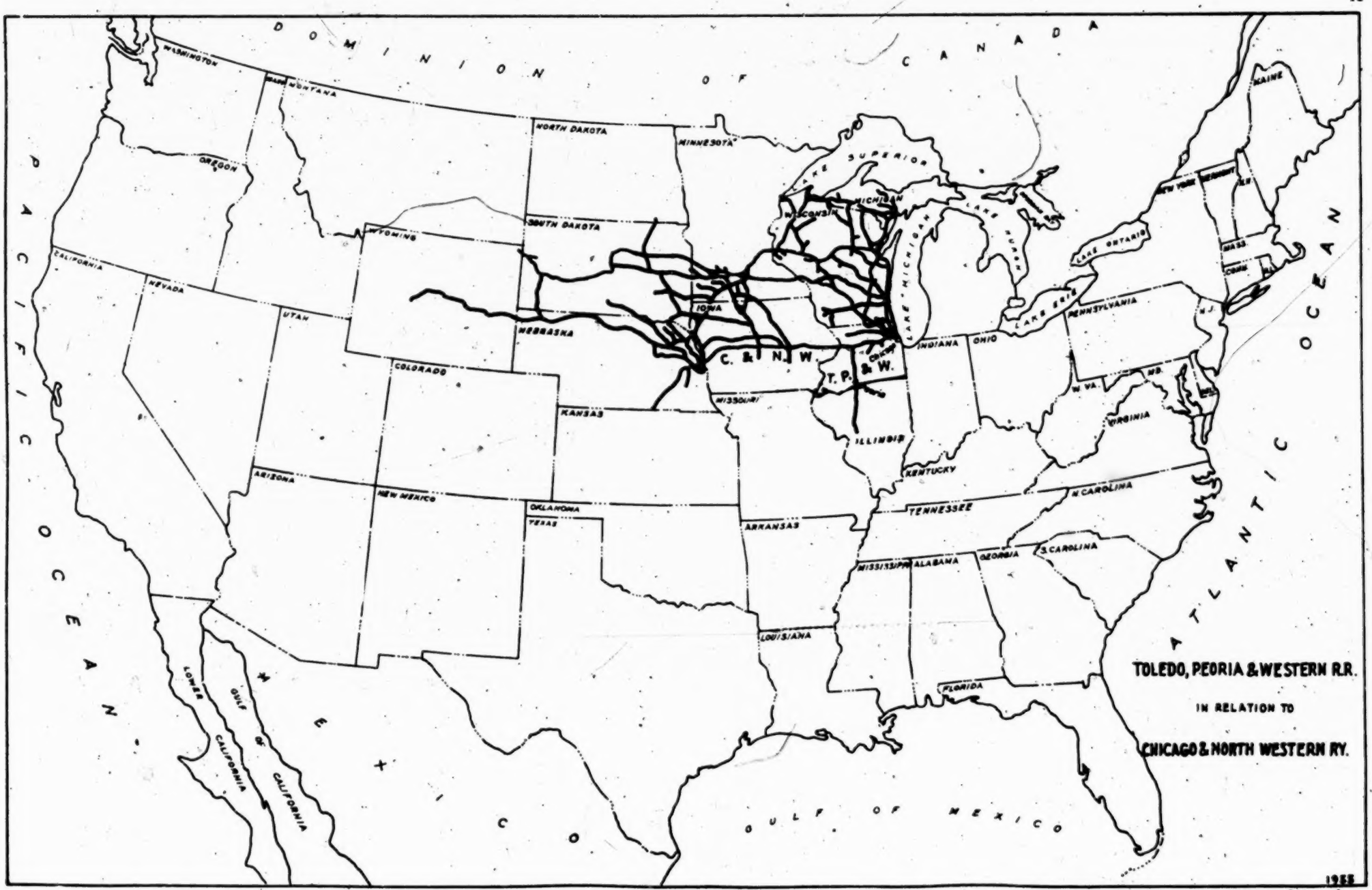
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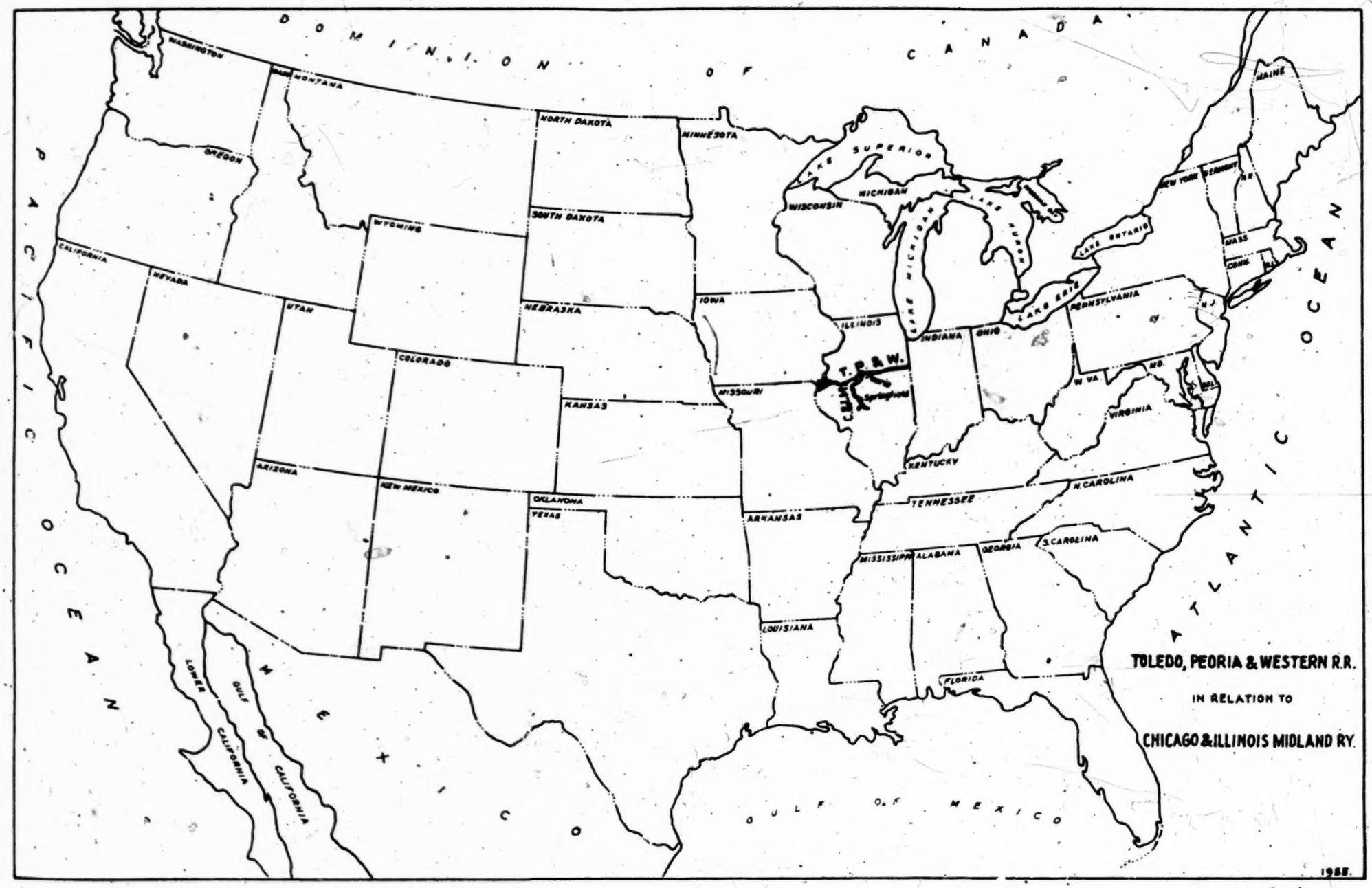
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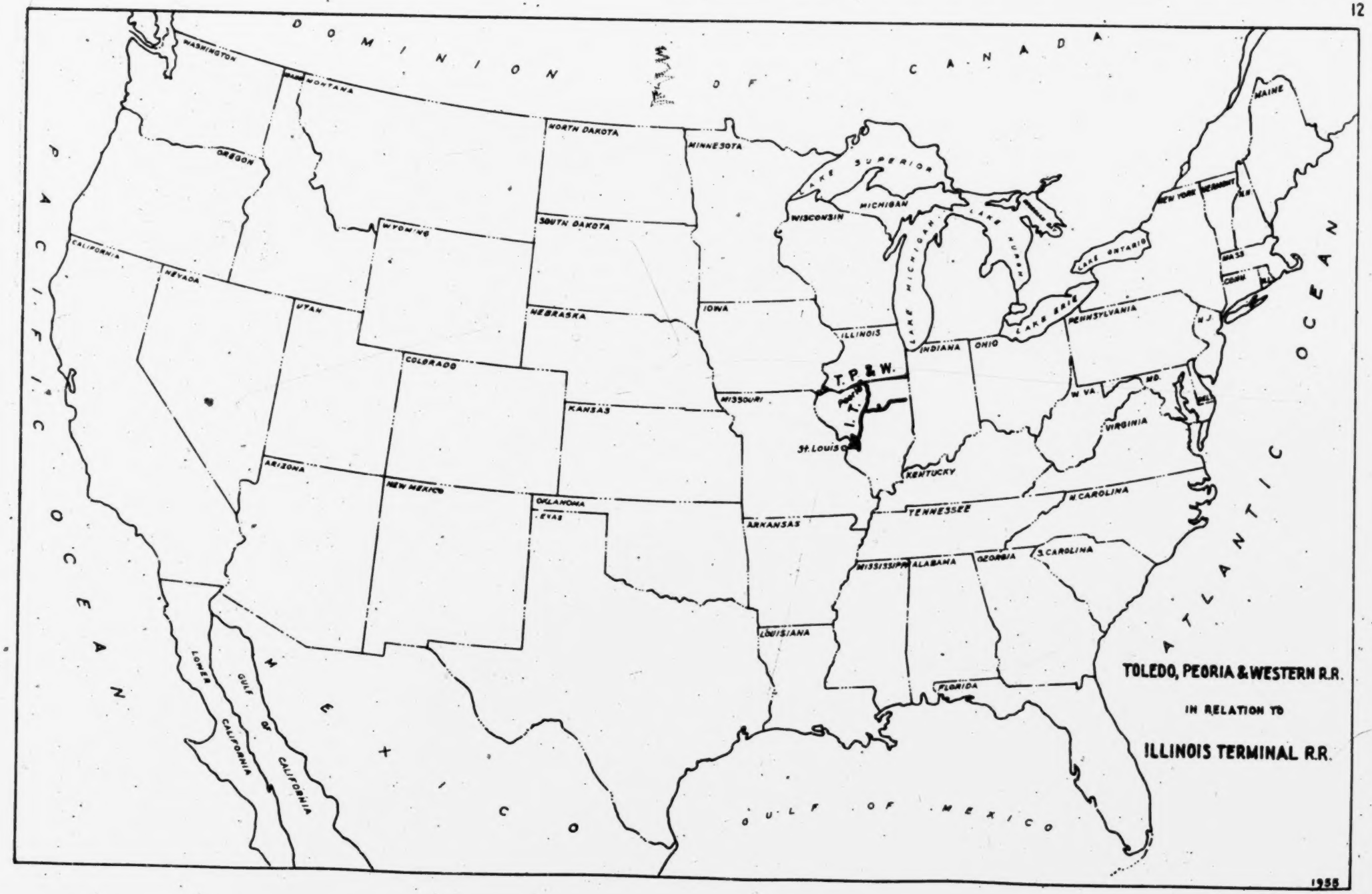
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[fol. 1946]



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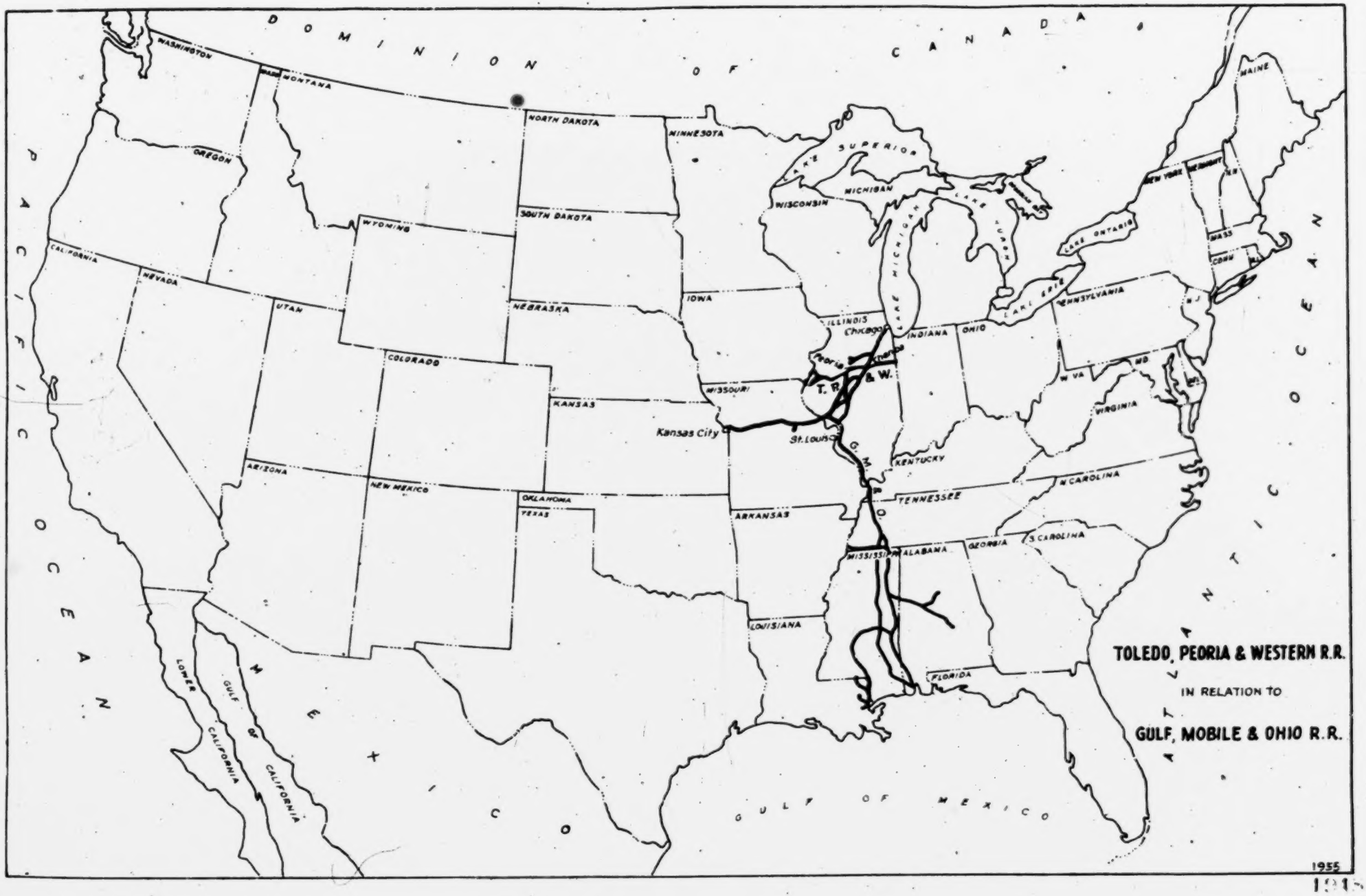
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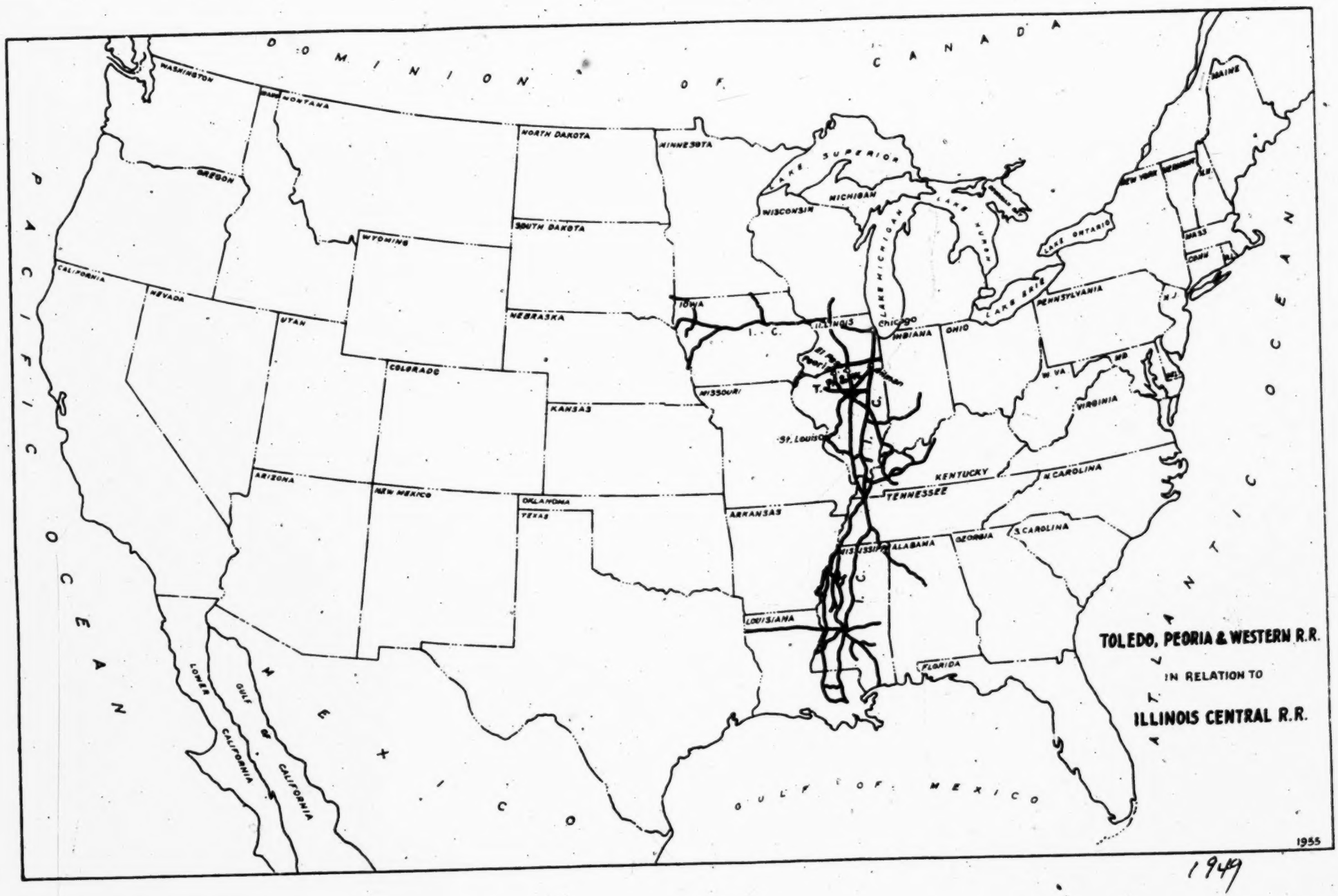


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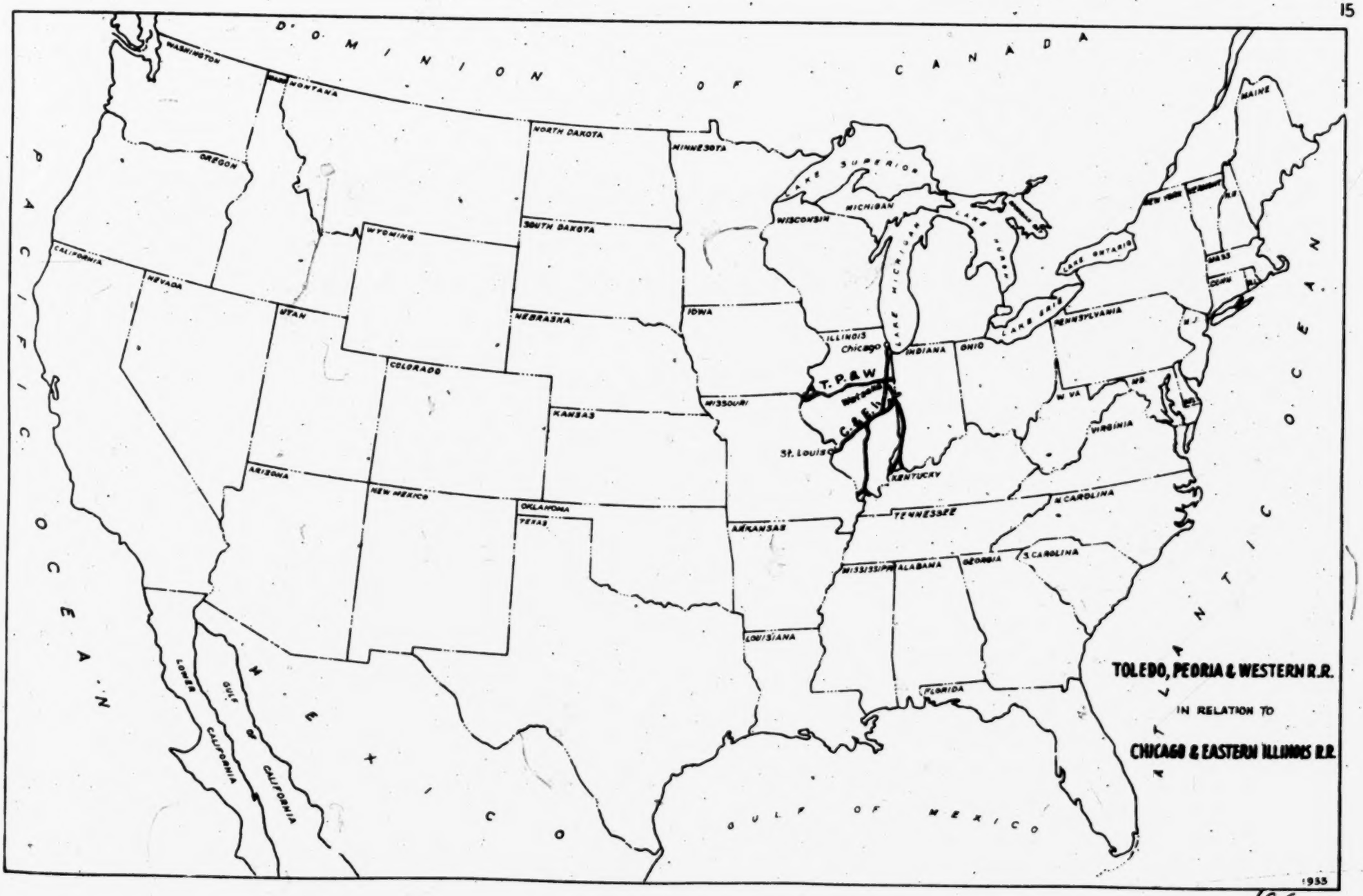
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DOMINION OF CANADA
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ATLANTIC OCEAN
MEXICO
GULF OF MEXICO
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MONTANA
NORTH DAKOTA
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SOUTH DAKOTA
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WISCONSIN
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FLORIDA
Kansas City
St. Louis
T. P. & W.
G. M. & O.
LOWER CALIFORNIA
GULF OF CALIFORNIA
TOLEDO, PEORIA & WESTERN R.R.
IN RELATION TO
GULF, MOBILE & OHIO R.R.
1955

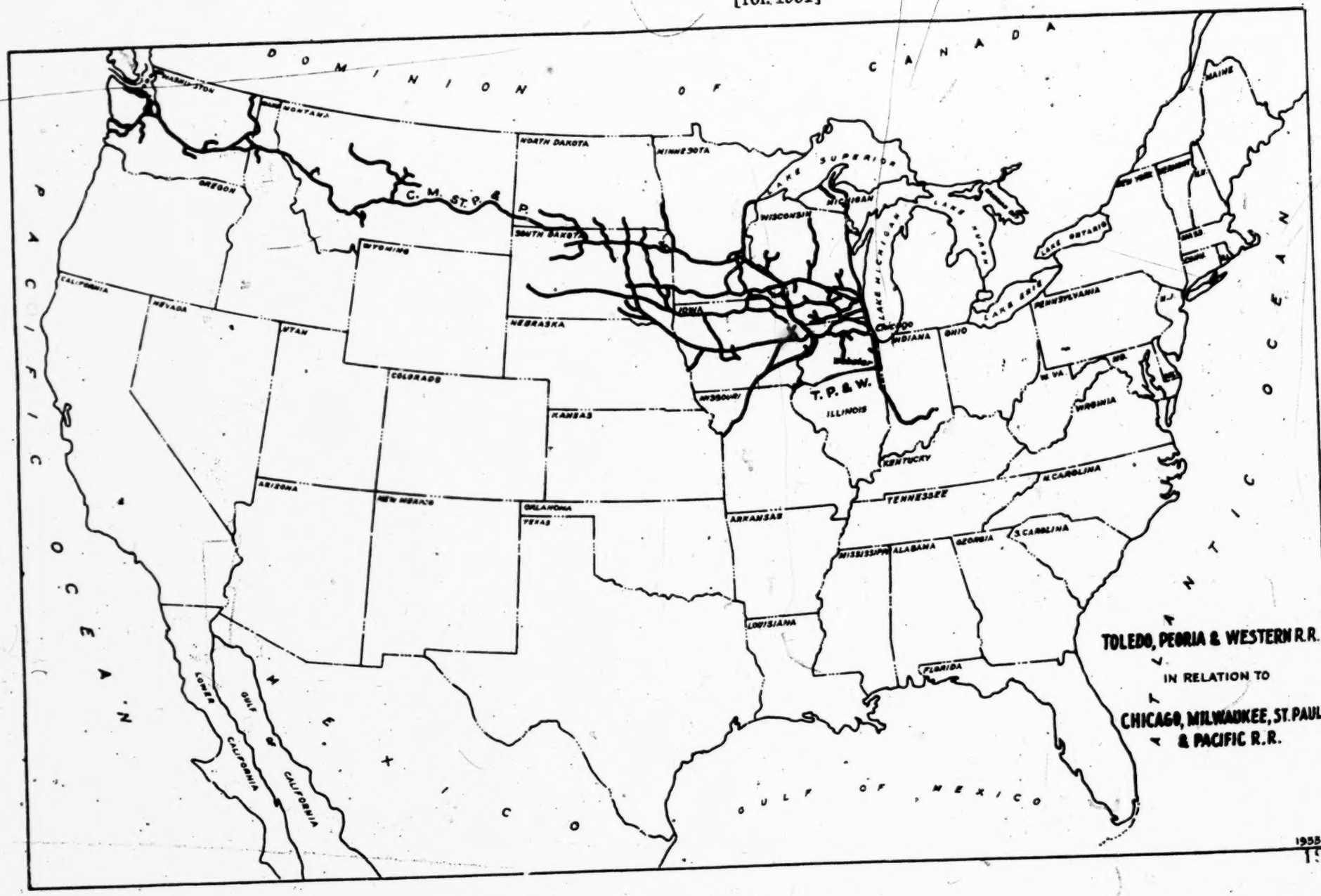

DOMINION OF CANADA
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ATLANTIC OCEAN
MEXICO
GULF OF MEXICO
LOWER CALIFORNIA
GULF OF CALIFORNIA
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N.H.
MASS.
CONN.
R.I.
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MD.
DEL.
LAKE SUPERIOR
LAKE MICHIGAN
LAKE HURON
LAKE ERIE
LAKE ONTARIO
CHICAGO
St. LOUIS
I. C.
T. P. & W.
TOLEDO, PEORIA & WESTERN R.R.
IN RELATION TO
ILLINOIS CENTRAL R.R.
1955
1949

[fol. 1950]

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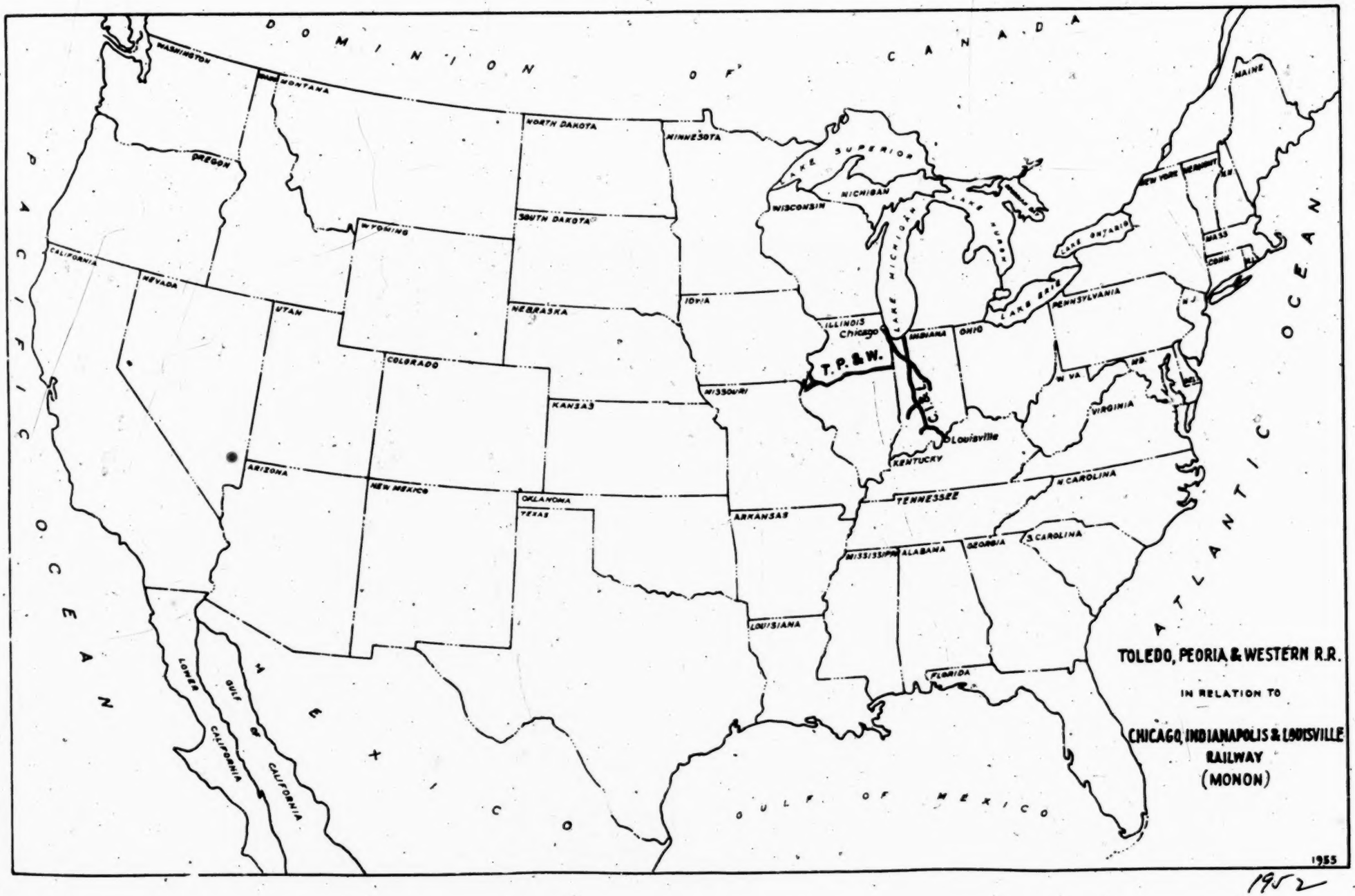


1950


DOMINION OF CANADA
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MEXICO
GULF OF MEXICO
WASHINGTON
MONTANA
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MINNESOTA
OREGON
C. M. ST. P. & P.
SOUTH DAKOTA
WISCONSIN
MICHIGAN
LAKE SUPERIOR
LAKE MICHIGAN
LAKE HURON
LAKE ONTARIO
LAKE ERIE
MAINE
NEW YORK
VERMONT
N.H.
MASS.
CONN.
R.I.
WYOMING
CALIFORNIA
NEVADA
UTAH
NEBRASKA
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ILLINOIS
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N. CAROLINA
MISSISSIPPI
ALABAMA
GEORGIA
S. CAROLINA
LOUISIANA
FLORIDA
LOWER CALIFORNIA
GULF OF CALIFORNIA
TOLEDO, PEORIA & WESTERN R.R.
IN RELATION TO
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R.R.
1938
1951

[fol. 1952]

17



1952

[fol. 1953]

EXHIBIT H-5

FINANCE DOCKET NO. 18991
EXHIBIT NO. H-5

BEFORE THE

Interstate Commerce Commission

Application of the Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and The Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	Finance Docket No. 18991.

TRAFFIC DATA

AT-PRR-B

1953

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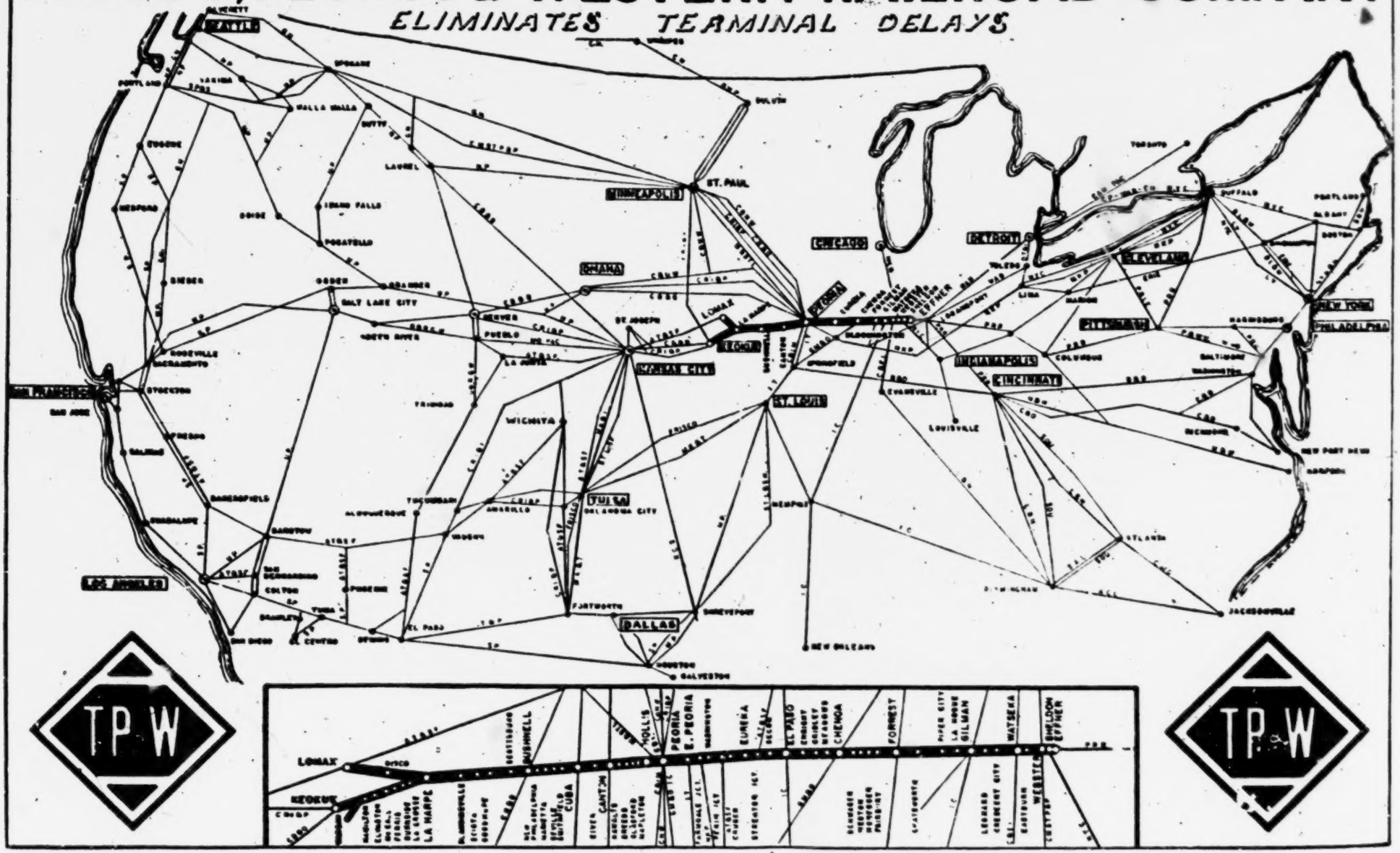
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[Vol. 1955]

REPRODUCTION OF PAGE 264 OF JANUARY, 1956 ISSUE OF "THE OFFICIAL GUIDE OF THE RAILWAYS OF THE UNITED STATES"

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

ELIMINATES TERMINAL DELAYS



TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

GENERAL OFFICES—PEORIA, ILL.

Peoria & Western

GUY A. GLADSON, Chairman of the Board
J. RUSSEL COULTER, President

J. ARLLERS BANOBOYTZ	Vice-President
ARTHUR J. MILLER	Vice-President—Traffic
CHARLES L. PATTISON	Controller and Secretary
WILLIAM H. BLAIR	Assistant Vice-President—Rates
LEWIS A. NEWELL	Assistant to Vice-President—Traffic
ROGER A. FISCHER	Freight Traffic Manager—Solicitation
S. B. GIFFORD	Assistant to President and Treasurer
A. H. EGBERT	Chief Engineer
B. M. BASLINGER	Superintendent
J. J. DAILEY	Superintendent of Motive Power
I. V. COHEN	General Purchasing Agent
W. A. GREEN	Assistant Treasurer
HUNTER, KAVANAGH, McLAUGHLIN & BOND	Attorneys
Dr. CHARLES D. KRANOK	Chief Surgeon
BOYD, WALKER, HUISKAMP & CONCANNON, KEOKUK, IOWA	Iowa Attorneys

§ Wilmington Trust Co., Wilmington, Del.

TRAFFIC DEPARTMENT

Chicago 4, Ill.—C Harrison 6-8[illegible]—
Room 1127, 608 South Dearborn Street
E. Russel Porter, Western Traffic Manager
Robert A. Pepper, Traffic Manager
R. K. Meyer, Assistant General Freight Agent

Cincinnati 8, Ohio—DUnbar 5775—
2301 Carew Tower Building—
J. L. Patterson, General Agent.

Cleveland 14, Ohio—SUperior 1-4[illegible]—
619 Williamson Building—
J. P. Chantin, General Agent.

Dallas 1, Tex.—STerling 1-5[illegible]—
1207 Kirby Building—
D. O. Schoman, General Agent.

Detroit 26, Mich.—Woodward 2-2[illegible]—
1218 Lafayette Building—
Leonard E. Boerger, General Agent.

Indianapolis 4, Ind.—MAin[illegible]—
519 Board of Trade Building—
Frank H. Sanders, General Agent.

Kansas City 6, Mo.—GRand 1-0[illegible]—
330 Railway Exchange Building—
Jerry Murray, General Agent.

Keokuk, Iowa—114 and 116
97 Bridge Street—
Mallory J. Craig, Traffic Manager.

Los Angeles 14, Calif.—Tucker 7-[illegible]
Room 1[illegible] Walter P. Story Building, 510 South Broadway—
Robert Hudson, Traffic Manager.
P. A. Ma[illegible], General Agent.

Minneapolis 1, Minn.—FEderal 2-[illegible]—
833 Metropolitan Building—
Robert L. Rowe, General Agent.

New York 6, N. Y.—BA[illegible]—
[illegible] Broadway
Edward P. Millikan, Eastern Traffic Manager
J. J. Dona[illegible], General Agent
S. V. Mu[illegible], Agent

Omaha 2, Neb.—[illegible]—
[illegible] Farnam Street
W. J. K[illegible], General Agent

Peoria, Ill.—[illegible]—
Charles F. Zeman, Traffic Manager
Clifford C. Miller, General Agent
P. J. Ri[illegible], Assistant General Freight Agent

Philadelphia 3, Pa.—Rittenhouse [illegible]—
1340 Philadelphia National Bank Building
N. E. Corner Broad and Chestnut Streets—
James J. Cassin, Traffic Manager

Pittsburgh 22, Pa.—Atlantic [illegible]—
1906 Oliver Building—
George E. Mu[illegible], General Agent.

St. Louis 1, Mo.—MAin [illegible]—
1015 Railway Exchange Building—
Charles A. Lee, Traffic Manager.

San Francisco 8, Calif.—Douglas [illegible]—
703 Mosadnock Building—
Ben. C. Simpson, Traffic Manager
Anthony J. Charlton, General Agent.

Seattle 1, Wash.—Seneca [illegible]—
1004 Joseph Vance Building
Charles P. Hillman, General Agent.

Tulsa 3, Okla.—[illegible]—
[illegible] Kennedy Building—
H. F. Reagin, General Agent

Mls.	STATIONS	Mls.	STATIONS
	Ethor		Glasford
	Sheldon		Bicnda
	Webster		Kewanis
	Watseka		Canton
	Crown		Ever
	Gilman		Cuba
	La Hogue		Seville
	Ripley		New Philadelphia
	Chatsworth		Smithfield
	Forrest		Smithsburg
	Fairbury		Good Hope
	Weston		[illegible]
	Chenoa		Blandinsville
	Meadows		La Harpe
	Hudson		Elvaston
	El Paso		Lomax
	[illegible]		La Harpe
	Eureka		Burnside
	[illegible]		Ferris
	Washington		Elvaston
	Farmdale		Hamilton
	Peoria Yard		Hooktok
	Peoria		Hamilton
	Hollis		Warsaw
	Majerton		

CONNECTIONS

A. T. & S. F.	Lomax, Ill., Kewanis, Ill.
C. B. & Q.	Keokuk, Ia., Peoria, Canton, Bushnell, Cuba and Peoria, Ill.
C. P. & P.	Keokuk, Ia., Peoria, Ill.
C. & E. I.	Watseka, Ill.
C. & I. W.	Peoria, Ill.
C. M. St. P. & P.	Webster, Ill.
C. & N. W.	Peoria, Ill.
Federal Barge Lines	Peoria, Ill.
G. M. & O.	Chenoa, Ill., Peoria, Ill.
I. C.	Gilman, Ill., Fairbury and Peoria, Ill.
I. T.	Peoria, Ill.
M. & St. L.	Peoria, Ill.
N. Y. C.	Sheldon, Ill., Peoria, Ill.
N. Y. C. & St. L.	Peoria, Ill., Bernadotte, Ill.
Pennsylvania	Ethor, Ill., Peoria, Ill.
P. & P. U.	Peoria, Ill.
P. T. Co.	Peoria, Ill.
Wabash	Forrest, Fairbury and Elvaston, Ill.

The Road That's Best . . . Links East and West

[Fol. 1957]

TOLEDO, PEORIA AND WESTERN RAILROAD

SUMMARY OF MAJOR TRAFFIC CHARACTERISTICS

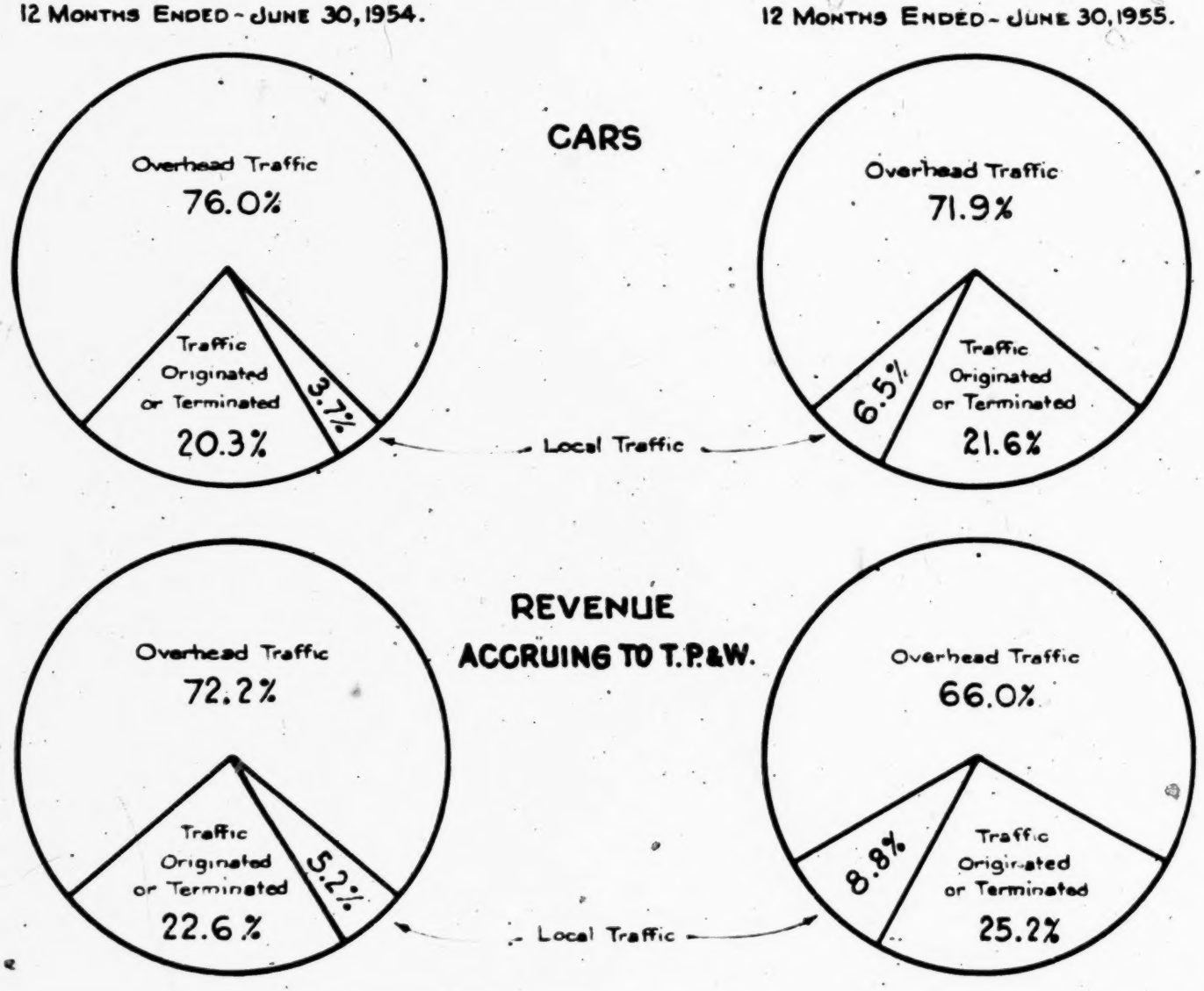
		12 MONTHS ENDING JUNE 30, 1954				12 MONTHS ENDING JUNE 30, 1955			
		Cars (1)	% of Total (2)	T.P.& W. Gross Freight Revenue (3)	% of Total (4)	Cars (5)	% of Total (6)	T.P.& W. Gross Freight Revenue (7)	% of Total (8)
1.	Local	4,022	3.7	$ 374,822	5.2	7,385	6.5	$ 606,657	8.8
	Interline:								
2.	Originated or Terminated	22,320	20.3	1,043,347	22.6	24,382	21.6	1,743,795	25.2
3.	Overhead	83,704	76.0	5,243,798	72.2	81,323	71.9	4,569,980	66.0
4.	Total Interline	106,024	96.3	6,887,145	94.8	105,705	93.5	6,313,775	91.2
5.	GRAND TOTAL	110,046	100.0	7,261,967	100.0	113,090	100.0	6,920,432	100.0

1957

SOURCE: Toledo, Peoria and Western Railroad

January 25, 1956

TOLEDO, PEORIA AND WESTERN RAILROAD
SUMMARY OF MAJOR TRAFFIC CHARACTERISTICS



Source T P & W R R
January 20, 1956

1958

[Vol. 1959]

TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

CARLOAD REVENUE FREIGHT CARRIED

Item (1)	YEAR ENDED JUNE 30, 1954 — Cars: Number (2)	Cars: Percent of Interchanged Traffic (3)	Cars: Percent of Total Traffic (4)	Revenue Accruing to T.P.& W.R.R.: Total (5)	Revenue: Percent of Interchanged Traffic (6)	Revenue: Percent of Total Traffic (7)	YEAR ENDED JUNE 30, 1955 — Cars: Number (8)	Cars: Percent of Interchanged Traffic (9)	Cars: Percent of Total Traffic (10)	Revenue Accruing to T.P.& W.R.R.: Total (11)	Revenue: Percent of Interchanged Traffic (12)	Revenue: Percent of Total Traffic (13)
1. Traffic Bridged Between A.T.& S.F. and P.R.R.												
A. Between Lomax and Effner	13,777	12.99%	12.52%	$1,351,047	19.62%	18.60%	12,241	11.58%	10.82%	$1,078,814	17.09%	15.99%
B. Between Lomax and Peoria	54	0.05	0.05	5,182	0.08	0.07	87	0.08	0.08	6,026	0.09	0.09
C. Between Bureka and Effner	281	0.27	0.26	15,371	0.22	0.21	198	0.19	0.18	10,487	0.17	0.15
D. Between Bureka and Peoria												
E. Total Traffic Between A.T.& S.F. and P.R.R.	14,112	13.31	12.83	1,371,600	19.92	18.88	12,526	11.85	11.08	$1,095,327	17.35	15.83
2. Traffic Interchanged with A.T.& S.F. other than that shown in Item 1.#	18,776	17.71	17.06	1,027,533	14.92	14.15	19,452	18.40	17.20	1,030,830	16.33	14.89
3. Traffic Interchanged with P.R.R. other than that shown in Item 1.*	43,774	41.29	39.78	2,574,853	37.38	35.46	42,794	40.49	37.84	2,378,161	36.08	32.93
4. Total Traffic Interchanged with A.T.& S.F. and/or P.R.R. (Sum of Items 1-E, 2 and 3)@	76,662	72.31	69.67	4,973,986	72.22	68.49	74,772	70.74	66.12	4,404,318	69.76	63.64
5. Traffic Interchanged only with Carriers other than A.T.& S.F. or P.R.R.	29,362	27.69	26.68	1,913,159	27.78	26.34	30,933	29.26	27.35	1,909,477	30.24	27.59
6. Total Traffic Interchanged												
A. Bridged Traffic	83,704	78.95	76.07	5,243,798	76.14	72.20	81,323	76.93	71.91	4,569,980	72.38	66.04
B. Originated Traffic	11,020	10.39	10.01	837,110	12.15	11.53	12,893	12.20	11.40	930,321	14.74	13.44
C. Terminated Traffic	11,300	10.66	10.27	806,237	11.71	11.10	11,489	10.87	10.16	813,474	12.88	11.75
D. Total Traffic Interchanged (Sum of Items A and B)	106,094	100.00%	96.35	6,887,145	100.00%	94.83	105,705	100.00%	93.47	6,313,775	100.00%	91.23
7. T.P.& W. Local Traffic	4,022		3.65	374,822		5.17	7,385		6.53	606,657		8.77
8. T.P.& W. Originated and/or Terminated Traffic (Sum of Items 6-B, 6-C and 7)	26,342		23.93	2,018,169		27.80	31,767		28.09	2,350,452		33.96
9. Total T.P.& W. Traffic (Sum of Items 6-D and 7)	110,046		100.00%	$7,261,967		100.00%	113,090		100.00%	$6,920,432		100.00%

- Includes Traffic Originating and Terminating on the T.P.& W., and that bridged by the T.P.& W. between the A.T.& S.F. and Carriers other than P.R.R.

* - Includes Traffic Originating and Terminating on the T.P.& W., and that bridged by the T.P.& W. between the P.R.R. and Carriers other than A.T.& S.F.

@ - Includes road haul interchange only and excludes duplications. Cars receiving only switch movements on the T.P.& W. and/or its connections are excluded.

SOURCE: T.P.& W. Railroad

January 24, 1956

1959

TOLEDO, PEORIA AND WESTERN RAILROAD

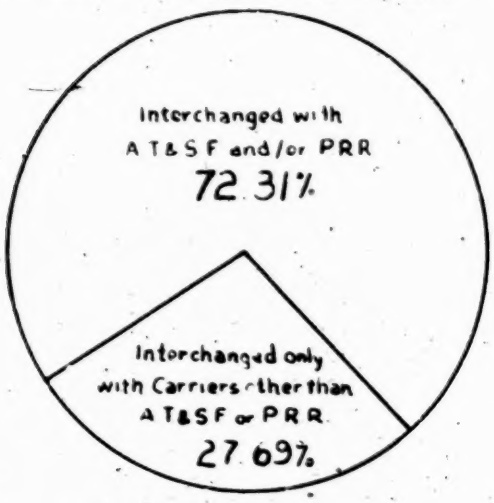
CARLOAD REVENUE FREIGHT CARRIED

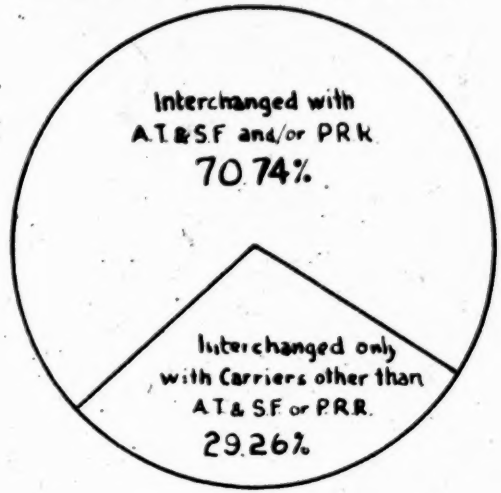
PERCENT OF INTERLINE TRAFFIC

12 MONTHS ENDED JUNE 30, 1954

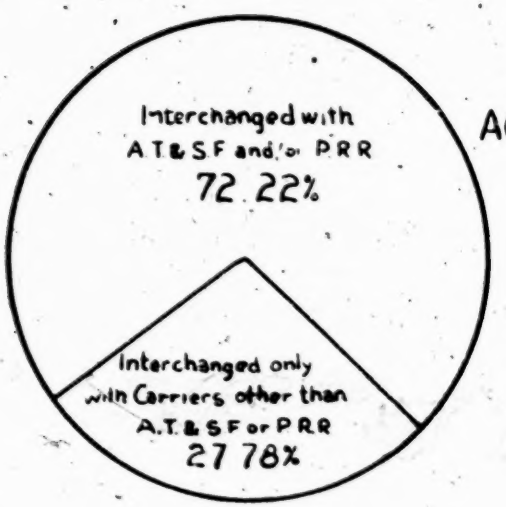
12 MONTHS ENDED JUNE 30, 1955

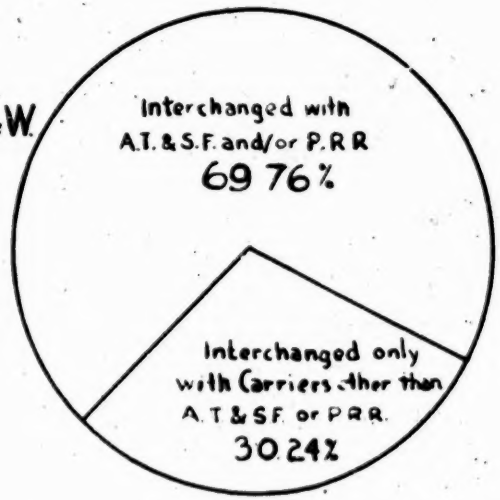
CARS





REVENUE
ACCRUING TO T.P.&W.



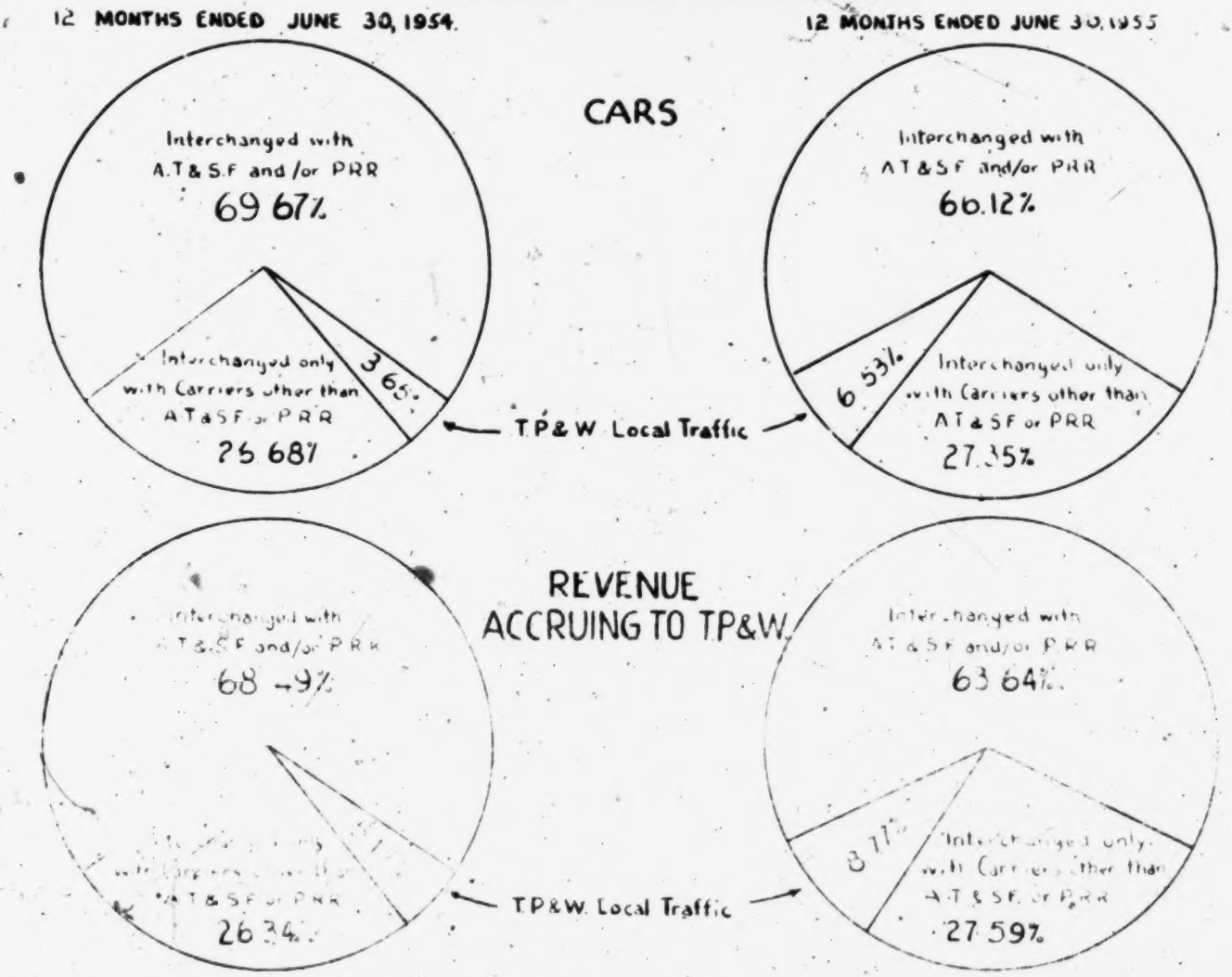


January 25, 1956

TOLEDO, PEORIA AND WESTERN RAILROAD

CARLOAD REVENUE FREIGHT CARRIED

PERCENT OF TOTAL TRAFFIC



January 25, 1956.

[Vol. 1963]

RELATIONSHIP OF INTERCHANGE VIA PENNSYLVANIA RAILROAD AND VIA ATCHISON, TOPEKA AND SANTA FE RAILWAY

TO TOTAL TOLEDO, PEORIA AND WESTERN RAILROAD CARLOAD TRAFFIC

1924 - 1955

	P.R.R.			A.T.& S.F.			T.P.& W. CARLOADS	
Year	Cars	% T.P.& W. Interline	% TP&W Total	Cars	% T.P.& W. Interline	% TP&W Total	Interline	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1924	13,491		33.3	1,109		2.7		40,509
1925	16,381		43.6	589		1.6		37,601
1926	17,087		44.2	584		1.5		38,650
1927	23,328		43.8	3,571		6.7		53,283
1928	29,697	48.2	43.7	7,264	11.8	10.7	61,675	67,957
1929	30,296	47.4	44.7	7,596	11.9	11.2	63,883	67,815
1930	27,011	45.4	43.6	7,512	12.6	12.1	59,515	62,021
1931	23,580	48.2	46.2	9,282	19.0	18.2	48,889	51,010
1932	19,910	45.2	42.2	11,777	26.7	25.0	44,096	47,189
1933	25,443	49.1	46.1	13,749	26.5	24.9	51,803	55,171
1934	29,431	50.5	48.3	13,742	23.6	22.6	58,239	60,879
1935	31,094	52.5	50.2	15,074	25.5	24.3	59,192	61,912
1936	35,894	49.9	46.9	15,754	21.9	20.6	71,996	76,593
1937	37,869	50.4	48.3	17,690	23.5	22.6	75,205	78,432
1938	31,841	50.2	47.8	14,456	22.8	21.7	63,465	66,620
1939	38,416	55.2	53.2	15,096	21.7	20.9	69,573	72,147
1940	40,529	55.1	52.9	17,682	24.0	23.1	73,624	76,601
1941	48,719	57.9	55.6	18,728	22.3	21.4	84,127	87,679
1942	52,314	66.0	63.9	22,034	27.8	26.9	79,314	81,834
1943	67,225	63.9	62.3	30,027	28.5	27.8	105,270	107,964
1944	78,651	68.7	67.1	36,602	32.0	31.2	114,489	117,261
1945	57,292	63.1	61.3	27,985	30.8	29.9	90,809	93,530
1946	Strike, very few cars handled.							
1947	16,667	45.2	43.5	8,426	22.8	22.0	36,880	38,289
1948	42,285	51.3	50.5	21,812	26.5	26.0	82,355	83,760
1949	42,342	51.6	50.1	22,215	27.1	26.3	82,066	84,446
1950	50,810	52.1	50.2	28,722	29.5	28.4	97,479	101,190
1951	62,000	55.0	53.4	32,105	28.5	27.6	112,629	116,162
1952	60,060	55.1	53.5	31,251	28.7	27.8	109,038	112,340
1953	62,619	56.3	54.8	34,712	31.2	30.4	111,245	114,280
1954	56,414	54.2	51.2	32,668	31.4	29.6	104,159	110,244
1955	58,543	53.0 p	49.2 p	34,735	31.4 p	29.2 p	110,452 p	116,956 p

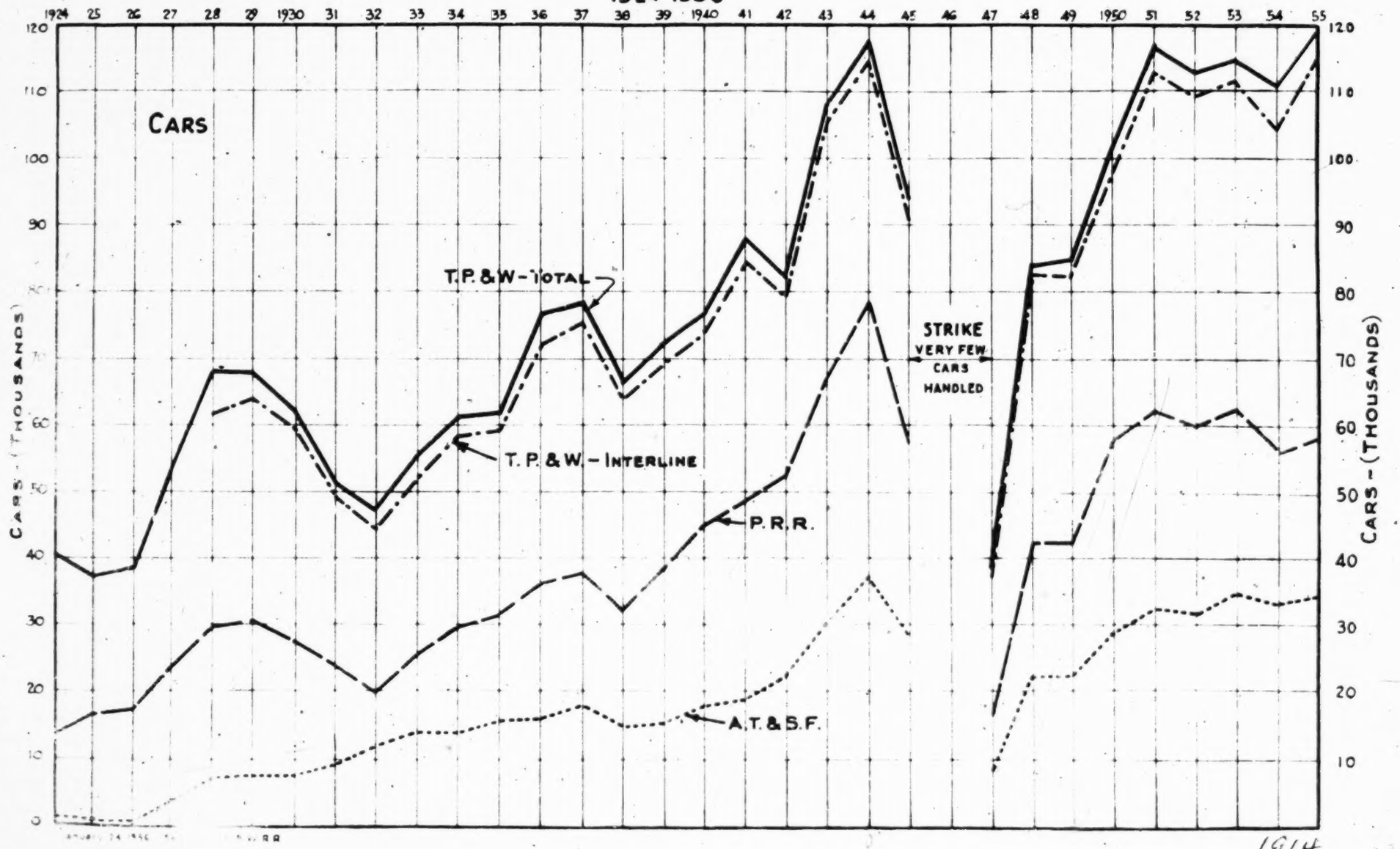
p - Preliminary - eleven months Actual and December estimated.

Note: All cars interchanged are included - not only road haul but also switched only, or road haul on one line and switched on the othe
Interchange with P.R.R. and/or A.T.& S.F. is practically 100% all road haul.

Source: Toledo, Peoria and Western Railroad. (T.P.& W. carloads in reports to I.C.C.)

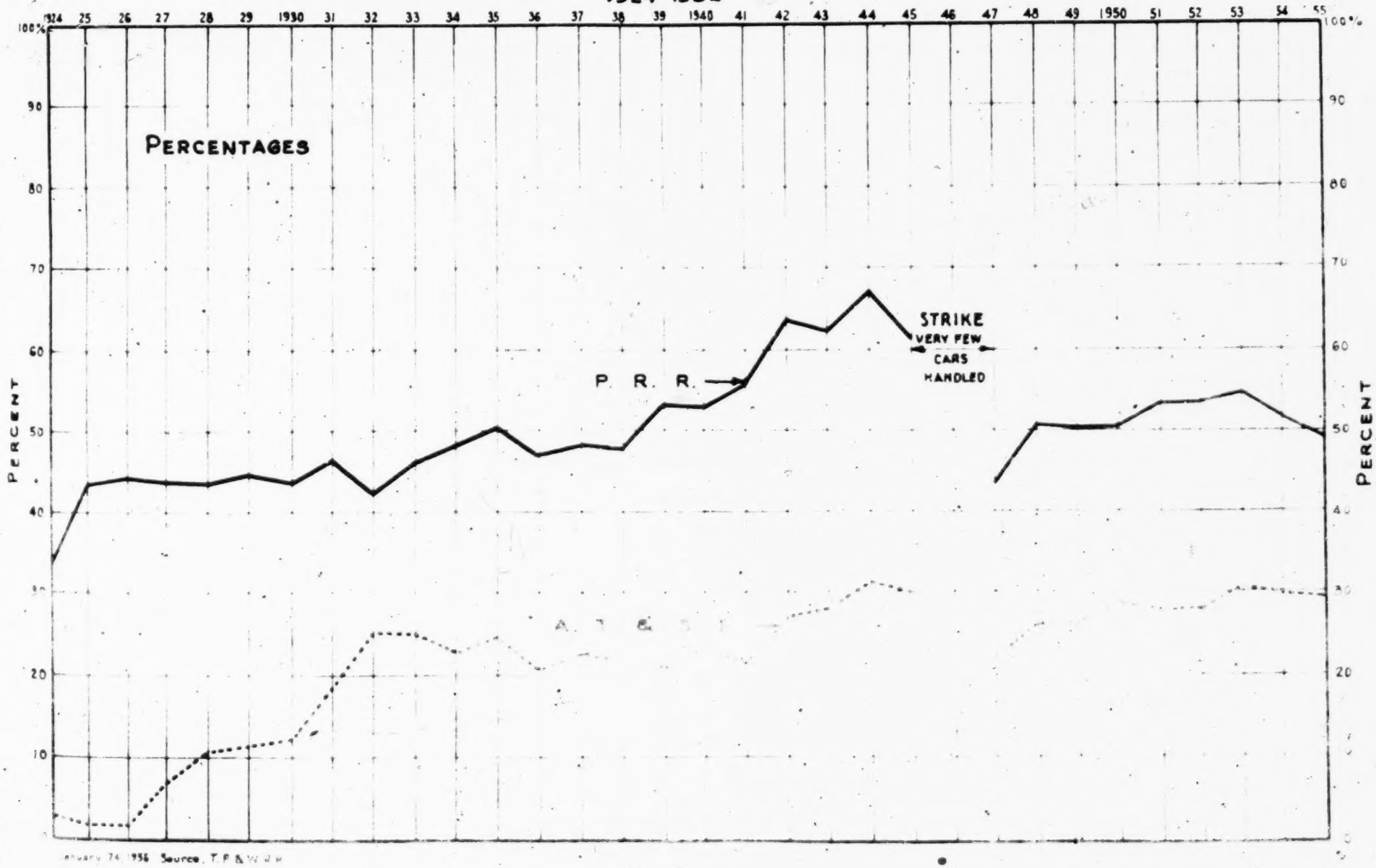
January 26, 1956

RELATIONSHIP OF INTERCHANGE VIA P. R. R. AND VIA A.T. & S. F. RY. TO TOTAL T. P. & W. R. R. 1924-1955



1964

RELATIONSHIP OF INTERCHANGE VIA P. R. R. AND VIA A. T. & S. F. Ry. TO TOTAL T. P. & W. R. R. 1924-1955



[Fol. 1967]

T[illegible] [illegible] [illegible] R[illegible]

EXPANSION OF TRAFFIC DURING WORLD WAR II - COMPARISON WITH PRE-WAR YEAR 1939

Year (1)	TOTAL CARLOADS			INTERLINE CARLOADS			OVERHEAD CARLOADS		
	Cars (2)	Inc. vs. '39 Cars (3)	Inc. vs. '39 % (4)	Cars (5)	Inc. vs. '39 Cars (6)	Inc. vs. '39 % (7)	Cars (8)	Inc. vs. '39 Cars (9)	Inc. vs. '39 % (10)
1939	72,147	-	-	[illegible]	-	-	46,178	-	-
1942	81,834	9,[illegible]	13.4	79,314	9,741	14.0	57,249	11,071	24.0
1943	107,964	35,[illegible]	49.6	105,272	35,697	51.3	80,545	34,367	74.4
1944	117,261	45,114	62.5	114,449	44,916	64.6	88,126	41,948	90.8

Year (11)	INTERCHANGE WITH P.H.R. Cars (12)	Inc. vs. '39 Cars (13)	Inc. vs. '39 % (14)	Year (15)	INTERCHANGE WITH A.T.& S.F. Cars (16)	Inc. vs. '39 Cars (17)	Inc. vs. '39 % (18)
1939	26,416	-	-	1939	15,096	-	-
1942	52,314	13,898	36.2	1942	22,034	6,938	46.0
1943	67,225	28,809	75.0	1943	30,027	14,931	98.9
1944	78,651	40,235	104.7	1944	36,602	21,506	142.5

Note: All cars interchanged are included - not only road haul but also switched only, or road haul on one line and switched on the oth
Interchange with P.H.R. and/or A.T.& S.F. is practically 100% all road haul.

Source: Toledo, Peoria and Western Railroad (Annual Reports to I.C.C. for Total, Interline and Overhead Carloads)

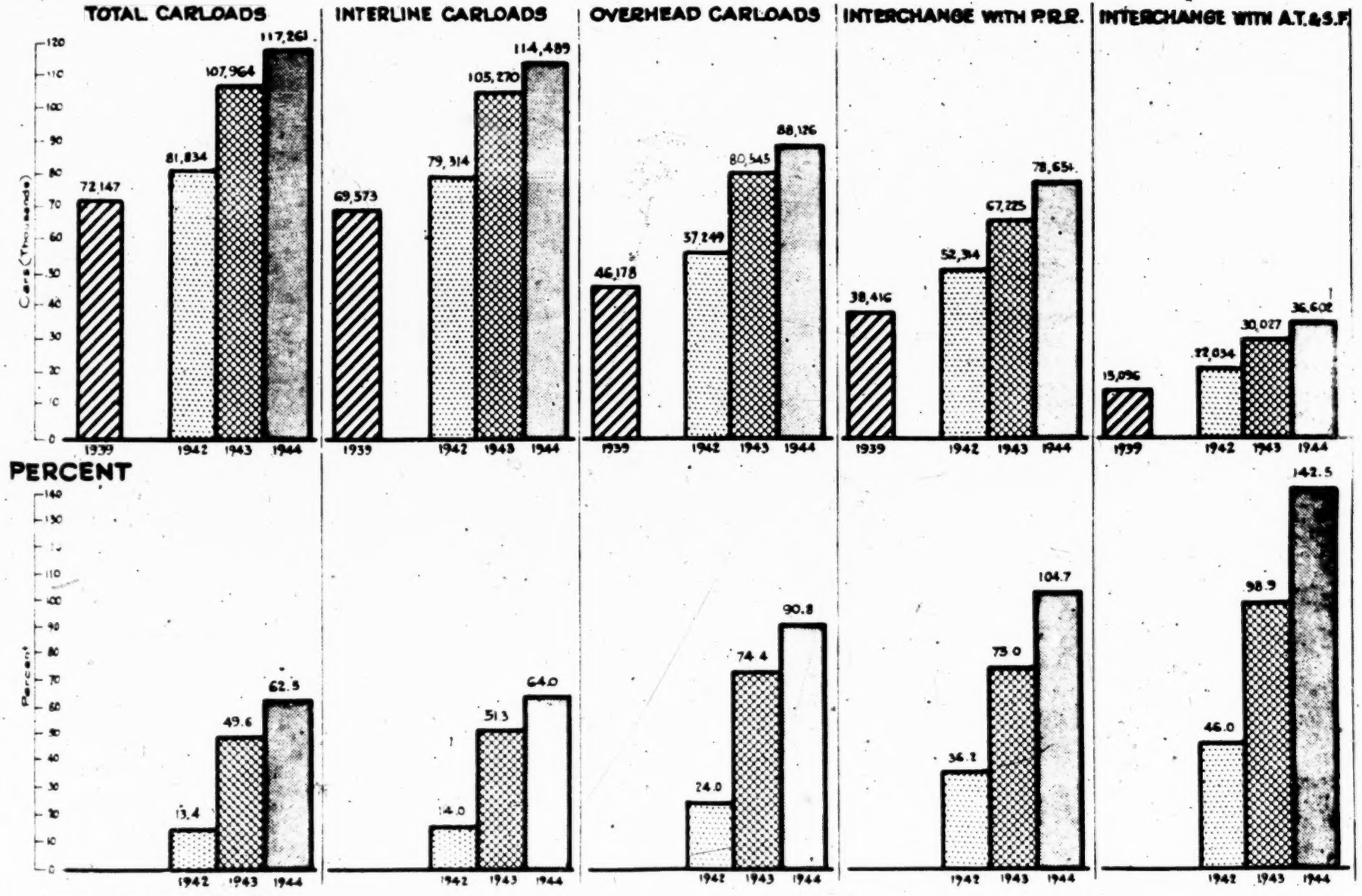
January 25, 1956

1967

TOLEDO, PEORIA AND WESTERN RAILROAD

EXPANSION OF TRAFFIC DURING WORLD WAR II

COMPARISON WITH PRE-WAR YEAR 1939



January 24, 1956 Source T P & W R R

1968

[fol. 1969]

TOLEDO, PEORIA AND WESTERN RAILROAD

PRINCIPAL ROAD HAUL INTERCHANGE CONNECTIONS
(Switching movements are excluded)

Line	Carrier	12 Months Ending June 30, 1954				12 Months Ending June 30, 1955			
		Cars		TP&W Gross Revenue		Cars		TP&W Gross Revenue	
		Number	Rank	Amount	Rank	Number	Rank	Amount	Rank
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	P.R.R.	57,886	1	$3,946,453	1	55,320	1	$3,373,488	1
2	A.T.& S.F.	32,888	2	2,399,133	2	31,978	2	2,126,157	2
3	C.B.& Q.	15,606	3	1,008,053	3	16,386	3	911,213	3
4	N.K.P.	14,161	4	744,113	6	13,590	4	656,988	6
5	N.Y.C.	12,143	5	775,425	5	13,529	5	845,634	4
6	C.R.I.& P.	11,914	6	944,021	4	11,552	6	824,435	5
7	M.& St.L.	10,886	7	591,010	7	9,711	7	474,209	7
8	C.M.St.P.& P.	9,962	8	278,016	8	9,684	8	270,492	8

Source: Toledo, Peoria and Western Railroad

January 25, 1956

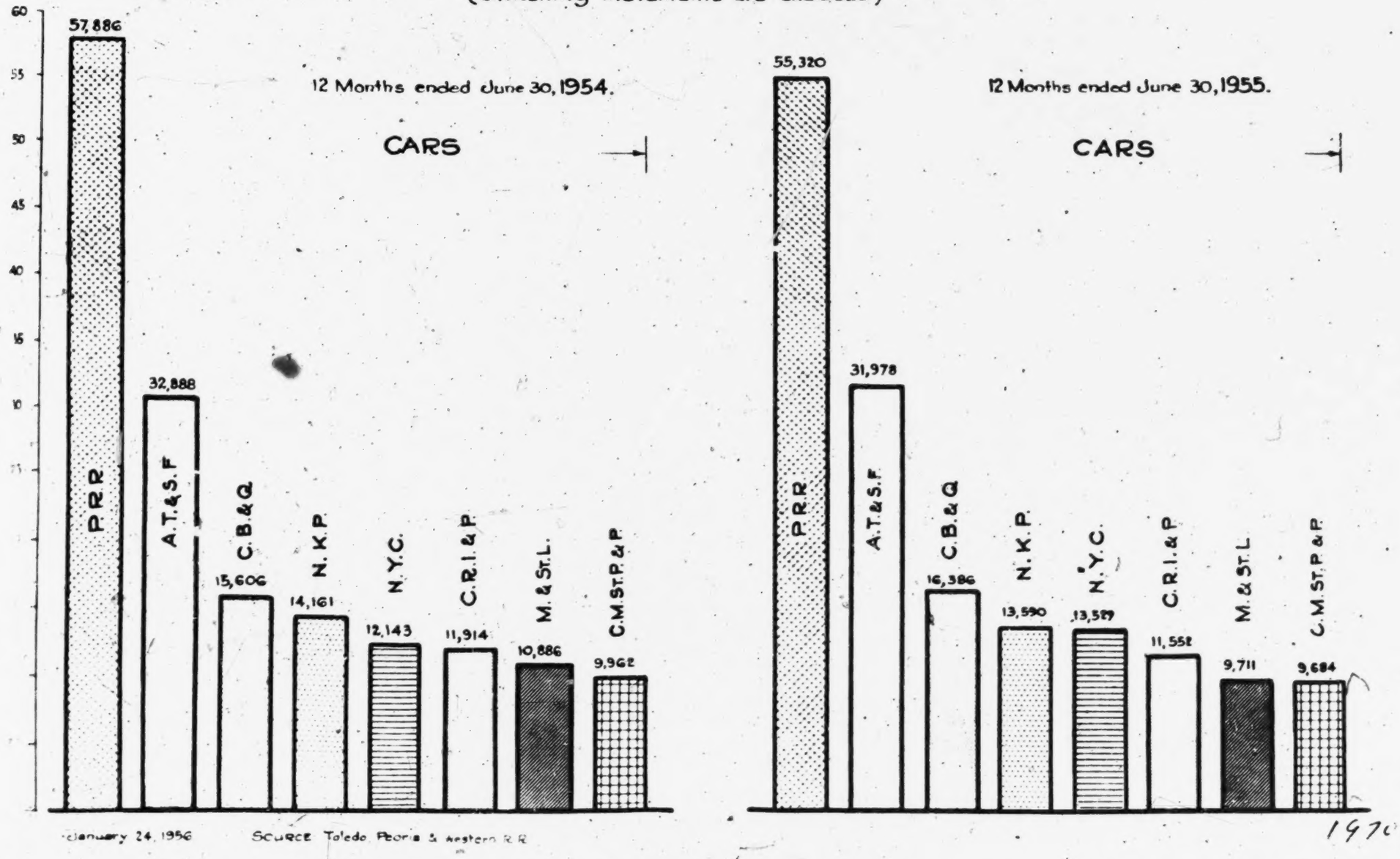
1969

[Fol. 1970]

TOLEDO, PEORIA AND WESTERN RAILROAD

PRINCIPAL ROAD HAUL INTERCHANGE CONNECTIONS

(Switching movements are excluded)



January 24, 1956 SOURCE Toledo Peoria & Western R.R

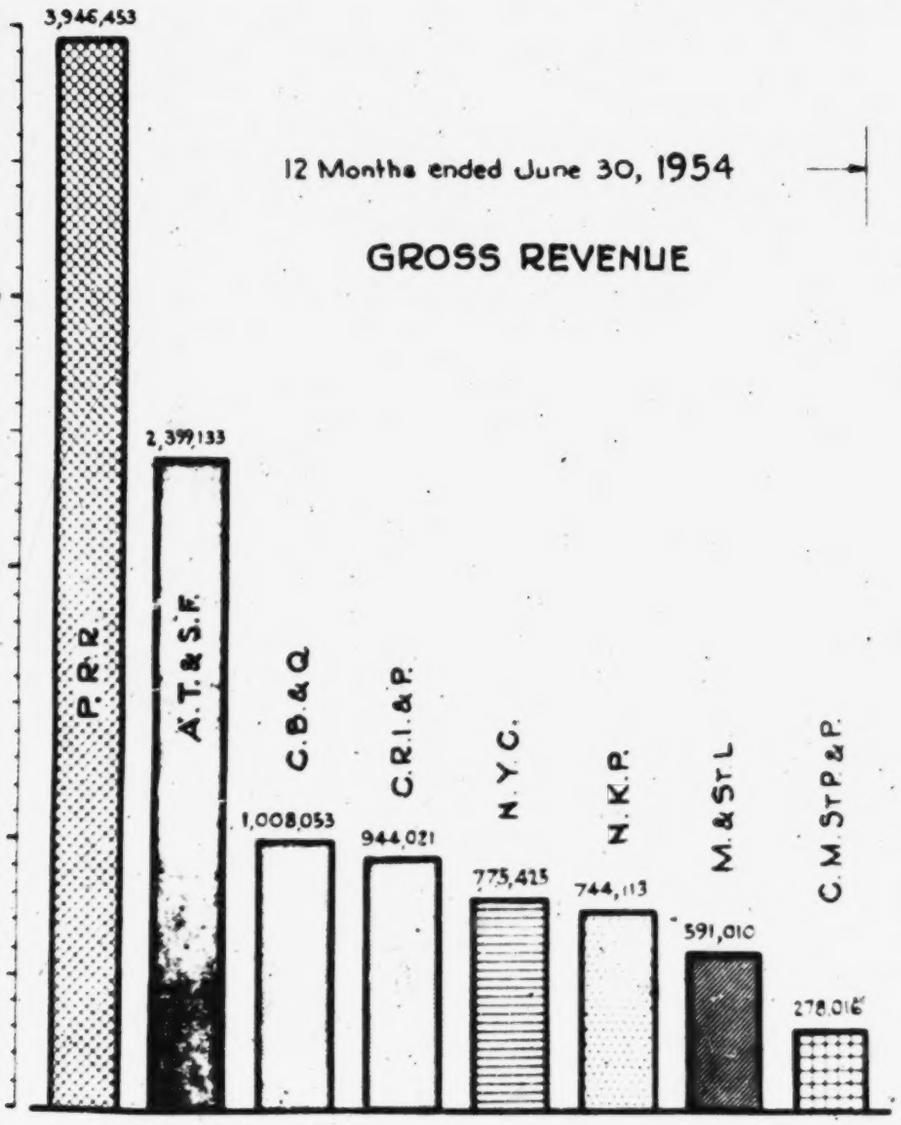
1970

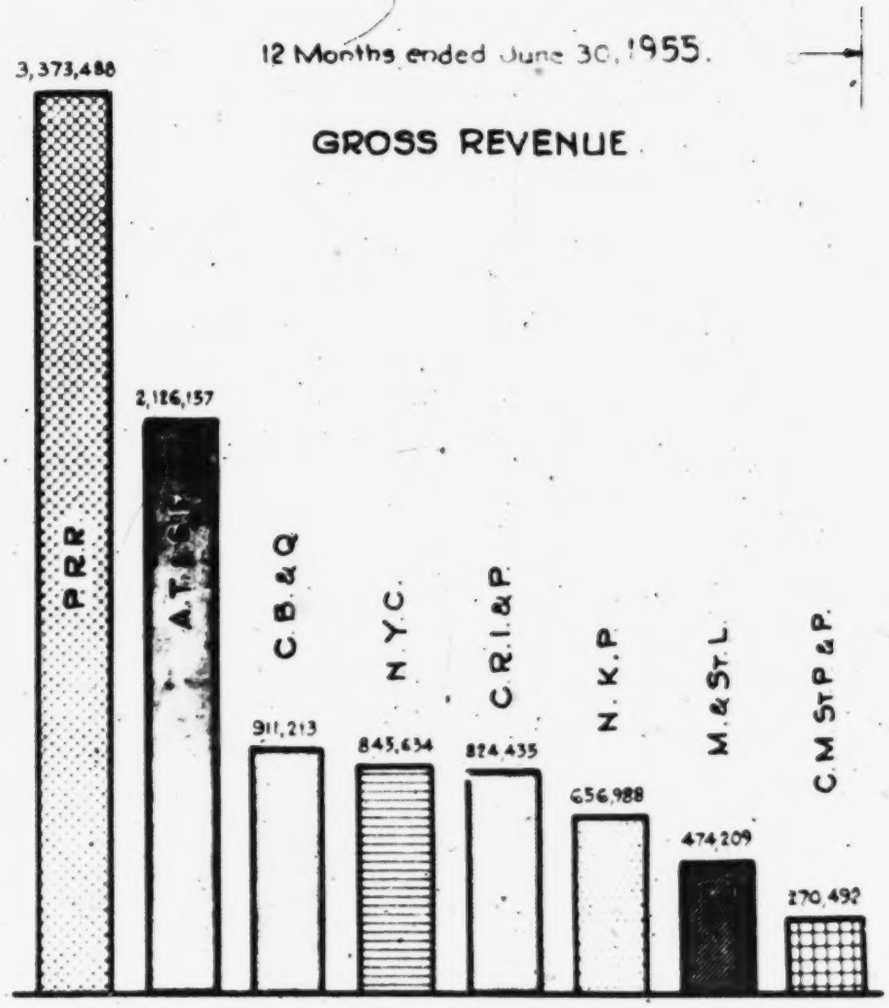
[Vol. 1972]

TOLEDO, PEORIA AND WESTERN RAILROAD

GROSS REVENUE DERIVED FROM PRINCIPAL ROAD HAUL INTERCHANGE CONNECTIONS

(Switching movements are excluded)





January 26, 1956 SOURCE T P & W R R

1972

[Fol. 1973]

ROAD HAUL INTERCHANGE OF THE PENNSYLVANIA RAILROAD
AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
WITH THE TOLEDO, PEORIA AND WESTERN RAILROAD
SHOWING MOVEMENT OF TRAFFIC TO AND FROM PRINCIPAL CONNECTIONS
OR TO AND FROM TOLEDO, PEORIA AND WESTERN STATIONS

	PRR Connections via TP&W:	1954* Cars (2)	1955* Cars (3)		AT&SF Connections via TP&W:	1954* Cars (5)	1955* Cars (6)
1.	A.T.& S.F.	14,112	12,526	1.	P.R.R.	14,112	12,526
2.	C.B.& Q.	11,445	12,783	2.	N.K.P.	10,152	9,834
3.	M.& St.L.	7,820	6,882	3.	N.Y.C.	3,718	4,705
4.	C.M.St.P.& P.	7,100	6,150	4.	C.& N.W.	1,118	1,239
5.	C.R.I.& P.	6,094	5,316	5.	C.& I.M.	1,068	843
6.	I.T.	1,884	2,018	6.			
7.	C.& N.W.	1,637	1,717	7.			
8.	C.& I.M.	946	1,058	8.			
9.	All other R.R.S.	1,893	2,034	9.	All other R.R.S.	950	843
10.	To and from TP&W stations	4,954	5,830	10.	To and from TP&W stations	1,723	1,852
11.	Total Interchange	57,886	55,320	11.	Total Interchange	32,888	34,042

* 12 months ending June 30.

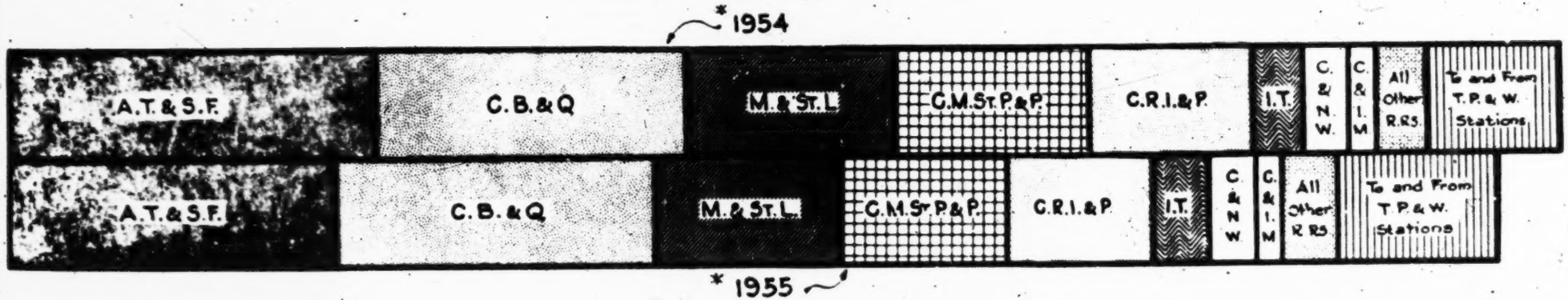
Source: Toledo, Peoria and Western Railroad

January 13, 1956

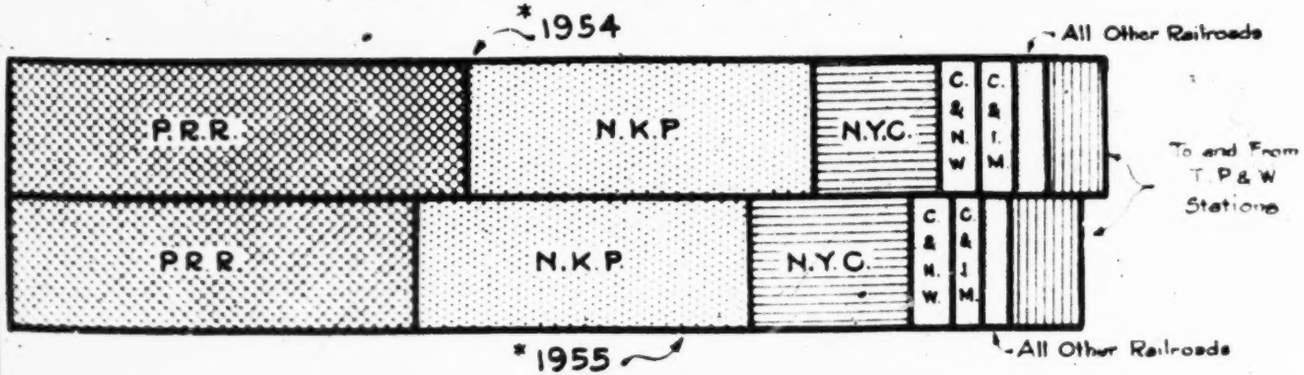
1973

ROAD HAUL INTERCHANGE
P.R.R. AND A.T.&S.F. RY. WITH T.P.&W.R.R.
MOVEMENT OF TRAFFIC TO AND FROM PRINCIPAL CONNECTIONS OR TO AND FROM T.P. & W. STATIONS

P.R.R. CONNECTIONS VIA T.P.&W.



A.T.&S.F. CONNECTIONS VIA T.P.&W.



January 24 1956 * 12 Months Ended June 30. SOURCE: T.P.&W.R.R.

1974

[fol. 1976]

EXHIBIT H-6

I.C.C. Finance Docket No. 18991
✓ Exhibit 14-3
Witness

COMPARISONS OF CERTAIN SELECTED FINANCIAL ITEMS SHOWING RATIOS OF TP&W, M&StL, ROCK ISLAND AND SANTA FE FOR YEAR 1954

Line	Year 1954	TP&W	M&StL	CRI&P	SANTA FE
1.	Operating Revenues	$6,806,211	$20,543,382	$187,062,645	$532,292,358
2.	Total Funded Debt-Dec. 31	1,773,600	7,755,306	97,330,640	195,982,500
3.	Ratio to Operating Revenues (2÷1)	.26	.38	.52	.37
4.	Net Current Assets-Dec. 31	1,029,243	2,723,657	25,969,156	102,588,406
5.	Ratio to Operating Revenues (4÷1)	.15	.13	.14	.19
6.	Net Railway Operating Income				
7.	Before Federal Income Taxes	1,326,628	2,848,238	23,990,674	95,312,989
8.	After Federal Income Taxes	659,628	1,788,063	20,753,674	63,989,776
9.	Net Income				
10.	Before Federal Income Taxes	1,300,168	2,677,775	21,906,138	97,496,163
11.	After Federal Income Taxes	633,168	1,617,600	18,669,138	66,172,950
12.	Fixed & Contingent Charges	71,746	274,486	3,145,099	8,256,566
13.	Number Times Net Railway Operating Income Covered Fixed and Contingent Charges				
14.	Before Federal Income Taxes (7÷12)	18.5	10.	7.6	11.5
15.	After Federal Income Taxes (8÷12)	9.2	6.5	6.6	7.8
16.	Total Compensation Charged to Operating Expenses	2,417,876	10,661,214	88,247,892	247,726,380
17.	Ratio to Operating Revenues (16÷1)	.36	.52	.47	.47
18.	Percent of Operating Revenues Carried Through to Net Railway Operating Income Before Federal Income Taxes (7÷1)	19.5%	13.9%	12.8%	17.9%

Source: Form A Annual Reports to Interstate Commerce Commission for Year 1954.

1976

[fol. 1977]

EXHIBIT H-7

I.C.C. Finance Docket 18991

Copy of

Agreement Between The Santa Fe and Elizabeth M. McNear, Individually and as Guardian of the Estate of John W. McNear, for the Purchase of 450 Shares of the Stock of the TP&W.

This Agreement made and entered into as of July 8, 1955, between Elizabeth M. McNear, individually and as Guardian of the Estate of John W. McNear, a minor (hereinafter referred to as "Shareholder"), party of the first part, and Toledo, Peoria & Western Railroad Company, a corporation organized under the laws of the State of Delaware (hereinafter called "TP&W"), party of the second part, and The Atchison, Topeka and Santa Fe Railway Company, a corporation organized under the laws of the State of Kansas (hereinafter called "Santa Fe"), party of the third part,

WITNESSETH:

RECITALS.

Santa Fe wishes to purchase and shareholder desires to sell all of the capital stock of the TP&W held by Shareholder at a price of $135 per share. By an option agreement dated as of February 15, 1954, between TP&W and certain individuals, including Shareholder, Shareholder and the other parties agreed not to sell or otherwise dispose of any portion of the capital stock held by them without first offering to sell such stock to the TP&W. The TP&W does not desire to exercise its rights to purchase such stock under the contract from the individuals who were parties to the agreement or their representatives at $135 per share, and for a consideration of $100 payable by Santa Fe, TP&W is willing to release Shareholder and such other individuals of their representatives from the obligations under the

said option agreement to the extent necessary to permit the sale of such stock to Santa Fe at $135 per share.

[fol. 1978] AGREEMENT.

NOW, THEREFORE, for and in consideration of the premises and of the mutual undertakings and obligations herein contained and expressed, the parties agree as follows:

SECTION 1. Elizabeth M. McNear agrees to sell and the Santa Fe agrees to buy 450 shares of the capital stock of the TP&W (being all of said stock held by her) at a price of $135 per share, or an aggregate purchase price of $60,750.

SECTION 2. Elizabeth M. McNear, as Guardian of the Estate of John W. McNear, a minor, agrees to sell and the Santa Fe agrees to buy 254 shares of the capital stock of the TP&W (being all of said stock held by her in such capacity) at a price of $135 per share, or an aggregate purchase price of $34,290.

SECTION 3. The purchase of the stock of the TP&W provided in Sections 1 and 2 of this Agreement is subject to the approval of the Interstate Commerce Commission; and Santa Fe agrees that it will promptly file and diligently prosecute an application or applications to the Interstate Commerce Commission for authority to carry out the transactions herein proposed. Shareholder will, in all reasonable ways, cooperate with Santa Fe in the prosecution of such application and the assembly of data pertinent to its presentation and consideration. Settlement hereunder shall take place not more than a reasonable time, which shall not exceed sixty days, after the order of the Interstate Commerce Commission granting its approval has become effective.

In the event approval of the purchase of the stock of TP&W by Santa Fe shall be denied by the Interstate Commerce Commission and the order of the Commission shall become final, and any proceedings instituted in court to set aside such an order shall have been finally terminated without said order having been set aside, then this Agreement shall cease and determine.

SECTION 4. Shareholder represents and warrants to Santa Fe that the shares of stock of TP&W delivered by her to Santa Fe will be free and clear of all liens, encumbrances, trusts or obligations of any kind or nature.

[fol. 1979] SECTION 5. Settlement hereunder shall be made at the general offices of Santa Fe at Chicago, Illinois. Shareholder shall pay all transfer taxes with respect to the sale of the stock. Stock certificates are to be delivered at settlement with all endorsements or assignments necessary for transfer of the stock. Payment shall be made by Santa Fe upon such delivery in cash, or by certified check, or cashier's or treasurer's check to the order of Shareholder. If settlement for the stock is made on a payment date for the payment of a quarterly dividend, such dividend shall be paid, endorsed or assigned to Shareholder by Santa Fe. If settlement for the stock is made on a date other than a payment date for the payment of a quarterly dividend, the next succeeding quarterly dividend on such shares of stock (and also any extra dividend which may be paid during such quarter yearly period) shall be apportioned to the date of settlement, and Santa Fe shall pay to Shareholder her pro-rata portion thereof promptly after the receipt of such dividend. The sum payable to Shareholder by Santa Fe shall be computed by dividing by ninety the dividend paid on the shares of stock on the quarterly dividend payment date next following settlement hereunder (and also any extra dividend which may be paid during such quarter-yearly period), and then multiplying the quotient of such division by the number of days which shall have elapsed from (but not including) the dividend payment date preceding settlement to (and including) the date of settlement for such stock. To the extent that dividends herein referred to have not been paid at time of settlement, the provisions of this Section shall survive the settlement.

SECTION 6. For and in consideration of the sum of $100 hereinbefore referred to, the receipt of which from Santa Fe is hereby acknowledged, TP&W agrees to release and relinquish any and all rights accruing to it under the terms of the option agreement dated as of February 15, 1954, insofar as is necessary to permit Shareholder and the other

parties to such agreement to sell and transfer their TP&W stock to Santa Fe at a price of $135 per share, but said option agreement shall in all other respects remain in full force and effect until such sale and transfer have been consummated.

SECTION 7. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns.

[fol. 1980] IN WITNESS WHEREOF, Shareholders, TP&W, and Santa Fe have signed and sealed this Agreement, or caused it to be signed and sealed, in four copies, each of which shall constitute an original, as of the date first hereinabove written.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

By: E. S. MARSH
Its Vice-President—Finance

ATTEST:

W. L. CAMP
Assistant Secretary.

(Seal)

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY,

By: J. RUSSEL COULTER
President

ATTEST:

D. HENDREN
Assistant Secretary.

(Seal)

ELIZABETH M. MC NEAR,
Individually and as Guardian of the Estate of John W. McNear, a minor.

Exhibit H-8

(See Opposite) ☞

[fol. 1981]

I.C.C. Finance Docket 18991
EXHIBIT H. 8
WITNESS Mahaney

Before The

INTERSTATE COMMERCE COMMISSION

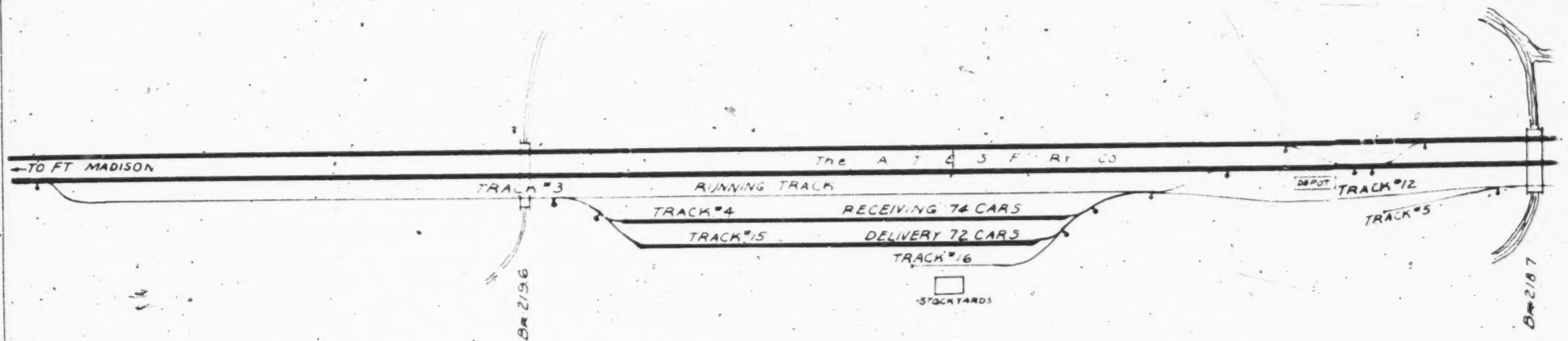
Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	Finance Docket No. 18991

CONTENTS

	Page
Lomax Interchange - 1927	1
Lomax Interchange - 1935	
Lomax Interchange - Present	
Freight Schedules via Santa Fe and TP&W between Kansas City and East Peoria	

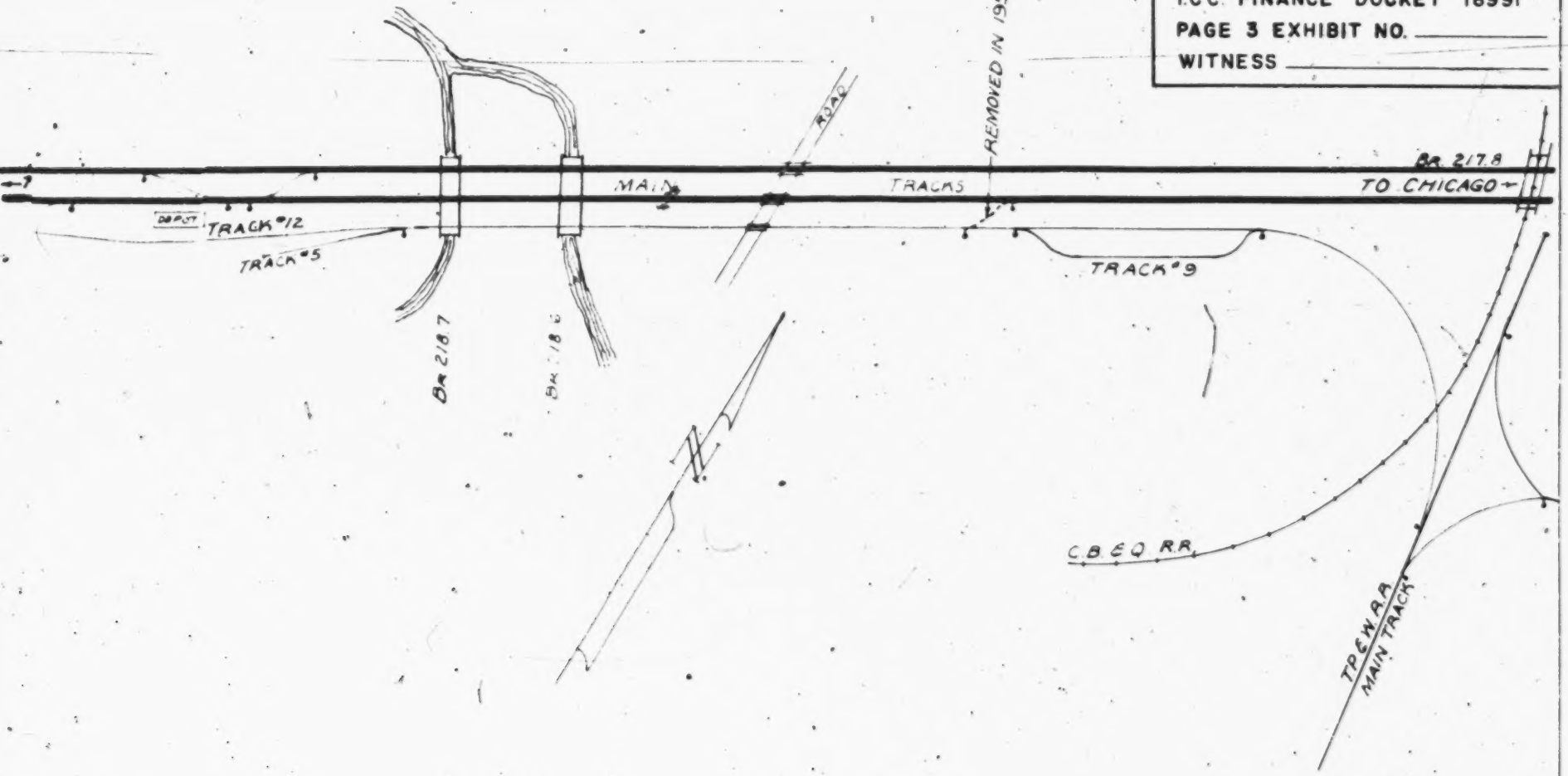
Stit
1981

1981



PRESENT LOMAX INTERCHANGE
IN. SERVICE 1954
A.F.E. 855-27
A.F.E. 398-35
A.F.E. 513-53
A.F.R. 4088-54

I.C.C. FINANCE DOCKET 18991
PAGE 3 EXHIBIT NO. _____
WITNESS _____



PRESENT LOMAX INTERCHANGE
IN SERVICE 1954

1984

I.C.C. FINANCE DOCKET 18991
PAGE 4, EXHIBIT # M-8
WITNESS

AT&SF AND TP&W
STATEMENT OF FREIGHT TRAIN SCHEDULES
BETWEEN East
KANSAS CITY, MO., AND PEORIA, ILL.

EASTWARD

	Train	Depart	Arrive	Train	Depart	Arrive
Kansas City	#140	5:00 AM		#146	4:00 PM	
Shopton	"		3:00 PM	"		3:45 AM
Shopton	"	4:30 PM		"	5:15 AM	
Lomax	"		8:00 PM	"		7:00 AM
Lomax	TPW-120	8:15 PM		TPW-122	7:30 AM	
East Peoria	"		11:45 PM	"		11:00 AM
*Kansas City	#40	8:00 AM		*#46	6:00 PM	
Shopton	"		3:00 PM	"		1:30 AM

(*) Consolidates with #140 at Shopton

(*) Consolidates with #146 at Shopton

WESTWARD

	Train	Depart	Arrive	Train	Depart	Arrive
East Peoria	TPW-121	1:00 PM		TPW-123	1:00 AM	
Lomax	"		5:45 PM	"		4:50 AM
Lomax	#159	6:15 PM		Extra	1:00 PM	
Shopton	"		7:30 PM	"		2:15 PM
Shopton	#59	9:00 PM		#59	9:00 PM	
Kansas City	"		5:00 AM	"		5:00 AM

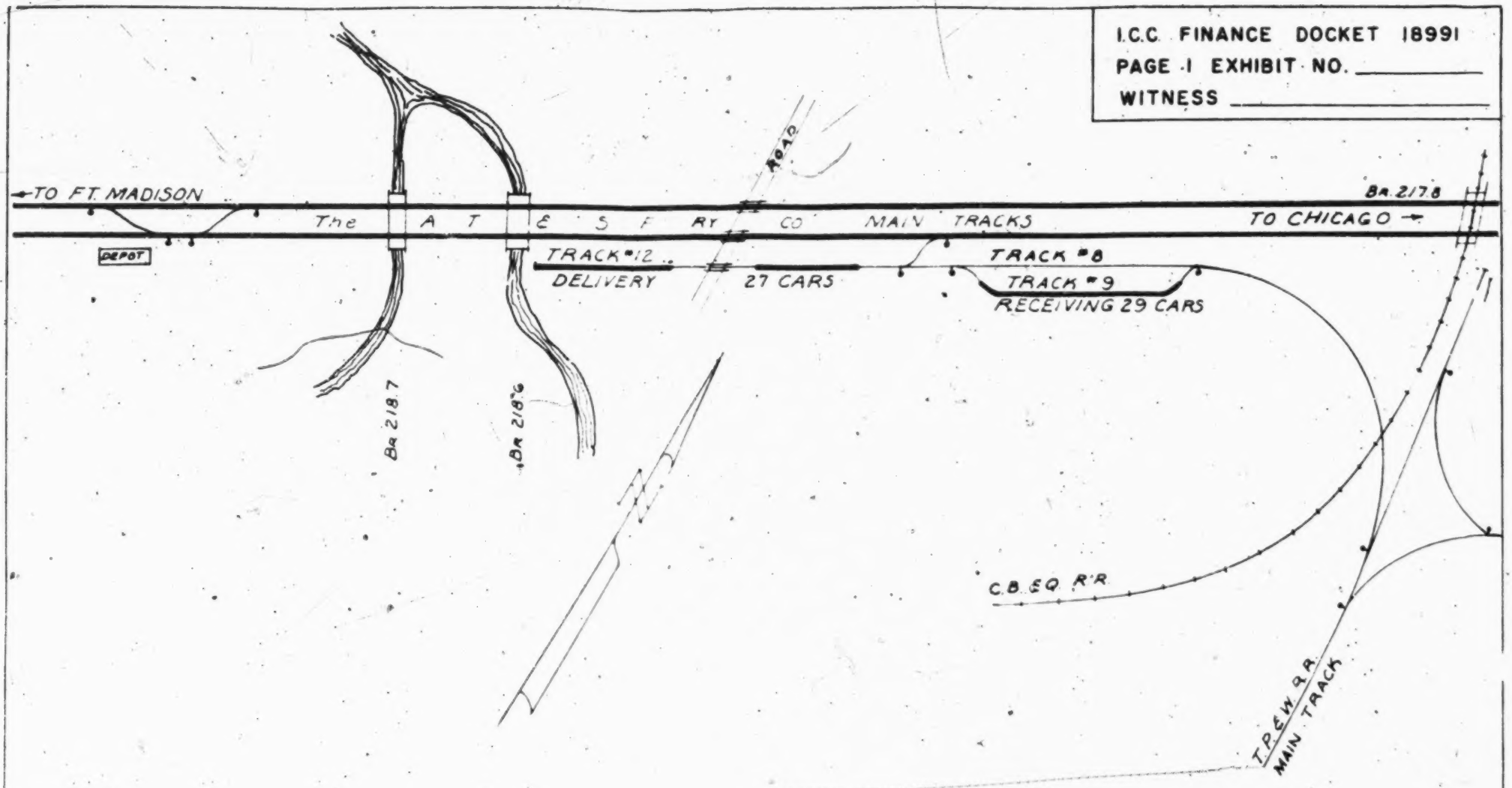
Trains 140 and 146 handle from Kansas City loads and special empties destined points and via junctions west of McCook, Illinois.

Train 140 handles connections from GFX from northern and southern California; SRX from Salt River Valley and Parker areas of Arizona; PVX from Palo Verde Valley of California; BCX from Clovis, N. M. with connections from west and south of Clovis, N. M., and Amarillo, Texas, and intermediate points and junctions; 32 from Colorado, northern New Mexico and Kansas; and 38 from Galveston, Houston and other Texas, as well as Oklahoma and Kansas points.

1985

(See Page #5)

I.C.C. FINANCE DOCKET 18991
PAGE 1 EXHIBIT NO. _____
WITNESS _____

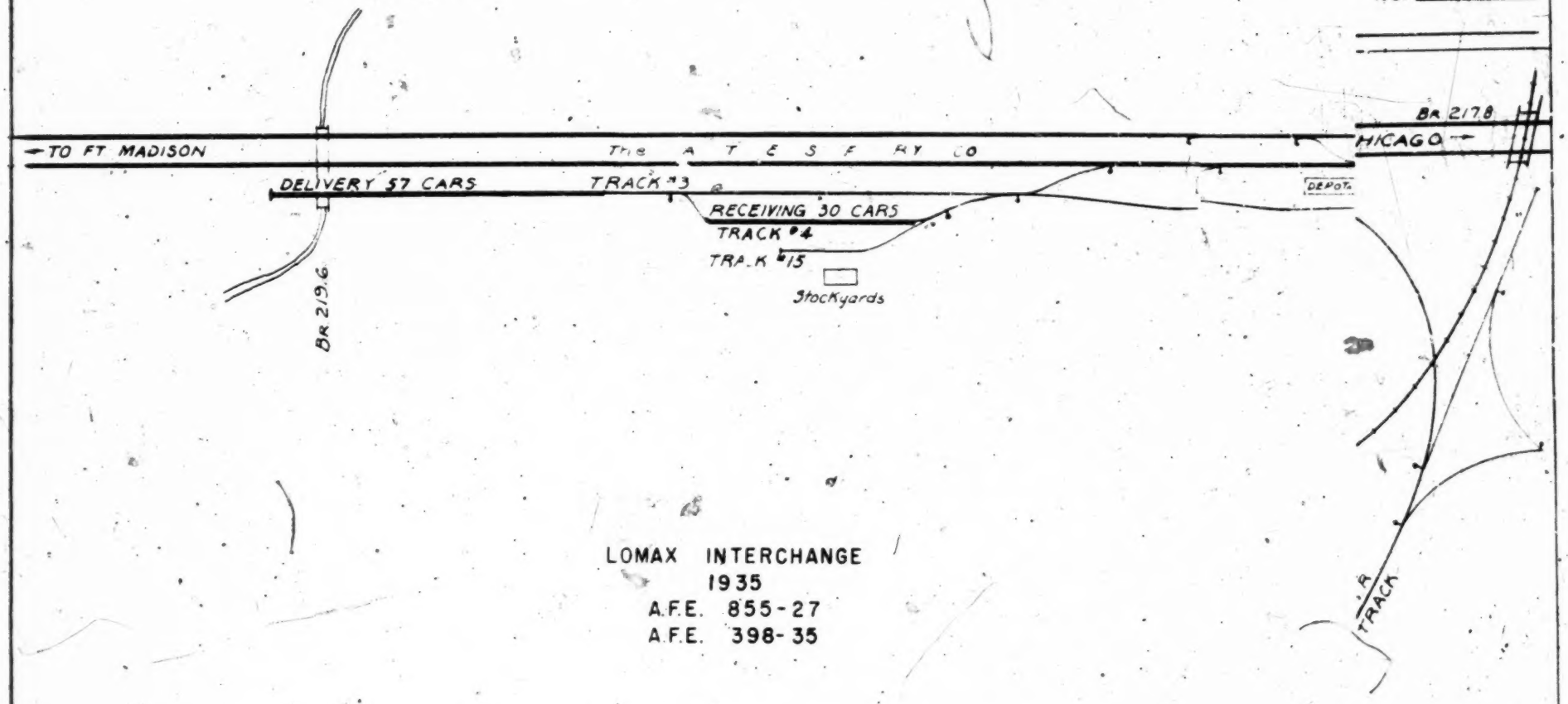


LOMAX INTERCHANGE
1927
A.F.E. 855-27

LOMAX INTERCHANGE
1927

1982

DOCKET 18991
NO. _____

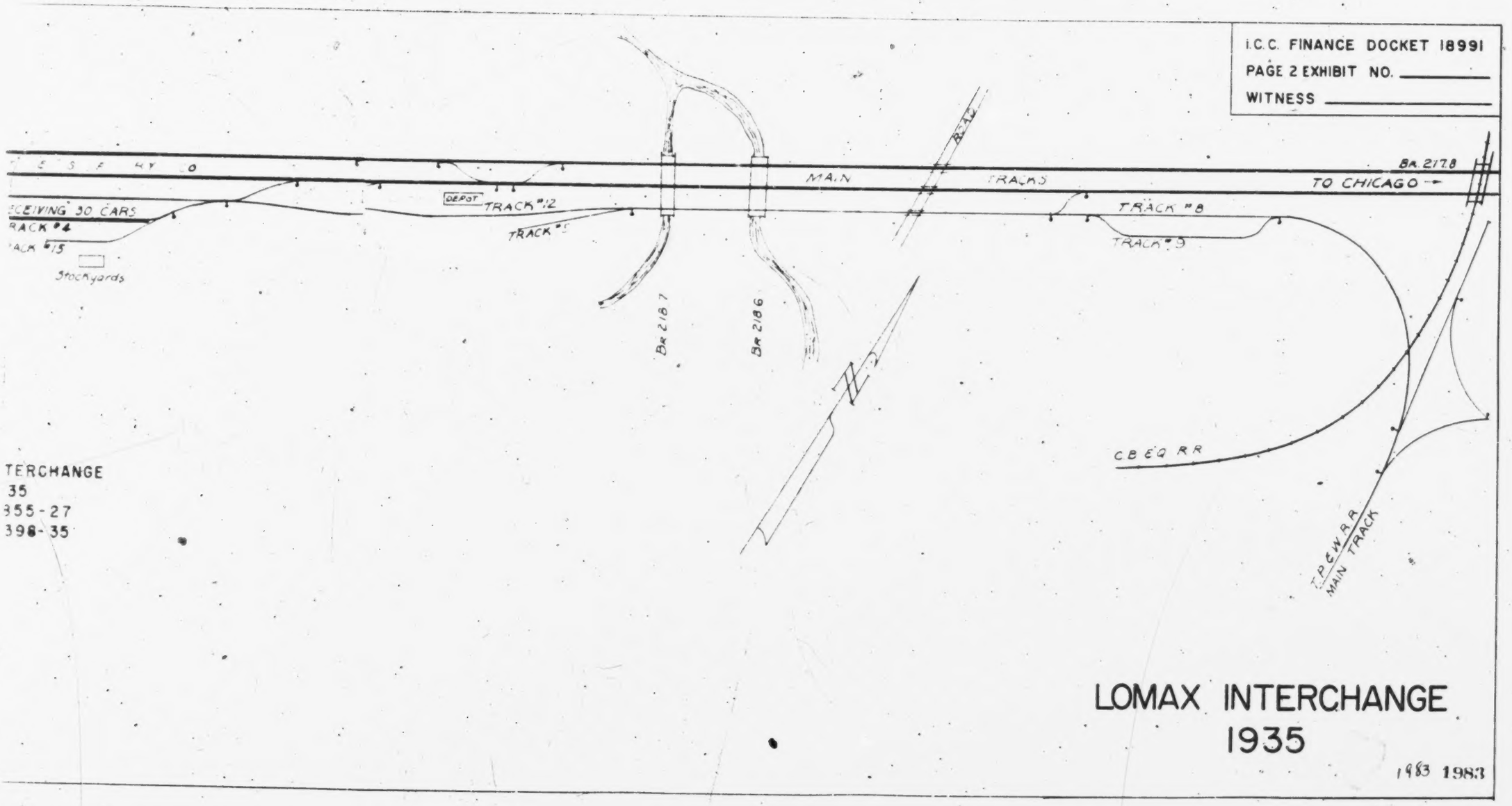


LOMAX INTERCHANGE
1935
A.F.E. 855-27
A.F.E. 398-35

HANGE

1983 1983

[fol. 1983]


I.C.C. FINANCE DOCKET 18991
PAGE 2 EXHIBIT NO.
WITNESS
MAIN TRACKS
TO CHICAGO
Br 217.8
Br 217
DEPOT
TRACK "12
TRACK "5
TRACK "8
TRACK "9
ECEIVING 30 CARS
RACK "4
ACK "15
Stockyards
Br 218.7
Br 218.6
CB&Q RR
T.P.&W.R.R.
MAIN TRACK
TERCHANGE
35
355-27
398-35
LOMAX INTERCHANGE
1935
1983 1983

Ship
Santa Fe
all the way

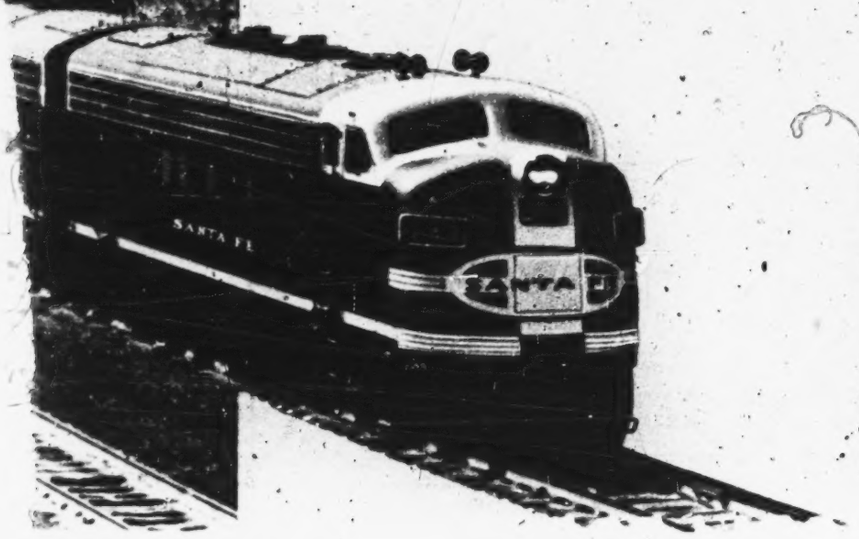


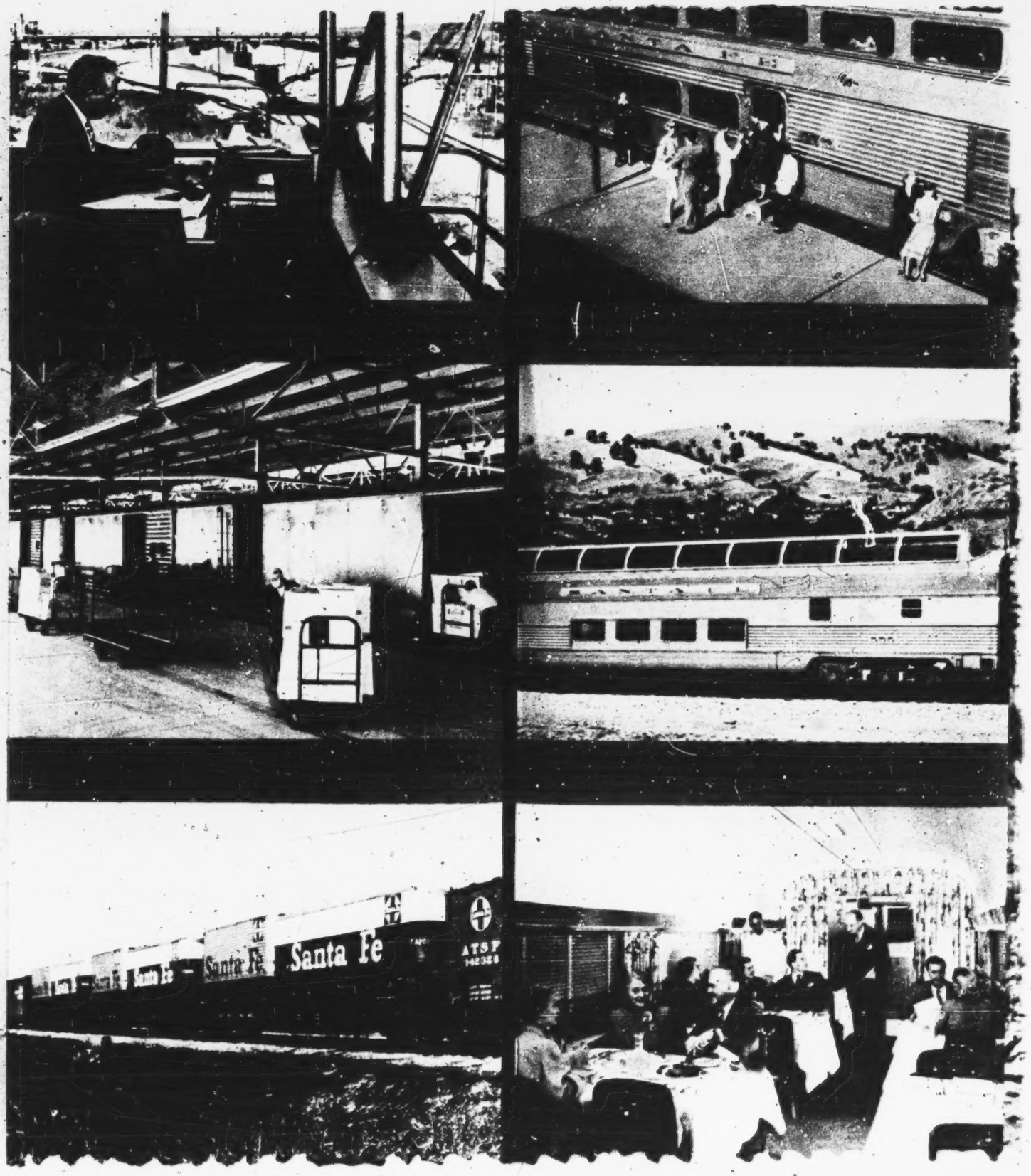
A good way to appraise Santa Fe freight operations is to glance over a map of the United States.

On this map we have highlighted our route to show how Santa Fe stretches from the Great Lakes to the Pacific and to the Gulf of Mexico. Santa Fe is the only railroad under one management between Chicago and California and Phoenix.

This means you can route your freight Santa Fe *all the way* and benefit from the advantages of one railroad operation in this vast territory. It means less chance for delays en route, and less chance for special handling instructions being misunderstood.

Our giant fleet of freight diesels and modern cars of all types, combined with the experience of skilled Santa Fe freight people, will prove that it pays to ship Santa Fe *all the way!*





I.C.C. FINANCE DOCKET _____
PAGE 5, EXHIBIT #_____
WITNESS_____

Train 146 takes traffic from trains 40 from southern and central Texas, Oklahoma and Kansas points; 42 from Colorado and Kansas points; 70 from eastern Oklahoma and southern Kansas points; 68 from Topeka, Kansas.

Train 40 handles all classes of traffic from Texas, Oklahoma and Kansas into Kansas City, protects meat and livestock originating Oklahoma City destined Kansas City and east. At Emporia or Kansas City, gets connection from Train 42 of perishable and livestock originating at Wichita and in Colorado. Kansas City protects perishable and livestock received from connecting lines by 7:30 AM in special deliveries.

Train 46 handles in preference livestock, packinghouse products, and other perishable originating Kansas City and St. Joseph.

At Kansas City, traffic from east arriving in sections of train 59 is passed through retarder yard and connections provided with trains as follows:

39 to Central and southern Texas points and connections

81 to western Texas, New Mexico and Arizona points and connections

41 to central Kansas points and connections

161 and 67 to Lawrence and Topeka, Kansas

69 to southern Kansas and eastern Oklahoma points and connections

59 to central and northern California points and connections

53 to southern California points and connections

339 to Kansas, Oklahoma and Texas points and connections

35 to western Kansas, Colorado and northern New Mexico points and connections

37 to Oklahoma and Texas points and connections

1986

[fol. 1987]

EXHIBIT H-9

(See Opposite) ☞

Santa Fe
The Chief Way

UNITED STATES MAP

Showing the route of
The Atchison, Topeka and Santa Fe
Railway System

Always on the Move Toward a Better Way





We will gladly prepare a cu: to help you choose the best location in the vast territory served by

When you're considering a plant site or warehouse in the territory served by Santa Fe, you want to get all the facts.

Well, we have them. We make it our business to know practically everything about every desirable site on Santa Fe's 13,150 miles of mainline track . . . about sites situated within already-organized industrial districts, sites in open country, and sites in big cities, small towns and rural areas.

And for any of these sites, we can give you accurate statistical information about housing, labor supply, schools, taxes, water, electricity and power, sewers, raw materials, markets, wage scales, pollution, fuel, transportation and hundreds of other vital questions.

Facts up to the Minute

All these facts, moreover, are right up to the minute, since our Industrial Development Department keeps in constant touch with local and state governmental authorities, as well as chambers of commerce and other local sources of information throughout the Santa Fe System.

As a result, we have most of the answers before you ask the questions. But if there's something we don't know, we find it out for you. We would be glad to assist you with your preliminary planning for plant and mum utilizat

This inforn our Industria are yours witl (And of cou lutely confide

Why? It's decide to mo want to haul if you make *want* us to h miles of track the way—con nation's bigge

So if you're ca warehouse in ask us to prep —a survey tha tailored specifi company, you

If you can information al will expedite h

Phone your ative or contac

Industrial De
Sant
80 E. Ja
Ch



We will gladly prepare a custom survey to help you choose the best location for your plant in the vast territory served by Santa Fe

When you're considering a plant site or warehouse in the territory served by Santa Fe, you want to get all the facts.

Well, we have them. We make it our business to know practically everything about every desirable site on Santa Fe's 13,150 miles of mainline track . . . about sites situated within already-organized industrial districts, sites in open country, and sites in big cities, small towns and rural areas.

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As a result, we have most of the answers before you ask the questions. But if there's something we don't know, we find it out for you. We would be glad to assist you with your preliminary planning for plant and trackage to give you maximum utilization of your choice site.

This information, and the services of our Industrial Development Department are yours without obligation on your part. (And of course—very important—absolutely confidential.)

Why? It's a matter of business: if you decide to move into our 12-state area, we want to haul your freight. What's more, if you make the move, we think you'll *want* us to haul it. For Santa Fe's 13,150 miles of track—under one management all the way—connects you swiftly with the nation's biggest markets.

Custom Survey

So if you're casting an eye on a plant site or warehouse in the growing Southwest, just ask us to prepare a custom survey for you—a survey that will give you *all* the facts, tailored specifically to your industry, your company, your requirements.

If you can give us specific or general information about your requirements, it will expedite handling.

Phone your nearest Santa Fe representative or contact us direct.

Industrial Development Department
Santa Fe Railway
80 E. Jackson Boulevard
Chicago 4, Illinois







Travel Santa Fe

ride great trains through a great country

Unfold this map and look at the wonderful scenic attractions of the western United States—then trace the Santa Fe route.

You will see how Santa Fe traverses the colorful Indian country of New Mexico and Arizona.

Note the outstanding scenic attractions, such as Grand Canyon, Carlsbad Caverns, Yosemite and many others that are a part of the great sights to see when you travel Santa Fe.

In California take special note that the Santa Fe serves its three biggest cities: Los Angeles, San Diego and San Francisco.

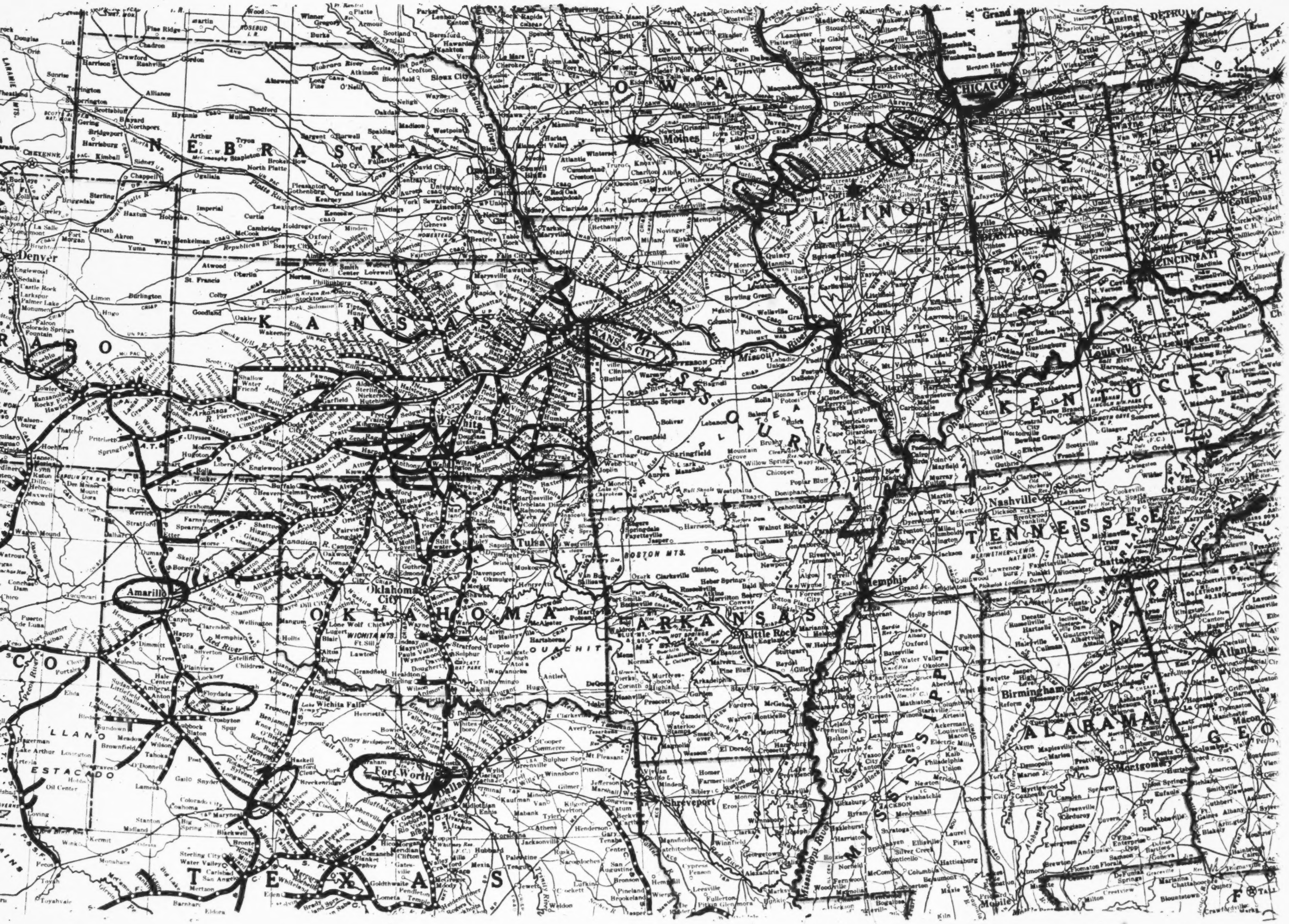
Western trips are easy to plan via Santa Fe for our great fleet of trains provide a variety of accommodations to suit your travel pleasure and your travel budget.

On the back of this folder map is a list of Santa Fe Travel Centers throughout the nation that will gladly assist with your travel plans and arrange details of your trip.




SANTA FE




NEBRASKA
KANSAS
OKLAHOMA
TEXAS
IOWA
ILLINOIS
MISSOURI
ARKANSAS
LOUISIANA
MISSISSIPPI
ALABAMA
GEORGIA
TENNESSEE
KENTUCKY
INDIANA
OHIO
Denver
Omaha
Des Moines
Kansas City
St. Louis
Chicago
Detroit
Cincinnati
Indianapolis
Columbus
Louisville
Nashville
Memphis
Atlanta
Birmingham
Montgomery
Mobile
Knoxville
Chattanooga
Oklahoma City
Tulsa
Amarillo
Fort Worth
Dallas
Wichita Falls
Little Rock
Shreveport
Jackson
Peoria
Lincoln
Wichita
Topeka
Sioux City
Cheyenne
Colorado Springs
Pueblo
Albuquerque
Lubbock
Abilene
San Antonio
Houston
Galveston
Corpus Christi
Waco
Austin
Beaumont
Lake Charles
New Orleans
Baton Rouge
Evansville
Fort Wayne
South Bend
Toledo
Akron
Cleveland
Lansing
Grand Rapids
Milwaukee
Madison
Rock Island
Davenport
Cedar Rapids
Waterloo
Sioux Falls
Omaha
Lincoln
Grand Island
North Platte
Scottsbluff
Alliance
Hastings
Kearney
Fremont
Norfolk
Columbus
Platte River
Missouri River
Arkansas River
Red River
Ohio River
Mississippi River
Cumberland Plateau
Ozark Mts.
Boston Mts.
Ouachita Mts.
Wichita Mts.
Black Hills
Rocky Mts.
Laramie Mts.
Llano Estacado
Staked Plains
Edwards Plateau
Big Thicket
Everglades
Okefenokee Swamp
Great Salt Lake
Pikes Peak
Mount Rainier
Mount Hood
Crater Lake
Yellowstone Lake
Glacier National Park
Grand Canyon
Yosemite
Sequoia
Death Valley
Mount Whitney
Lake Tahoe
Lake Michigan
Lake Superior
Lake Erie
Lake Ontario
Lake Huron
Lake Okeechobee
Lake Pontchartrain
Lake Arthur
Lake Texoma
Lake Meredith
Lake Mead
Lake Powell
Lake Shasta
Lake Oroville
Lake Tahoe
Lake Winnipesaukee
Lake Champlain
Lake Placid
Lake George
Lake Chautauqua
Lake Erie
Lake Ontario
Lake Huron
Lake Michigan
Lake Superior
Lake Okeechobee
Lake Pontchartrain
Lake Arthur
Lake Texoma
Lake Meredith
Lake Mead
Lake Powell
Lake Shasta
Lake Oroville
Lake Tahoe
Lake Winnipesaukee
Lake Champlain
Lake Placid
Lake George
Lake Chautauqua

FINANCE DOCKET NO. 18991
EXHIBIT NO. A-10
WITNESS

[Fol. 1989]

EXHIBIT A-10

BEFORE THE

Interstate Commerce Commission

Application of the Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and The Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	Finance Docket No. 18991.

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CARRIERS WITH WHICH SANTA FE INTERCHANGES TRAFFIC AT JUNCTIONS SHOWN ON MAP EXHIBIT NO. _____

Junction	Interchange Carrier		
Chicago, Ill.	B&OCT R.R.	CR&I R.R.	Direct
	Belt Ry.	GTW R.R.	
	C. Jct. Ry.	GM&O R.R.	
	CIW R.R.	Ill.Nor.Ry.	
	CPT Co.	IHB R.R.	
		P R.R.	
	C&O R.R.	MStP&SSM R.R.	Through Clearing Yard
	C&EI R.R.	Monon	
	CM&C R.R.	P R.R.	
	CRI&P R.R.	Wabash R.R.	
	Erie R.R.		
	I.C. R.R.		
	C&CR R.R.	CWP&S R.R.	Via Belt Railway
	C&WI R.R.	EJ&E Ry.	
	CGW R.R.	M.J. R.R.	
	CSI Ry.	M.C. R.R.	
	CSS&SB R.R.	NYC&StL R.R.	
		Pullman R.R.	
	B&O R.R.	- via B&OCT and Belt Ry.	
	CB&Q R.R.	- via B&OCT-IHB and I.N.	
	C&NW Ry.	- via Belt Ry.-I.N.-B&OCT-IHB	
	CA&E Ry.	- via B&OCT - IHB	
	CMStP&P R.R.	- via Belt Ry. - IHB - I.N.	
	NYC R.R.	- via Belt Ry.-IHB-B&OCT-I.N.	
Joliet, Ill.	M.C. R.R.		
	GM&O R.R.		
	EJ&E R.R.		
	CRI&P R.R.		
	CMStP&P R.R.	via EJ&E or M.C. R.R.	
Streator, Ill.	GM&O R.R.		
	CB&Q R.R.		
	Wabash R.R.		
	NYC R.R.		

Junction	Interchange Carrier
Nemo, Ill.	M&StL R.R.
Lomax, Ill.	TP&W R.R.
Kansas City, Mo.	GM&O R.R.
	CB&Q R.R.
	CGW R.R.
	CMStP&P R.R..
	CRI&P R.R.
	KCS Ry.
	KCT Ry.
	MKT R.R.
	Mo.Pac. R.R.
	StLASF Ry.
	U.P. R.R.
	Wabash R.R..
	KCKV R.R. via KCS Ry. and K&M Ry. & T Co.
	K&M Ry. & T Co. via KCS Ry. and KCT Ry.
	KCC R.R.
Cherryvale, Kan.	StLSF Ry. Co.
Ft. Worth, Tex.	FW&D Ry.
	T&P Ry.
	CRI&P R.R.
	MKT R.R. of T.
	IGN R.R.
	Ft.W. Belt Ry.
	StLSF & T Ry.
	T&NC R.R.
	StLSW Ry. of T.
Sweetwater, Tex.	T&P Ry.
Floydada, Tex.	CA&P Ry.
Amarillo, Tex.	FW&D Ry.
	CRI&P R.R.
Pueblo, Colo.	DARGW R.R.
	Colo. R.R.
	C&S Ry.
	Mo.Pac. R.R.

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MERCHANDISE DIVISIONS IN PERCENTS ACCRUING TO SANTA FE ON EASTBOUND TRAFFIC VIA GATEWAYS SHOWN

From / To	Via Gateway		Kansas City, Mo.	Wichita, Kan.	Denver, Colo.	Oklahoma City Okla.	Houston, Tex.	El Paso, Tex.	* Phoenix, Ariz. Los Angeles, Cal. San Francisco, Cal.
Boston, Mass.	(1)Kansas City,	Mo.	-	16.6	35.3	21.7	38.8	38.0	56.8
	Nemo,	Ill.	18.6	30.7	45.5	37.4	43.1	50.0	65.7
	Lomax,	Ill.	20.1	31.9	46.4	38.6	46.2	51.0	66.1
	Streator,	Ill.	33.2	41.3	53.3	45.7	52.5	56.8	71.0
	Chicago,	Ill.	38.0	45.0	58.0	49.9	57.4	59.5	72.5
New York, N. Y.	(1)Kansas City,	Mo.	-	17.6	36.4	23.6	39.6	40.3	60.2
	Nemo,	Ill.	19.8	32.2	47.3	38.5	47.0	51.4	65.7
	Lomax,	Ill.	21.4	33.5	48.2	39.8	48.1	52.0	66.1
	Streator,	Ill.	35.0	44.0	55.2	47.0	54.6	58.8	71.0
	Chicago,	Ill.	40.0	48.0	58.0	50.4	57.6	61.0	72.5
Baltimore, Md.	(1)Kansas City,	Mo.	-	19.1	38.2	25.4	41.1	42.8	60.2
	Nemo,	Ill.	22.8	34.0	49.9	40.0	48.5	53.5	65.7
	Lomax,	Ill.	24.0	35.9	50.8	41.3	49.7	54.5	66.1
	Streator,	Ill.	37.6	45.9	59.0	48.6	56.1	60.4	71.0
	Chicago,	Ill.	43.0	50.0	61.0	52.0	59.2	63.0	72.5
Pittsburgh, Pa.	(1)Kansas City,	Mo.	-	22.4	44.6	29.1	48.1	49.1	70.3
	Nemo,	Ill.	26.4	40.7	56.1	47.7	55.6	60.6	76.1
	Lomax,	Ill.	28.6	42.3	57.1	49.1	56.8	61.7	76.6
	Streator,	Ill.	45.5	55.0	66.6	59.2	65.4	69.4	81.8
	Chicago,	Ill.	52.0	60.0	70.0	61.3	69.0	72.6	83.5
Buffalo, N. Y.	(1)Kansas City,	Mo.	-	22.1	44.2	28.8	48.8	48.6	70.3
	Nemo,	Ill.	25.2	39.2	55.2	45.5	54.7	58.2	76.1
	Lomax,	Ill.	27.3	40.6	56.2	46.9	55.2	59.4	76.6
	Streator,	Ill.	45.5	55.0	66.6	57.0	64.0	67.3	81.8
	Chicago,	Ill.	52.0	60.0	70.0	61.1	67.6	70.5	83.5
Cleveland, Ohio	(1)Kansas City,	Mo.	-	24.4	46.8	31.0	50.7	50.4	70.3
	Nemo,	Ill.	29.4	45.3	61.3	50.8	59.8	64.0	76.1
	Lomax,	Ill.	31.9	47.0	62.4	51.3	59.1	64.1	76.6
	Streator,	Ill.	51.6	61.5	71.3	64.2	70.1	73.7	81.8
	Chicago,	Ill.	59.0	67.0	75.0	68.8	74.0	77.2	83.5
Cincinnati, Ohio	(1)Kansas City,	Mo.	-	28.1	52.6	36.0	47.2	54.0	73.4
	Nemo,	Ill.	32.4	48.4	64.8	51.5	60.5	65.0	79.5
	Lomax,	Ill.	35.1	50.2	66.0	52.9	61.7	66.1	80.0
	Streator,	Ill.	54.2	63.3	73.2	62.2	69.5	73.0	85.2
	Chicago,	Ill.	62.0	69.0	77.0	66.2	73.0	76.8	87.0
Detroit, Mich.	(1)Kansas City,	Mo.	-	25.1	48.2	32.2	41.9	50.2	73.4
	Nemo,	Ill.	31.2	46.8	63.1	50.1	58.9	63.3	79.5
	Lomax,	Ill.	33.8	48.6	64.2	51.5	60.1	64.4	80.0
	Streator,	Ill.	54.2	63.3	73.2	64.8	71.4	74.4	85.2
	Chicago,	Ill.	62.0	69.0	77.0	68.4	75.3	77.9	87.0
Indianapolis, Ind.	(1)Kansas City,	Mo.	-	30.8	53.4	38.4	49.0	57.0	77.4
	Nemo,	Ill.	36.0	51.0	66.3	57.4	65.2	69.4	79.5
	Lomax,	Ill.	39.0	55.0	69.5	59.2	66.6	70.7	80.0
	Streator,	Ill.	59.5	67.9	78.0	70.5	76.1	79.0	85.2
	Chicago,	Ill.	68.0	74.0	82.0	75.4	80.2	82.6	87.0

(1) - Applies on traffic moving via St. Louis - E. St. Louis Gateway.

* - On Transcontinental Traffic Via Nemo, Lomax, Ill. and Kansas City, Mo., Percents Shown Do Not Reflect Mississippi River Bridge Toll of 3 cents Per 100 Lbs.

AUTHORITY FOR DIVISIONS

Trans-Continental Division Circular 62-B.
Trans-Continental Division Circular 66-C.
Joint Rate Committee Percents 20-A.
Joint Rate Committee Percents 144.
Joint Rate Committee Percents 145.
Western Trunk Lines' Division Sheet 600-A.
Western Trunk Lines' Division Sheet 700.
Southwestern Lines' Division Sheet 100.
Southwestern Lines' Division Sheet 200-A.
New York Central Percents 263.
Santa Fe Percentage Sheet 3101-F (with TP&W).
Santa Fe Percentage Sheet 3160-I (with WABash).

MERCHANDISE DIVISIONS IN PERCENTS ACCRUING TO SANTA FE ON WESTBOUND TRAFFIC VIA GATEWAYS SHOWN

From	To	Via Gateway	Kansas City, Mo.	Wichita, Kan.	Denver, Colo.	Oklahoma City Okla.	Houston, Tex.	El Paso, Tex.	* Phoenix, Ariz. Los Angeles, Cal. San Francisco, Cal.
Boston, Mass.		(1)Kansas City, Mo.	-	16.6	35.3	21.7	29.8	34.0	56.8
		Nemo, Ill.	18.6	30.7	45.6	36.0	43.9	48.8	65.0
		Lomax, Ill.	20.1	31.9	46.4	37.1	44.9	49.8	65.5
		Streator, Ill.	33.2	41.3	51.3	43.6	50.7	55.2	71.0
		Chicago, Ill.	38.0	45.0	56.0	46.6	53.4	57.7	72.5
New York, N. Y.		(1)Kansas City, Mo.	-	17.6	37.6	23.6	32.0	46.1	66.5
		Nemo, Ill.	19.8	32.2	47.3	37.6	46.2	51.2	65.0
		Lomax, Ill.	21.4	33.5	48.2	38.8	47.2	52.2	65.5
		Streator, Ill.	35.0	44.0	55.2	45.9	53.4	57.8	71.0
		Chicago, Ill.	40.0	48.0	58.0	48.9	56.1	60.5	72.5
Baltimore, Md.		(1)Kansas City, Mo.	-	19.3	39.6	25.4	34.1	42.6	66.5
		Nemo, Ill.	22.2	34.6	49.9	39.6	48.2	53.2	68.0
		Lomax, Ill.	24.0	35.9	50.8	40.9	49.3	54.2	68.5
		Streator, Ill.	37.6	45.9	58.0	48.0	55.6	60.0	71.0
		Chicago, Ill.	43.0	50.0	61.0	51.3	58.6	62.7	73.5
Pittsburgh, Pa.		(1)Kansas City, Mo.	-	22.9	44.6	28.1	38.1	49.1	70.1
		Nemo, Ill.	26.4	40.7	56.1	47.7	55.5	60.6	75.2
		Lomax, Ill.	28.6	42.3	57.1	49.1	56.8	61.7	76.0
		Streator, Ill.	45.5	55.0	66.6	59.2	65.4	69.4	81.8
		Chicago, Ill.	52.0	60.0	70.0	61.1	68.0	72.6	83.5
Buffalo, N. Y.		(1)Kansas City, Mo.	-	22.1	43.2	28.5	37.6	46.6	70.1
		Nemo, Ill.	25.2	39.2	55.2	45.5	54.0	58.2	75.4
		Lomax, Ill.	27.3	40.6	56.2	46.9	55.2	59.4	76.0
		Streator, Ill.	45.5	55.0	66.6	57.0	64.0	67.1	81.8
		Chicago, Ill.	52.0	60.0	70.0	61.1	67.6	70.5	83.5
Cleveland, Ohio		(1)Kansas City, Mo.	-	24.4	46.8	31.0	40.4	49.4	70.1
		Nemo, Ill.	29.4	43.3	61.3	49.8	57.8	63.0	75.4
		Lomax, Ill.	31.9	47.0	62.4	51.3	59.1	64.1	76.0
		Streator, Ill.	51.6	61.5	71.3	62.2	70.1	73.7	81.8
		Chicago, Ill.	59.0	67.0	75.0	68.8	74.0	77.6	83.5
Cincinnati, Ohio		(1)Kansas City, Mo.	-	28.2	52.6	36.0	44.4	54.0	73.6
		Nemo, Ill.	32.4	48.4	64.8	51.5	60.5	65.0	78.7
		Lomax, Ill.	35.1	50.2	66.0	52.9	61.7	66.1	79.3
		Streator, Ill.	54.2	63.3	73.2	62.2	69.5	73.0	85.2
		Chicago, Ill.	62.0	69.0	77.0	66.2	73.0	76.0	87.0
Detroit, Mich.		(1)Kansas City, Mo.	-	27.3	48.2	32.2	41.9	48.3	71.6
		Nemo, Ill.	31.2	46.8	63.1	50.1	58.9	63.3	78.7
		Lomax, Ill.	33.8	48.6	64.2	51.5	60.1	64.4	79.3
		Streator, Ill.	54.2	63.3	73.2	64.8	71.4	74.4	85.2
		Chicago, Ill.	62.0	69.0	77.0	69.4	75.1	77.9	87.0
Indianapolis, Ind.		(1)Kansas City, Mo.	-	30.8	51.4	38.4	46.0	47.0	71.6
		Nemo, Ill.	36.0	53.0	68.3	57.4	65.2	69.4	78.7
		Lomax, Ill.	39.0	55.0	69.5	59.2	66.6	70.7	79.3
		Streator, Ill.	59.5	67.9	78.0	70.5	76.1	79.0	85.2
		Chicago, Ill.	68.0	74.0	82.0	75.4	80.2	82.6	87.0

(1) - Applies on traffic moving via St. Louis - E. St. Louis Gateway.
* - On Transcontinental Traffic Via Kansas City, Mo. Percents shown Do Not Reflect Mississippi River Bridge Toll of 3 Cents Per 100 lbs.

AUTHORITY FOR DIVISIONS

Trans-Continental Division Circular 62-B.
Trans-Continental Division Circular 66-C.
Joint Rate Committee Percents 20-A.
Joint Rate Committee Percents 144.
Joint Rate Committee Percents 145.
Western Trunk Lines' Division Sheet 500-A.
Western Trunk Lines' Division Sheet 700.
Southwestern Lines' Division Sheet 100.
Southwestern Lines' Division Sheet 200-A.
New York Central Percents 263.
Santa Fe Percentage Sheet 3101-F (With TP&W).
Santa Fe Percentage Sheet 3160-I (With WABA).

1668 [61 1952]

Merchandise Divisions In Percents Accruing To Santa Fe West of Interchange Junctions Shown On Traffic Originating At Or Destined to San Francisco, Cal., Los Angeles Cal., And Phoenix, Ariz., When Routed Through East St. Louis, Ill. Gateway.

BETWEEN / AND	INTERCHANGE JUNCTION		SAN FRANCISCO, CAL. LOS ANGELES, CAL. PHOENIX, ARIZ.	BETWEEN / AND	INTERCHANGE JUNCTION		SAN FRANCISCO, CAL. LOS ANGELES, CAL. PHOENIX, ARIZ.
	Cherryvale,	Kan.	59.8		Cherryvale,	Kan.	70.3
	Fort Worth,	Tex.	49.3		Fort Worth,	Tex.	58.0
Boston, Mass.	Pueblo,	Colo.	* 48.8	Cleveland, Ohio	Pueblo,	Colo.	* 57.4
	Floydada,	Tex.	43.5		Floydada,	Tex.	51.2
	Sweetwater,	Tex.	41.5		Sweetwater,	Tex.	48.8
	Amarillo,	Tex.	39.5		Amarillo,	Tex.	46.4
	Cherryvale,	Kan.	60.2		Cherryvale,	Kan.	73.4
	Fort Worth,	Tex.	49.7		Fort Worth,	Tex.	60.5
New York, N. Y.	Pueblo,	Colo.	* 49.1	Cincinnati, Ohio	Pueblo,	Colo.	* 59.9
	Floydada,	Tex.	43.8		Floydada,	Tex.	53.4
	Sweetwater,	Tex.	41.8		Sweetwater,	Tex.	50.9
	Amarillo,	Tex.	39.7		Amarillo,	Tex.	48.4
	Cherryvale,	Kan.	60.2		Cherryvale,	Kan.	73.4
	Fort Worth,	Tex.	49.7		Fort Worth,	Tex.	60.5
Baltimore, Md.	Pueblo,	Colo.	* 49.1	Detroit, Mich.	Pueblo,	Colo.	* 59.9
	Floydada,	Tex.	43.8		Floydada,	Tex.	53.4
	Sweetwater,	Tex.	41.8		Sweetwater,	Tex.	50.9
	Amarillo,	Tex.	39.7		Amarillo,	Tex.	48.4
	Cherryvale,	Kan.	70.3		Cherryvale,	Kan.	73.4
	Fort Worth,	Tex.	58.0		Fort Worth,	Tex.	60.5
Pittsburgh, Pa.	Pueblo,	Colo.	* 57.4	Indianapolis, Ind.	Pueblo,	Colo.	* 59.9
	Floydada,	Tex.	51.2		Floydada,	Tex.	53.4
	Sweetwater,	Tex.	48.8		Sweetwater,	Tex.	50.9
	Amarillo,	Tex.	46.4		Amarillo,	Tex.	48.4
	Cherryvale,	Kan.	70.3				
	Fort Worth,	Tex.	58.0				
Buffalo, N. Y.	Pueblo,	Colo.	* 57.4				
	Floydada,	Tex.	51.2				
	Sweetwater,	Tex.	48.8				
	Amarillo,	Tex.	46.4				

AUTHORITY FOR DIVISIONS

Trans-Continental Division Circular 62-B.
Trans-Continental Division Circular 66-C.
Santa Fe Percentage Sheet No. 3043-A (With Mo. Pac.).
Santa Fe Percentage Sheet No. 3208-E (With T&P).
Santa Fe Percentage Sheet No. 2661-B (With StL-SF).
Santa Fe Percentage Sheet No. 4394 (With CRI&P).

Divisions shown do not reflect Mississippi River Bridge deductions of 3 cents per 100 lbs. at East St. Louis, Ill. and do not reflect San Francisco Bay Transfer deduction of 5 cents per 100 pounds.

* When to or from San Francisco, the percents are slightly less.

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MERIDIAN-BIRMINGHAM DIVISION
EASTBOUND LINES ON EASTBOUND TRAFFIC VIA GATEWAYS SHOWN

To	Via Gateway	From	Kansas City, Mo.	Wichita, Kans.	Denver, Colo.	Oklahoma City Okla.	Houston, Tex.	El Paso, Tex.	Phoenix, Ariz.	Los Angeles, Cal.	San Francisco, Cal.
Boston, Mass.	E. St. Louis,	Ill.	72.0	64.0	51.0	65.0	58.0	50.0	32.0	32.0	32.0
	Chicago,	Ill.	62.0	55.0	44.0	51.0	44.6	40.5	27.5	27.5	27.5
	Effner,	Ind.	63.5	56.2	44.2	48.7	42.5	38.5	28.5	28.5	28.5
	Peoria,	Ill.	66.0	58.5	47.5	52.5	46.5	42.0	31.5	31.5	31.5
New York, N.Y.	E. St. Louis,	Ill.	70.0	64.0	48.0	62.0	55.0	47.0	32.0	32.0	32.0
	Chicago,	Ill.	60.0	52.0	42.0	49.6	42.4	38.4	27.5	27.5	27.5
	Effner,	Ind.	58.3	50.5	40.0	44.8	38.3	34.6	27.0	27.0	27.0
	Peoria,	Ill.	67.0	58.0	46.0	51.5	44.0	40.0	31.0	31.0	31.0
Baltimore, Md.	E. St. Louis,	Ill.	67.0	58.0	46.0	59.0	52.0	44.0	31.5	31.5	31.5
	Chicago,	Ill.	57.0	50.0	39.0	48.0	40.8	36.0	27.5	27.5	27.5
	Effner,	Ind.	54.5	46.2	36.5	42.4	36.0	32.5	26.2	26.2	26.2
	Peoria,	Ill.	63.0	55.0	43.0	53.0	46.1	42.0	31.5	31.5	31.5
Pittsburgh, Pa.	E. St. Louis,	Ill.	61.0	54.0	38.0	48.0	41.0	38.0	30.0	30.0	30.0
	Chicago,	Ill.	48.0	40.0	30.0	38.7	31.0	27.4	16.5	16.5	16.5
	Effner,	Ind.	44.8	37.6	28.8	32.6	27.5	24.3	16.0	16.0	16.0
	Peoria,	Ill.	56.0	47.0	36.0	44.8	34.4	30.4	20.0	20.0	20.0
Buffalo, N.Y.	E. St. Louis,	Ill.	62.0	52.0	40.0	54.0	47.0	39.0	29.5	29.5	29.5
	Chicago,	Ill.	48.0	40.0	30.0	34.9	32.4	25.2	23.0	23.0	23.0
	Effner,	Ind.	40.6	34.3	25.9	30.2	25.2	22.3	16.5	16.5	16.5
	Peoria,	Ill.	58.0	49.0	37.0	46.2	36.0	32.8	20.0	20.0	20.0
Cleveland, Ohio	E. St. Louis,	Ill.	56.0	47.0	35.0	50.0	43.0	35.0	25.5	25.5	25.5
	Chicago,	Ill.	41.0	33.0	25.0	31.2	26.0	22.8	16.5	16.5	16.5
	Effner,	Ind.	40.2	32.9	24.0	30.7	25.6	22.4	16.0	16.0	16.0
	Peoria,	Ill.	51.0	41.0	30.0	38.4	32.0	28.0	20.5	20.5	20.5
Cincinnati, Ohio	E. St. Louis,	Ill.	49.0	39.0	27.0	42.0	36.0	29.0	24.0	24.0	24.0
	Chicago,	Ill.	38.0	31.0	23.0	31.8	27.0	24.0	17.6	17.6	17.6
	Effner,	Ind.	30.8	24.8	17.4	24.7	19.8	17.6	11.1	11.1	11.1
	Peoria,	Ill.	46.0	37.0	26.0	36.9	29.5	26.8	16.5	16.5	16.5
Detroit, Mich.	E. St. Louis,	Ill.	56.0	45.0	33.0	48.0	41.0	34.0	24.0	24.0	24.0
	Chicago,	Ill.	38.0	31.0	23.0	30.6	24.7	22.1	13.0	13.0	13.0
	Effner,	Ind.	36.0	29.2	21.0	28.9	23.4	20.9	12.4	12.4	12.4
	Peoria,	Ill.	46.0	39.0	28.0	38.5	31.2	27.9	16.5	16.5	16.5
Indianapolis, Ind.	E. St. Louis,	Ill.	43.0	33.0	23.0	35.0	31.0	25.0	17.5	17.5	17.5
	Chicago,	Ill.	32.0	26.0	18.0	24.6	19.8	17.4	11.0	11.0	11.0
	Effner,	Ind.	30.0	23.5	16.0	23.4	18.8	16.6	8.2	8.2	8.2
	Peoria,	Ill.	40.0	31.0	22.0	28.7	23.1	20.2	16.5	16.5	16.5

Authority for Divisions

Transcontinental Division Circular 64-B
West Trunk Lines Division Sheet 500-A
Southwestern Lines Division Sheet 200-A
Joint Rate Committee Percents 20-A

Joint Rate Committee Percents 145
Pennsylvania Division Basis 7253-A and 5880-A
New York Chicago and St. Louis Division Sheet 1123

1670 [fol. 1994]

1994

[Vol. 1995]

MERCHANDISE DIVISIONS IN PERCENTS ACCRUING TO EASTERN LINES ON ST.LOUIS TRAFFIC VIA GATEWAYS SHOWN

From	To / Via Gateway		Kansas City, Mo.	Wichita, Kan.	Denver, Colo.	Oklahoma City, Okla.	Houston, Tex.	El Paso, Tex.	Phoenix, Ariz. / Los Angeles, Cal. / San Francisco, Cal.
Boston, Mass.	E. St. Louis,	Ill.	73.0	64.0	51.0	65.0	58.0	50.0	32.0
	Chicago,	Ill.	62.0	55.0	44.0	53.4	46.6	42.3	27.5
	Effner,	Ind.	63.5	55.2	44.2	50.9	44.3	40.4	28.5
	Peoria,	Ill.	69.0	60.0	48.0	55.1	48.2	41.9	31.0
New York, N.Y.	E. St. Louis,	Ill.	70.0	61.0	48.0	62.0	55.0	47.0	31.5
	Chicago,	Ill.	60.0	52.0	42.0	51.1	43.7	39.6	27.5
	Effner,	Ind.	58.3	50.5	40.0	46.1	39.4	35.1	27.0
	Peoria,	Ill.	67.0	58.0	46.0	53.0	45.3	41.0	31.0
Baltimore, Md.	E. St. Louis,	Ill.	67.0	58.0	45.0	59.0	52.0	44.0	31.5
	Chicago,	Ill.	57.0	50.0	39.0	48.7	41.4	37.3	27.5
	Effner,	Ind.	53.5	46.8	36.5	42.9	36.5	32.9	26.3
	Peoria,	Ill.	63.0	55.0	43.0	50.5	43.9	38.7	31.0
Pittsburgh, Pa.	E. St. Louis,	Ill.	61.0	51.0	38.0	51.0	46.0	38.0	20.0
	Chicago,	Ill.	48.0	40.0	30.0	36.7	31.0	27.4	16.5
	Effner,	Ind.	44.8	37.6	28.8	32.6	27.5	24.3	16.0
	Peoria,	Ill.	56.0	47.0	36.0	40.5	34.3	30.5	20.0
Buffalo, N.Y.	E. St. Louis,	Ill.	62.0	52.0	40.0	54.0	47.0	39.0	20.0
	Chicago,	Ill.	48.0	40.0	30.0	38.9	32.4	29.5	16.5
	Effner,	Ind.	40.6	34.3	25.9	30.2	25.2	23.0	14.0
	Peoria,	Ill.	58.0	48.0	37.0	41.6	34.8	32.8	20.0
Cleveland, Ohio	E. St. Louis,	Ill.	57.0	47.0	36.0	50.0	43.0	35.0	20.0
	Chicago,	Ill.	41.0	33.0	25.0	31.2	26.0	22.8	16.5
	Effner,	Ind.	40.6	32.8	24.0	30.7	25.6	22.4	16.0
	Peoria,	Ill.	51.0	43.0	32.0	35.1	30.0	28.0	20.0
Cincinnati, Ohio	E. St. Louis,	Ill.	53.0	43.0	34.0	42.0	36.0	29.0	16.5
	Chicago,	Ill.	35.0	31.0	23.0	33.8	27.0	24.0	13.0
	Effner,	Ind.	30.8	24.8	17.4	24.7	19.8	17.6	11.1
	Peoria,	Ill.	46.0	37.4	26.0	36.9	29.5	26.2	16.5
Detroit, Mich.	E. St. Louis,	Ill.	56.0	46.6	33.0	45.0	41.0	34.0	16.5
	Chicago,	Ill.	38.0	31.0	23.0	30.6	24.7	22.1	13.0
	Effner,	Ind.	36.0	29.2	21.0	28.9	23.4	20.9	12.4
	Peoria,	Ill.	52.0	39.0	28.0	38.5	31.2	27.9	16.5
Indianapolis, Ind.	E. St. Louis,	Ill.	43.0	33.0	21.0	38.0	31.0	25.0	16.5
	Chicago,	Ill.	32.0	26.0	18.0	24.6	19.8	17.4	13.0
	Effner,	Ind.	20.0	15.5	11.0	14.4	11.6	10.2	8.2
	Peoria,	Ill.	40.0	31.0	22.0	28.7	23.1	20.3	16.5

Authority for Divisions

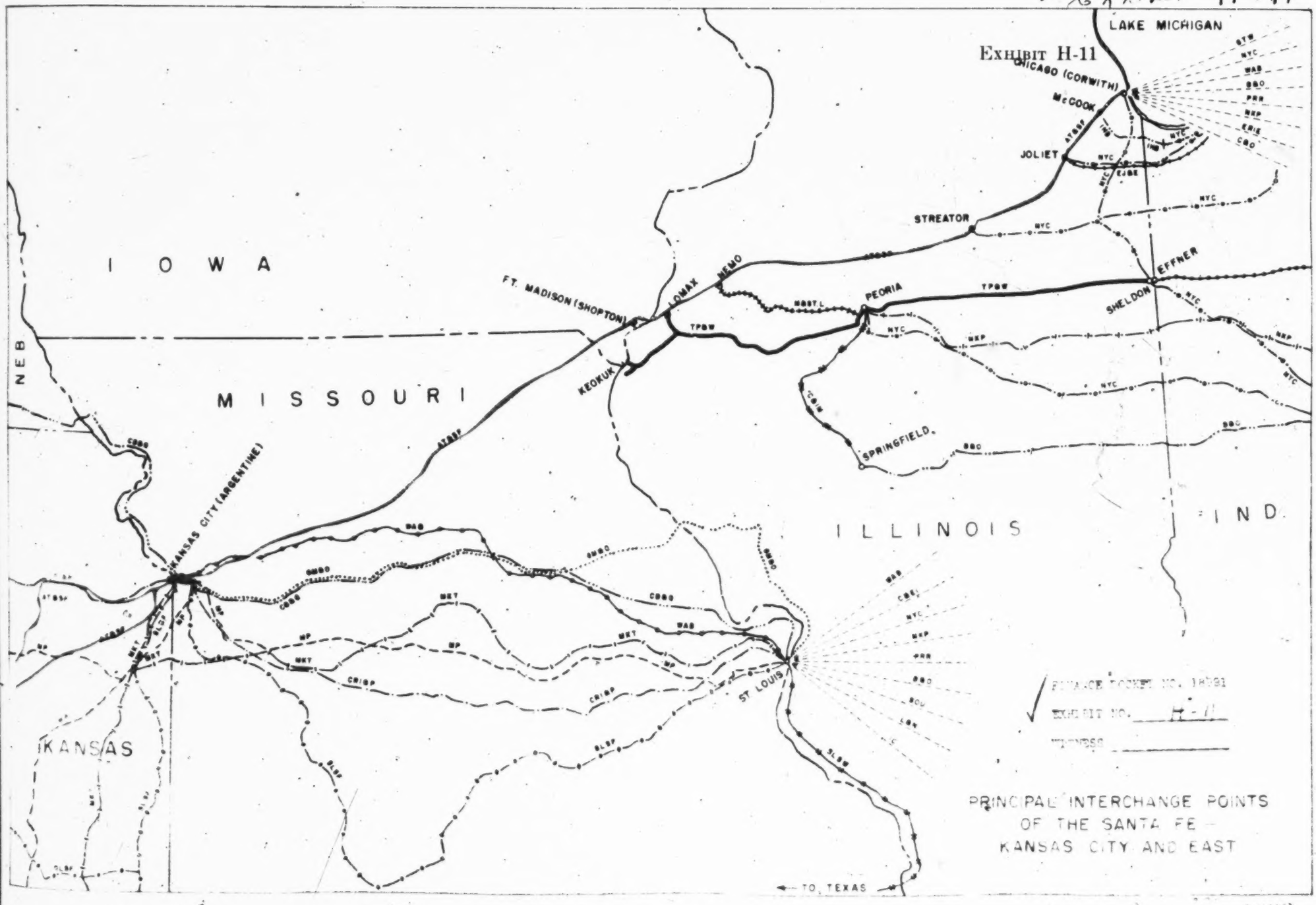
Transcontinental Division Circular 62-B
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Joint Rate Committee Percents 20-A

Joint Rate Committee Percents 144
Pennsylvania Division Basis 7253-A and 5850-A
New York Chicago and St. Louis Division Sheet 1123

1971

[fol. 1996]

✓ Exhibit H-11



19905

[fol. 1997]

EXHIBIT H-12

I.C.C. Finance Docket 18991
EXHIBIT A-12
WITNESS

Before The

INTERSTATE COMMERCE COMMISSION

Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	Finance Docket No. 18991

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General balance sheet of AT&SF Ry. Sys., Nov. 30, 1955. 1

Income account and earned surplus statement of AT&SF Ry. Sys. for 11 months ended Nov. 30, 1955. 3

1997

[fol. 1998]

EXHIBIT
Page 1

THE ATCHISON TOPEKA AND SANTA FE RAILWAY SYSTEM
Balance Sheet as of November 30, 1955

ASSETS

INVESTMENTS		
Road and equipment property		$1 732 935 743
Improvements on leased property		1 378 082
Acquisition adjustment	Cr	4 202 379
Donations and grants	Cr	22 497 884
Accrued depreciation - Road	Cr	66 749 189
Accrued depreciation - Equipment	Cr	317 707 335
Accrued amortization of defense projects - Road	Cr	16 208 103
Accrued amortization of defense projects - Equip.	Cr	87 970 937
Sinking funds		5 717 160
Miscellaneous physical property		19 373 883
Accrued depreciation-Misc'l. physical property	Cr	4 266 801
Investments in affiliated companies		39 602 984
Other investments		1 795 838
Total		$1 288 749 071
CURRENT ASSETS		
Cash		$ 47 097 714
Temporary cash investments		113 538 583
Special deposits		54 288
Loans and bills receivable		800
Traffic and car-service balances - Dr.		10 937 276
Net balance receivable from agents & conductors		5 339 670
Miscellaneous accounts receivable		13 405 262
Material and supplies		39 492 704
Interest and dividends receivable		612 380
Accrued accounts receivable		7 508 647
Other current assets		706 649
Total		$ 238 693 973
DEFERRED ASSETS		
Working fund advances		$ 553 020
Other deferred assets		3 250 820
Total		$ 3 803 840
UNADJUSTED DEBITS		
Prepayments		$ 569 048
Other unadjusted debits		1 682 387
Total		$ 2 251 435
Total Assets		$1 533 498 319

1998

[fol. 1999]

EXHIBIT
Page 1

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
Balance Sheet as of November 30, 1955

LIABILITIES

STOCK		
Capital stock		$ 366 878 800
Premium on capital stock		717 800
	Total	$ 367 596 600
LONG TERM DEBT		
Funded debt unmatured		$ 192 971 500
CURRENT LIABILITIES		
Audited accounts and wages payable		$ 29 348 462
Miscellaneous accounts payable		7 307 176
Interest matured unpaid		334 048
Dividends matured unpaid		54 288
Unmatured interest accrued		1 755 341
Unmatured dividends declared		6 067 650
Accrued accounts payable		7 937 273
Taxes accrued		57 689 914
Other current liabilities		3 835 911
	Total	$ 114 330 063
DEFERRED LIABILITIES		
Other deferred liabilities		$ 3 057 582
UNADJUSTED CREDITS		
Other unadjusted credits		$ 22 530 266
Accrued depreciation - Leased property		11 993
	Total	$ 22 542 259
SURPLUS		
Unearned surplus		$ 565 768
Earned surplus - Appropriated		92 105 299
Earned surplus - Unappropriated		740 329 248
		$ 833 000 315
	Total Liabilities	$1 533 498 319

1999

[fol. 2000]

EXHIBIT
Page 3

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
Income Account and Earned Surplus Statement
for Eleven Months Ended November 30, 1955

I. OPERATING INCOME

A. Railway operating revenues	$527 191 817
Railway operating expenses	376 131 770
Net revenue from railway operations	151 060 047
Railway tax accruals	81 010 813
Railway operating income	70 049 234
B. Rent Income	
Rent from locomotives	129 028
Rent from passenger-train cars	1 360 724
Rent from floating equipment	950
Rent from work equipment	22 162
Joint facility rent income	1 465 928
Total rent income	2 978 792
C. Rents payable	
Hire of freight cars - Debit balance	1 221 628
Rent for locomotives	1 196
Rent for passenger-train cars	854 562
Rent for work equipment	692
Joint facility rents	2 735 267
Total rents payable	4 813 345
Net Rents	Dr 1 834 553
Net railway operating income	68 214 681

II. OTHER INCOME

Revenues from miscellaneous operations	925 722
Income from lease of road and equipment	70 856
Miscellaneous rent income	680 358
Income from non-operating property	1 044 525
Dividend income	2 570
Interest income	2 021 909
Income from sinking and other reserve funds	77 231
Miscellaneous income	234 646
Total other income	5 057 817
Total income	73 272 498

III. MISCELLANEOUS DEDUCTIONS FROM INCOME

Expenses of miscellaneous operations	1 050 809
Taxes on miscellaneous operating property	46
Miscellaneous rents	237 366
Miscellaneous tax accruals	224 452
Separately operated properties - Loss	3 563
Amortization of discount on funded debt	9 598
Maintenance of investment organization	1 407
Miscellaneous income charges	149 113
Total miscellaneous deductions	1 676 354
Income available for fixed charges	$ 71 596 144

[fol. 2001]

EXHIBIT
Page 4

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM
Income Account and Earned Surplus Statement
For Eleven Months Ended November 30, 1955

IV. FIXED CHARGES

Rent for leased roads and equipment	$ 2 001
Interest on funded debt	
Fixed interest not in default	5 422 902
Interest on unfunded debt	47 402
Total fixed charges	5 472 305
Income after fixed charges	66 123 839

V. OTHER DEDUCTIONS

Interest on funded debt	1 739 616
Net income after fixed charges and other deductions	64 384 223

VI. DISPOSITION OF NET INCOME

Income applied to sinking and other reserve funds	2 476 893
Balance of income transferred to Earned Surplus	$ 61 907 330

EARNED SURPLUS - UNAPPROPRIATED, November 30, 1955

CREDITS

Balance at beginning of year	$700 097 626
Credit balance transferred from income	61 907 330
Miscellaneous credits	177 717
Total Credits	$762 182 673

DEBITS

Dividend appropriations of surplus	$ 21 307 270
Miscellaneous debits	546 155
Balance carried to Balance Sheet	740 329 248
Total Debits	$762 182 673

vcc/

[fol. 2003]

EXHIBIT H-13

I.C.C. Finance Docket No. 18991

Exhibit No. H-13

Witness _____

Before The

INTERSTATE COMMERCE COMMISSION

Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	)	Finance Docket No. 18991

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Valuation data, November 30, 1955, Toledo, Peoria & Western Railroad Company	5

2003

[fol. 2004]

I.C.C. Finance Docket No. 18991

Exhibit No. _____

Witness _____

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

INCOME ACCOUNT FOR ELEVEN MONTHS ENDED NOVEMBER 30, 1955

	11 Months Ended Nov. 30, 1955
Railway operating revenues	$ 6,512,735
Railway operating expenses	4,068,087
Net revenue from railway operations	2,444,648
Railway tax accruals	1,031,456
Railway operating income	1,413,192
RENT INCOME	
Rent from locomotives	201
Rent from work equipment	756
Joint facility rent income	35,737
Total rent income	36,694
RENTS PAYABLE	
Hire of freight cars - Dr. balance	700,178
Rent for passenger train cars	41
Joint facility rent	20,043
Total rents payable	720,262
Net rents	(683,568)
Net railway operating income	729,624
OTHER INCOME	
Miscellaneous rent income	20,904
Income from non-operating property	5,853
Interest income	21,025
Miscellaneous income	170
Total other income	47,952
Total income	777,576
MISCELLANEOUS DEDUCTIONS	
Miscellaneous rents	70
Miscellaneous tax accruals	1,120
Miscellaneous income charges	19,507
Total miscellaneous deductions	20,697
Income available for fixed charges	$ 756,879

(Continued)

2004

I.C.C. Finance Docket No. 17991

Exhibit No. _____

Witness _____

FIXED CHARGES:		
Interest on funded debt		
Fixed interest not in default		$ 61,000
Interest on unfunded debt		
Total fixed charges		61,000
Net income after fixed charges and other deductions		695,791
Balance of income transferred to earned surplus - unappropriated		$ 695,791

EARNED SURPLUS - UNAPPROPRIATED

Balance at beginning of year	Cr	$2,496,098
Miscellaneous credits	Cr	32,357
Dividend appropriations of surplus	Dr	175,500
Miscellaneous debits	Dr	266
Funded debt retired thru income and surplus	Cr	10,000
Balance transferred from income	Cr	695,791
	Cr	$3,058,480

I hereby certify that the above statement reflects the income accounts and unappropriated earned surplus of Toledo, Peoria & Western Railroad Company as of November 30, 1955.

C. L. Pattison
Controller

Subscribed and sworn to before me this 30th day of January, A. D. 1956.

(SEAL)

Ferne S. Holtke
Notary Public

2005

[fol. 2004]

I.C.C. Finance Docket No. 18991

Exhibit No. _____

Witness _____

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

INCOME ACCOUNT FOR ELEVEN MONTHS ENDED NOVEMBER 30, 1955

	11 Months Ended Nov. 30, 1955
Railway operating revenues	$ 6,512,735
Railway operating expenses	4,068,087
Net revenue from railway operations	2,444,648
Railway tax accruals	1,031,456
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RENT INCOME	
Rent from locomotives	201
Rent from work equipment	756
Joint facility rent income	35,737
Total rent income	36,694
RENTS PAYABLE	
Hire of freight cars - Dr. balance	700,178
Rent for passenger train cars	41
Joint facility rent	20,043
Total rents payable	720,262
Net rents	(683,568)
Net railway operating income	729,624
OTHER INCOME	
Miscellaneous rent income	20,904
Income from non-operating property	5,853
Interest income	21,025
Miscellaneous income	170
Total other income	47,952
Total income	777,576
MISCELLANEOUS DEDUCTIONS	
Miscellaneous rents	70
Miscellaneous tax accruals	1,120
Miscellaneous income charges	19,507
Total miscellaneous deductions	20,697
Income available for fixed charges	$ 756,879

(Continued)

2004

[fol. 2005]

I.C.C. Finance Docket No. 18091

Exhibit No. _____

Witness _____

FIXED CHARGES		
Interest on funded debt		
Fixed interest not in default		$ 61,082
Interest on unfunded debt		6
Total fixed charges		61,088
Net income after fixed charges and other deductions		695,791
Balance of income transferred to earned surplus - unappropriated		$ 695,791

EARNED SURPLUS - UNAPPROPRIATED

Balance at beginning of year	Cr	$2,496,098
Miscellaneous credits	Cr	32,357
Dividend appropriations of surplus	Dr	175,500
Miscellaneous debits	Dr	266
Funded debt retired thru income and surplus	Cr	10,000
Balance transferred from income	Cr	695,791
	Cr	$3,058,480

I hereby certify that the above statement reflects the income accounts and unappropriated earned surplus of Toledo, Peoria & Western Railroad Company as of November 30, 1955.

C. L. Pattison
Controller

Subscribed and sworn to before me this 30th day of January, A. D. 1956.

(SEAL)

Ferne S. Holtke
Notary Public

2005

[fol. 2006]

I.C.C. Finance Docket No. 18991

Exhibit No. _____

Witness _____

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY
GENERAL BALANCE SHEETS

ASSETS

		Nov. 30, 1955
	INVESTMENTS	
701	Road and equipment property	$10,176,417.28
702½B	Donations and grants	Cr 2,165,369.86
	Investment in transportation property	8,011,047.42
702¾C	& D Accrued depreciation-Road and Equipment	Cr 2,145,454.55
	Investment in transportation property less recorded depreciation	5,865,592.87
703	Sinking funds	14,094.82
704	Deposit in lieu of mortgaged property sold	3,952.00
705	Miscellaneous physical property	777,543.40
705½	Accrued depreciation - Misc. phys. prop.	Cr 78,281.58
	Miscellaneous physical property less recorded depreciation	699,261.82
706	Investments in affiliated companies	43,000.00
707	Other investments - Cash value life insurance	89,364.00
	Total investments less recorded depreciation	6,715,265.51
	CURRENT ASSETS	
708	Cash	1,286,199.01
709	Temporary cash investments	1,200,906.25
714	Net balance receivable from agents and cmds,	97,142.76
715	Miscellaneous accounts receivable	79,143.91
716	Material and supplies	540,673.07
717	Interest and dividends receivable	12,556.32
718	Accrued accounts receivable	516,176.21
719	Other current assets	1,826.31
	Total current assets	3,734,623.84
	DEFERRED ASSETS	
730	Working fund advances	7,142.13
732	Other deferred assets	20,036.96
	Total deferred assets	27,179.09
	UNADJUSTED DEBITS	
728	Prepayments	33,811.02
729	Discount on funded debt	9,763.28
731	Other unadjusted debits	41,504.08
	Total unadjusted debits	85,078.38
	Grand Total	$10,562,146.82

2006

I.C.C. Finance Docket No. 18991

Exhibit No. _____

Witness _____

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY
GENERAL BALANCE SHEETS

LIABILITIES

		Nov. 30, 1955
	STOCK	
751	Capital stock	$ 3,600,000.00
	LONG-TERM DEBT	
755	Funded debt unmatured	1,477,000.00
756½	Equipment obligations	158,841.40
	Total long-term debt	1,635,841.40
	CURRENT LIABILITIES	
759	Traffic and car service balances - Cr.	116,176.24
760	Audited accounts and wages payable	137,932.51
761	Miscellaneous accounts payable	74,835.72
764	Unmatured interest accrued - First Mortgage - Series B Bonds	24,616.66
766	Accrued accounts payable	183,066.04
767	Taxes accrued	1,599,138.07
768	Other current liabilities	52,089.98
	Total current liabilities	2,187,855.22
	DEFERRED LIABILITIES	
770	Other deferred liabilities	35,978.08
	UNADJUSTED CREDITS	
773½	Equalization reserves	36,381.00
778	Other unadjusted credits	1,610.71
	Total unadjusted credits	37,991.71
	SURPLUS	
785	Earned surplus - Appropriated	6,000.00
786	Earned surplus - Unappropriated - Cr. balance	3,058,480.41
	Total surplus	3,064,480.41
	Grand Total	$10,562,146.82

I hereby certify that the above statement reflects the general balance sheet of Toledo, Peoria & Western Railroad Company as of November 30,1955.

C. L. Pattison
Controller

Subscribed and sworn to before me this 30th day of January, A. D. 1956.

(SEAL)

Ferne S. Holtke
Notary Public

I.C.C. Finance Docket No. 18991

Exhibit No. _____

Witness _____

The value of the property of Toledo, Peoria & Western Railroad Company, as found by the Commission, and the net cost of additions and betterments made after valuation date to and including November 30, 1955, are:

Owned and used - Final value (19a 6-30-17)		$ 7,006,050
Owned but not used - Final value (19a 6-30-17)		238,134
Less working capital (19a 6-30-17)	Cr	122,800
Net owned - carrier - 6-30-17		7,121,384
Additions and betterments		5,835,568
Total carrier owned		12,956,952
Non-carrier (19a 6-30-17)		16,500
Non-carrier net additions and betterments		777,543
Total owned - carrier and non-carrier		$13,750,995

I hereby certify that the above statement reflects the valuation of Toledo, Peoria & Western Railroad Company as of November 30, 1955.

C. L. Pattison
Controller

Subscribed and sworn to before me this 30th day of January, A. D. 1956.

(SEAL)

Ferne S. Holtke
Notary Public

7.008

[fol. 2009]

EXHIBIT H-14

FINANCE DOCKET NO. 18991
EXHIBIT NO. H-14
WITNESS—J. M. SYMES

BEFORE THE

Interstate Commerce Commission

Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	Finance Docket No. 18991

2009

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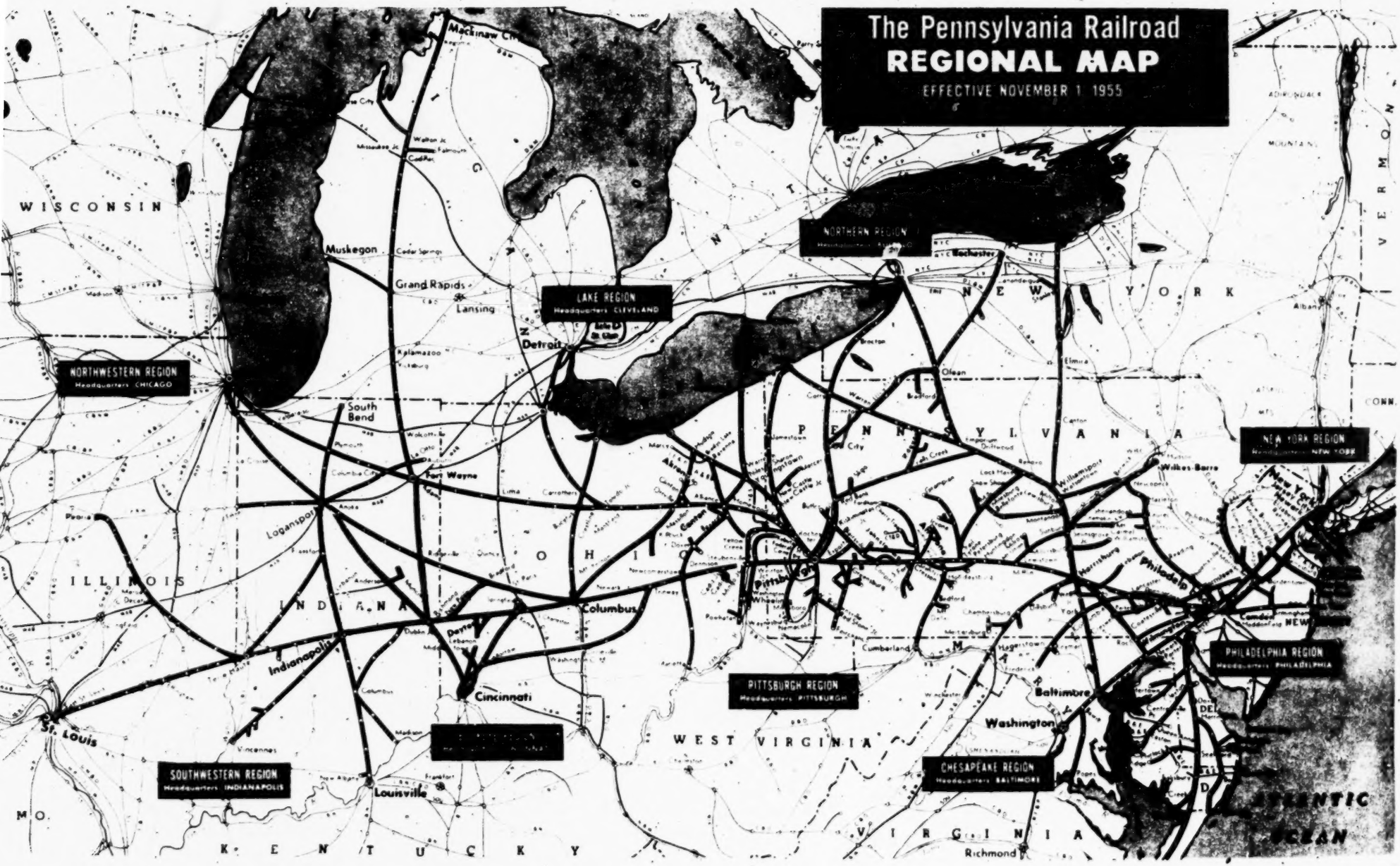
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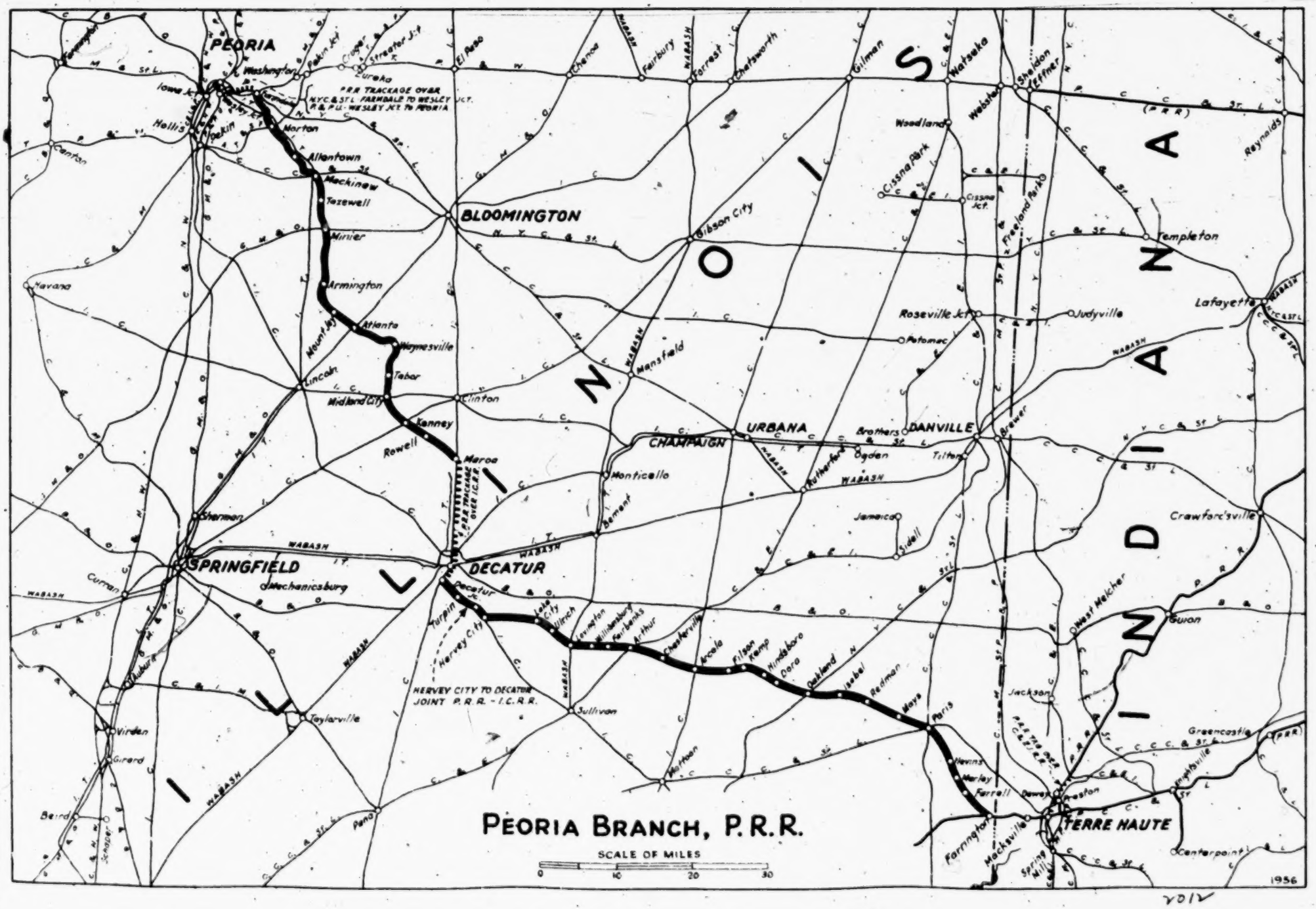
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2010

[fol. 2011]


The Pennsylvania Railroad
REGIONAL MAP
EFFECTIVE NOVEMBER 1 1955
NORTHWESTERN REGION
Headquarters CHICAGO
LAKE REGION
Headquarters CLEVELAND
NORTHERN REGION
NEW YORK REGION
PITTSBURGH REGION
Headquarters PITTSBURGH
PHILADELPHIA REGION
Headquarters PHILADELPHIA
CHESAPEAKE REGION
Headquarters BALTIMORE
SOUTHWESTERN REGION
Headquarters INDIANAPOLIS
WISCONSIN
ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
NEW YORK
WEST VIRGINIA
KENTUCKY
VIRGINIA
Muskegon
Grand Rapids
Lansing
Detroit
South Bend
Fort Wayne
Logansport
Indianapolis
Columbus
Cincinnati
Louisville
St. Louis
Rochester
Olean
Wilkes-Barre
Baltimore
Washington
Richmond
Philadelphia
ATLANTIC OCEAN

[fol. 2012]


PEORIA
Washington
Iowa Jct.
Hollis
Pekin
Morton
Canton
Allentown
Mackinaw
Tazewell
Minier
Armington
Atlanta
Heymesville
Tabor
Lincoln
Midland City
Kenney
Rowell
Maroa
Sherman
SPRINGFIELD
Curran
Auburn
Virden
Girard
Beird
Mechanicsburg
Taylorville
Pana
Pekin Jct.
Creager
Streator Jct.
Eureka
P.R.R. TRACKAGE OVER N.Y.C. & ST.L. FARMDALE TO WESLEY JCT. P. & P.U. WESLEY JCT. TO PEORIA
El Paso
Chenoa
Fairbury
Forrest
Chatsworth
Gilman
Watseka
Sheldon
Effner
Webster
Woodland
Cissna Park
Cissna Jct.
Reynolds
(P.R.R.)
BLOOMINGTON
Gibson City
Templeton
Havana
Mansfield
Roseville Jct.
Judyville
Potomac
Lafayette
URBANA
CHAMPAIGN
Brothers
DANVILLE
Brewer
Tilton
Ogden
Rutherford
Monticello
Bement
Jamaica
Sidell
Crawfordsville
DECATUR
Mechanicsburg
Decatur
Turpin
Harvey City
Lake City
Ullrich
Lovington
Williamsburg
Fairbanks
Arthur
Chesterville
Jacola
Filson
Kemp
Hindsboro
Dora
Oakland
Isabel
Redman
Ways
Paris
West Melcher
Ewan
Jackson
Greencastle
(P.R.R.)
Hevins
Morley
Farrell
Dewey
Preston
TERRE HAUTE
Farmington
Macksville
Spring Hill
Centerpoint
Sullivan
Hartton
HERVEY CITY TO DECATUR JOINT P.R.R. - I.C.R.R.
PEORIA BRANCH, P.R.R.
SCALE OF MILES
0
10
20
30
1956
WABASH
P.R.R.
I.C.R.R.
N.Y.C. & St.L.
C. & E.I.
T.P. & W.
G.M. & O.
C. & I.W.
C.C.C. & St.L.
B. & O.
I L L I N O I S
I N D I A N A

[fol. 2013]

PENNSYLVANIA RAILROAD

IMPROVEMENTS - LOGANSPORT TO EFFNER, INDIANA

1927 to 1955, INCLUSIVE

Year of Completion (1)	Location (2)	Description (3)		Expenditures (4)
A. CAPITAL EXPENDITURES				
1927	Monticello	Undergrade bridge #21.05 - single span deck plate girders on concrete abutments replacing frame trestle	$ 12,393.90	
27	Monticello	Undergrade bridge #21.07 - improved and heavier type	214,530.54	
27		Increased weight of rail - 85# replacing 60# and 70# rail	124,972.33	
				$351,906.77
1928		Increased weight of rail - 85# replacing 60# and 70# rail		17,896.07
1929		Increased weight of rail - 101.5# and 86.5# replacing 85# and 70# rail	2,605.00	
29		Tie plates and rail anchors	2,249.45	
				4,854.45
1930		Increased weight of rail - 86.5# replacing 60# and 70# rail	3,164.59	
30		Tie plates and rail anchors	842.12	
				4,006.71
1931	Mollett	Water facilities	9,896.36	
31	Reynolds	Undergrade bridge #27.70 - deck plate girders replacing timber trestle	2,619.46	
31		Tie plates and rail anchors	282.67	
31		Increased weight of rail - 101.5# and 86.5# replacing 85# and 70# rail	1,916.58	
				14,715.07
1927 - 31		Drainage improvements	2,657.57	
1927 - 31		Station improvements	1,540.12	
				4,197.70
1932		Tie plates and rail anchors		257.16
1933		Increased weight of rail - 130#, 101.5# and 86.5# replacing 101.5#, 85# and 60# rail		17,257.74
1934		Increased weight of rail - 86.5# replacing 60# rail		575.82
1936		Increased weight of rail - 101.5# replacing 86.5# rail		22,339.56
1934 - 36		Stock pen improvements		2,846.66
1937		Increased weight of rail - 130#, 101.5# and 86.5# replacing 101.5# and 85# rail		37,502.63
1938		Increased weight of rail - 130# and 101.5# replacing 101.5# and 85# rail		2,154.61
1939		Increased weight of rail - 101.5# replacing 86.5# rail		66,288.55

7013

[fol. 2014]

PENNSYLVANIA RAILROAD

IMPROVEMENTS - LOGANSPORT TO EFFNER, INDIANA

1927 to 1955, INCLUSIVE

(Continued)

Year of Completion (1)	Location (2)	Description (3)		Expenditures (4)
A. CAPITAL EXPENDITURES	(Contined)			
1940		Increased weight of rail - 130# and 101.5# replacing 101.5# and 86.5# rail		$ 71,896.36
1942		Increased weight of rail - 130# and 101.5# replacing 101.5# and 85# rail		27,438.32
1937 - 41		Grade crossing improvements		1,669.24
1942	Kentland	Track circuits and electric switch locking	$ 1,997.39	
42		Increased weight of rail - 130# and 101.5# replacing 101.5# and 86.5# rail	54,528.59	
				56,525.98
1943		Cross ties	624.52	
43		Increased weight of rail - 130# and 101.5# replacing 101.5# and 85# rail	8,426.33	
				9,050.85
1944		Increased weight of rail - 130#, 101.5# and 86.5# replacing 101.5#, 85# and 70#		45,966.35
1945		Increased weight of rail - 130# and 101.5# replacing 86.5# rail		49,989.23
1946		Increased weight of rail - 101.5# replacing 130# and 85# rail		543.87
1947		Increased weight of rail - 101.5# replacing 85# rail		561.41
1948	Goodland	Bridge #47.03 - substructure revised	8,637.45	
48		Increased weight of rail - 101.5# replacing 85# rail	2,434.65	
				11,072.10
1949		Increased weight of rail - 131# and 101.5# replacing 130# and 86.5# rail		2,[illegible]4.85
1950	Goodland	Bridge #47.03 installed replacing trestle	22,219.42	
50		Increased weight of rail - 130# and 101.5# replacing 101.5# and 85# rail	1,627.74	
				24,927.88
1951	Kentland	U. S. Route 41 crossing and flashing light signals	14,241.00	
51		Increased weight of rail - 131# and 101.5# replacing 131# and 86.5# rail	25,856.22	
				40,247.22
1952		Increased weight of rail - 101.5# replacing 85# rail		53,[illegible]6.19

2014

[fol. 2015]

PENNSYLVANIA RAILROAD

IMPROVEMENTS - LOGANSPORT TO EFFNER, INDIANA

1927 to 1955, INCLUSIVE

(Continued)

Year of Completion (1)	Location (2)	Description (3)		Expenditures (4)
A. CAPITAL EXPENDITURES	(Contined)			
1953		Increased weight of rail - 140#, 130# and 101.5# replacing 130#, 101.5# and 86.5# rail		$ 55,463.81
1954	Kentland	Side track	$ 7,406.42	
54	Goodland	Flashing light signals	6,200.00	
54		Increased weight of rail - 130# and 101.5# replacing 85# rail	5,261.99	
				18,868.41
1948 - 54		Cross ties		8,059.04
1955	Monticello)			
55	Reynolds)	Automatic interlockings and flashing light signals	$ 35,187.00	
55	Kenneth to Van	Electric locks	38,968.00	
				74,155.00
		GRAND TOTAL - CAPITAL EXPENDITURES		$1,164,085.36
B. EXTRAORDINARY MAINTENANCE EXPENDITURES				
1952 - 55		22.6 miles of track raised @ $4,400.00		$ 99,440.00
1952 - 55		7.7 miles of gravel ballast replacing cinder @ $2,100.00		16,170.00
1952 - 55		2.5 miles of slag ballast replacing cinder @ $2,160.00		5,400.00
		GRAND TOTAL - MAINTENANCE EXPENDITURES		$ 121,010.00
C. GRAND TOTAL - CAPITAL AND MAINTENANCE EXPENDITURES				$1,285,095.36

Source: P.R.R. Valuation Department Completion Reports

January 27, 1956

2015

[fol. 2016]

PENNSYLVANIA RAILROAD

CAPITAL IMPROVEMENTS AT EFFNER, INDIANA

1927 to 1955, Inclusive

Year of Completion (1)	Description (2)	Capital Expenditure (3)
1928	Additional yard tracks	$ 1,904.95
1930	New wye track	6,390.30
1930	Water station improvements	1,125.16
1932	Stock pens	3,955.66
	Total	$13,376.07

Source: P.R.R., Valuation Department, Completion Reports

January 27, 1956

2016

[fol. 2017]

REMARKS OF

[illegible] AT THE PEORIA, ILLINOIS, ANNEX

at

PEORIA, ILLINOIS, JULY 8, 1959

Today should be a great occasion for this area. It marks the filing of a joint application with the Interstate Commerce Commission on the part of the Santa Fe and the Pennsylvania Railroads for permission to acquire joint and equal ownership in the Toledo, Peoria and Western Railway. That railroad has been made possible and has been successful largely because of it being a very important connecting link between these two large railroads — one of which serves nearly all of the West — and the other which serves nearly all of the East. These two railroads are not competitors with one another but they very importantly supplement each other. So, when it was determined that the T. P. & W. was definitely for sale, what could be more logical than for the two railroads who have contributed so much to its success in the past, to be the owners thereof — and that is particularly so when these two railroads, as I say, do not compete with each other, or with the railroad they are acquiring. That should make for a very healthy long-term situation insofar as the T. P. & W. is concerned.

Even though we see many small businesses being absorbed by larger ones, that is not the intent in this particular case. It is proposed that the individual identity of the T. P. & W. will continue to be maintained. It will have its own independent management with headquarters here in Peoria, as in the past. It will have its own soliciting forces located at strategic points throughout the country. Competitive routes and conditions with other carriers, with which it connects, will be maintained just as they are today.

It is to the mutual advantage of the owners of this property that present competitive conditions do continue — and in our joint application to the Interstate Commerce Commission we are taking that position — and undoubtedly it will be appropriately covered as a condition of approval in the Commission's Order — and, as I say, we are in complete accord with it being done that way.

Because of the importance of the T. P. & W. to the new owners, I do not think anyone need fear its future success from the standpoint of improving the property, and in the service it will perform.

So, I am here today to say to the citizens of Peoria, the patrons of the Road, and all railroads connecting with the T. P. & W. that the Pennsylvania Railroad is acquiring an ownership in this property because we think it is geographically logical and because it should be a good investment — and the only way it can be a good investment is in the movement of more and more traffic over it — and the only way that can be done is through better service over a better railroad. It is just as simple as that — and we solicit your help in supporting the application before the Interstate Commerce Commission in having it become a reality — for we believe it to be in the best interest of the T. P. & W., the City of Peoria, Central Illinois, the Santa Fe, the Pennsylvania Railroad, and the public in general. In short — it just makes "an awful lot of common sense".

3 c/7

VANIA RAILROAD - INSTRUCTIONS ON PERPETUATION OF THE T.P.& W. RAILROAD AS A SEPARATE AND INDEPENDENT CARRIER

PERSONAL

July 26, 1955

J. P. N. J. C. W.
F. C. H. C. C.
D. C. D. H. J. W.
W. W. P. J. B. P.
J. B. J. B. H. R.

COPY

As you know, in our proposed acquisition of joint control with the Santa Fe of the TP&W, our agreement of June 28, 1955 contains the following covenants:

(a) TP&W will continue to be operated as a separate and independent carrier with responsible management located along its lines in order to preserve to shippers and communities the present direct access to its officials.

(b) The properties of the TP&W, including line and equipment, will be maintained and improved in keeping with the requirements of a railroad of its character and importance.

(c) TP&W will continue to maintain its own solicitation forces and will be entirely free to solicit traffic in such manner as best to serve the interests of TP&W.

(d) All existing routes and channels of trade via TP&W will be maintained and kept open without discrimination between connecting lines of railroad.

The foregoing covenants appear also in our Application for approval filed with the Interstate Commerce Commission on July 8th.

A hearing before the Commission is expected sometime in the Fall and considerable opposition to our Application is anticipated.

Our opponents at the hearing will undoubtedly contend that Santa Fe and PRR intend, notwithstanding the foregoing assurances, to alter present relations with TP&W to their respective advantages.

It is highly important that there be no factual basis for such contention.

There should be no change in our present normal relations with TP&W. It is particularly important that presently existing joint traffic routes and rates between PRR and TP&W be continued without any change interpretable as being detrimental to TP&W and beneficial to PRR.

All persons exercising any degree of responsibility in respect to operations and traffic matters should be instructed promptly to exercise every precaution in order that our testimony at the approaching hearing will be unimpeachable.

J. M. S.

cc: A. J. G.
J. A. A. J. D. M.
H. H. P. J. W. L.
M. L. N. J. L. W.
H. T. C. E. E. E.
J. W. G. N. J. R.
S. H. N. T. C. S.

7018

Please be governed accordingly.

J. P. N.

ASSIGNMENT OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY IN VARIOUS CONSOLIDATION PLANS

CONSOLIDATION OF RAILROADS

IN THE MATTER OF CONSOLIDATION OF THE RAILWAY PROPERTIES OF THE UNITED STATES INTO A LIMITED NUMBER OF SYSTEMS. No. 12964, 63 I.C.C. 455 (August 3, 1921)

In its Report dated August 3, 1921 entitled "Tentative Plan of the Commission", 63 I.C.C. 455, the Commission made the following finding at page 456:

> "We find for the purposes of this tentative plan that the railway properties of the continental United States may be consolidated under the statute into the following systems: * * * "

System No. 2 was that of the "Pennsylvania", and such System included the "Toledo, Peoria and Western", as appears from the following at page 457 of the Commission's Report:

> System No. 2.--Pennsylvania.
>
> * * *
>
> Toledo, Peoria & Western.
>
> * * *

CONSOLIDATION PLAN PUBLISHED IN NOVEMBER, 1921, AND PREPARED BY JOHN E. OLDHAM OF MERRILL, OLDHAM & CO., OF BOSTON, FOR THE INVESTMENT BANKERS ASSOCIATION OF AMERICA

The next consolidation plan having the merit of some official recognition was that published in November, 1921 and prepared by John E. Oldham, of Merrill, Oldham & Co. of Boston, for the Investment Bankers' Association of America.

The so-called Oldham Plan received recognition both before the Interstate Commerce Commission and before the Committee on Interstate and Foreign Commerce, House of Representatives, 69th Congress. The latter proceedings appear in a government publication entitled "RAILROAD CONSOLIDATION" consisting of the transcript of hearings before the above-named Committee on H. R. 11212, "a bill to permit the unification of carriers engaged in interstate commerce, and for other purposes." Said hearings commenced May 24, 1926 and at stated intervals extended through June 18, 1926. Included among the witnesses appearing before the House Committee was Mr. Oldham whose statement commences at page 285 of the Committee's report. At page 309 the Honorable James S. Parker, Chairman of the Committee, requested that Mr. Oldham put in the record his testimony before the Interstate Commerce Commission on railroad consolidations, including his proposed plan. Pursuant to the Chairman's request, under date

of June 11, 1926, Mr. Oldham forwarded to the Committee a copy of a pamphlet dealing with the grouping of the railroads of the country which he had prepared "and which was published by the Investment Bankers' Association in November 1921;" also, his testimony before the Interstate Commerce Commission in regard to consolidations given under dates of November 23, 1923 and January 12, 1924. Mr. Oldham's letter indicates that he had testified also before the Senate Committee on Interstate and Foreign Commerce under date of May 21, 1926 and a copy of this statement was also supplied to the Chairman of the House Committee.

At page 508 of the House Committee report appears the following:

> "3. Pennsylvania system.- The Pennsylvania system remains practically intact with the exception of sharing with other systems in the joint control of the New England roads."

Mr. Oldham's Plan provided for five systems in Eastern Territory, System 3 being that of the Pennsylvania. At page 497 of the House report appears an enumeration of the railroads comprising the Pennsylvania System. The Toledo, Peoria & Western with its entire mileage there shown of 247.70 is listed. Mr. Oldham's Plan was accompanied by maps, each of which appears reproduced in the government document. Map 3 covering the Pennsylvania System shows the extension of line from Logansport to Effner, there connecting with the Toledo, Peoria & Western extending across Illinois through Peoria and with two termini on the Mississippi River, one Burlington and the other Keokuk, both in Iowa.

Following the Commission's "Tentative Plan" of consolidation of railroads, 63 I.C.C. 455, the report of August 3, 1921 referred to above, two consolidation plans were evolved on the part of certain Eastern railroads.

"THREE-PARTY PLAN OF NEW YORK CENTRAL, BALTIMORE & OHIO AND NICKEL PLATE, EXHIBIT A-20, DOCKET 12964"

The next plan receiving a sufficient measure of official consideration was suggested jointly by the New York Central, Baltimore & Ohio and Nickel Plate. Concerned only with the northeastern section of the United States, it divided the railroads in that area into four groups headed by the New York Central, Pennsylvania Railroad, Baltimore & Ohio and Nickel Plate.

The proposal of the three roads named was embodied in a printed document entitled "BEFORE THE INTERSTATE COMMERCE COMMISSION -- SUGGESTED CONSOLIDATION OF RAILROADS OF THE EASTERN DISTRICT INTO A LIMITED NUMBER OF SYSTEMS." Further authentication of the foregoing consists of its identification as Exhibit A-20 received into the record in Docket 12964 at the hearing of January 7, 1932, page 180 of the transcript of testimony. The said document, submitted first informally and subsequently made a matter of record, Exhibit A-20 as described above, consisted of a statement by Messrs. P. E. Crowley, Daniel Willard and J. J. Burnett, each President, respectively, of the

[fol. 2020]

ASSIGNMENT OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY IN VARIOUS CONSOLIDATION PLANS (Continued)

New York Central Lines, Baltimore & Ohio System and Nickel Plate System. Their Plan was presented, as stated in the three-party document, "at an informal conference with the Consolidation Committee of the Interstate Commerce Commission, January 26, 1925". At page 5 of the document appears the following:

> "The allocations to the four Systems as recommended by the New York Central, Baltimore & Ohio and Nickel Plate Systems at the conference above referred to, are stated in Appendix 'A' hereto attached and hereinafter referred to as the 'Recommended Plan.'"

In Appendix A under the column headed "N. Y. C., B. & O. and N. P. Suggested Grouping of October 11, 1924" appears the entry: "Toledo, Peoria & Western Ry. (East of Peoria)".

CONSOLIDATION OF RAILROADS

IN THE MATTER OF CONSOLIDATION OF THE RAILWAY PROPERTIES OF THE UNITED STATES INTO A LIMITED NUMBER OF SYSTEMS

December 9, 1929

Pursuant to section 5 of the interstate commerce act, plan adopted for consolidation of the railway properties of continental United States into a limited number of systems as stated in the report.

Under date of December 9, 1929, the Interstate Commerce Commission issued its further report in Docket No. 12964, Consolidation of Railroads, etc., 159 I.C.C. 522. Under the heading "Plan of the Commission", the report points out that following its tentative plan of August 3, 1921 extensive hearings had been conducted and that the Commission

> "does now proceed to prepare and adopt a plan as hereinafter set out for such consolidation of the railway properties of the continental United States into a limited number of systems, all as requested by Section 5(4) and (5) of the Interstate Commerce Act."

With reference to Trunk Line Region, the plan included five systems, number 7 thereof comprising the so-called "Wabash-Seaboard" system. Therein was included the Toledo, Peoria & Western Railroad (page 532). Such assignment was accompanied by trackage rights "over the Pennsylvania from Logansport to Effner, Ind." (page 533).

No. 12964

CONSOLIDATION OF RAILROADS

IN THE MATTER OF CONSOLIDATION OF THE RAILWAY PROPERTIES OF THE UNITED STATES INTO A LIMITED NUMBER OF SYSTEMS

Submitted April 28, 1932. Decided July [illegible], 1932

Plan for consolidation of the railway properties of continental United States into a limited number of systems, 159 I.C.C. 522, in so far as it concerns the properties in eastern territory, excluding New England, modified in part.

On October 1, 1931 the major eastern railroads submitted their "Four-Party Plan" comprising four systems for the Eastern District. These systems were headed, respectively, by the New York Central, Pennsylvania Railroad, Baltimore & Ohio and Chesapeake & Ohio-Nickel Plate.

Such "Four-Party Plan" was embodied in an Application filed with the Interstate Commerce Commission under date of October 1, 1931 by legal representatives of the four proponents. The document in question was entitled:

> "APPLICATION
> of
> THE BALITMORE AND OHIO RAILROAD COMPANY
> THE CHESAPEAKE AND OHIO RAILWAY COMPANY
> THE NEW YORK CENTRAL RAILROAD COMPANY
> and
> THE PENNSYLVANIA RAILROAD COMPANY
>
> To Reopen the Subject and to Change and Modify, in Certain Respects, the Plan Adopted and Published Herein Under date of December 9, 1929, for Consolidation of the Railway Properties of the Continental United States Into a Limited Number of Systems."

At page 8 appears, in part, the following:

"The changes proposed to be made in the Commission's complete plan may be stated as follows: * * *

> "8 -- Wabash Railway, Toledo, Peoria & Western Railroad and Norfolk and Western Railway from System No. 7- Wabash-Seaboard to System No. 4-Pennsylvania;"

VOVO

In pursuance of the foregoing Application, the consolidation proceeding, Docket 12964, was reopened and again extensive hearings were held, briefs filed and oral argument conducted, following which the Commission issued its further report of July 13, 1932, 185 I.C.C. 403. Therein the Commission proposed a slightly different grouping of the eastern railroads but in large measure approved the grouping of eastern railroads as proposed in the October 1, 1931 Application of the Baltimore and Ohio, Chesapeake & Ohio, New York Central and Pennsylvania.

With respect particularly to the Toledo, Peoria & Western, the following paragraph appears in the Commission's report at page 424:

> "The Toledo, Peoria & Western Railroad considers the plan of the applicants as unsound and contrary to the intent of Congress. It desires to remain an independent system and is opposed to the proposal of the applicants that this property be allocated to system No. 4. In our plan it is allocated to the Wabash-Seaboard system. This road extends from Effner, Ind., on the east through the important gateway of Peoria, Ill., to the Mississippi River at Lomax, Ill., and Keokuk, Iowa, on the west, 224 miles. It is primarily a bridge road. As indicated, in our plan the Toledo, Peoria & Western is allocated to the same system as the Wabash. The applicants would do likewise by allocating it to system No. 4. The Toledo, Peoria & Western objects to such or any allocation, but offers no aid to us in our statutory duty of allocating this property. We can not find upon this record any greater public use for this property than as a part of system No. 4, and it will be so allocated."

Under date of September 23, 1932 the railroads for the Eastern District of the United States agreed to the Four-Party Plan, this being practically the same as the Four-Party Plan approved by the Commission. In connection with such agreement there were some very minor modifications but these did not disturb the allocation of the Toledo, Peoria & Western to the Pennsylvania System.

During the course of the foregoing activity there was still another plan, to wit, the so-called Prince Plan, as well as a further proposal known as the Poland Report on the Prince Plan.

The Prince Plan, submitted March 15, 1933, divided the railroads of the United States into seven major systems and one additional jointly owned system. This assigned the T.P.&W. between Peoria and Effner to System No. 2, built around the PRR, and between Keokuk and Peoria to System No. 7, built around the Santa Fe and Missouri Pacific Railroads.

The Poland Report on the Prince Plan was issued on January 1, 1934. This contained the same separation and allocation of the eastern portion of the TP&W to System No. 2, and the western portion of the TP&W to System No. 7.

[fol. 2022]

EXHIBIT H-15

FINANCE DOCKET NO. 18991
EXHIBIT NO. H-15
WITNESS—J. M. SYMES

PENNSYLVANIA RAILROAD

EFFNER BRANCH - LOGANSPORT TO EFFNER, INDIANA

INCREASE IN WEIGHT OF RAIL

1926 Through 1955

Miles of Various Weights of Rail

Year	Kenneth to Logansport								Effner to Kenneth					
	East Bound Main				West Bound Main				Single Main					
	85#	100#	130#	131#	85#	100#	130#	131#	60#	70#	85#	100#		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)		
1916	.93	3.97			4.83	.01			22.59	19.98	12.92			
1928		4.90				4.84					55.06	.43		
1930											55.06	.43		
1935											55.07	.39		.03
1940											30.48	24.96	.02	.03
1945											12.65	42.76	.05	.03
1950											12.65	42.76	.05	.03
1954			.58	4.32			4.25	.59			5.94	49.44	.08	.03
1955			.58	4.32			4.25	.59				55.38	.08	.03

DATA NOT AVAILABLE

SOURCE: - 1916 - I.C.C. Valuation Inventory
1926 Through 1955 - Records of the Pennsylvania Railroad

January 28, 1956

20227

20222

[fol. 2023]

EXHIBIT H-16

FINANCE DOCKET NO. 18991
EXHIBIT NO. 1
WITNESS—FRED CARPI

BEFORE THE

Interstate Commerce Commission

Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	Finance Docket No. 18991

2023

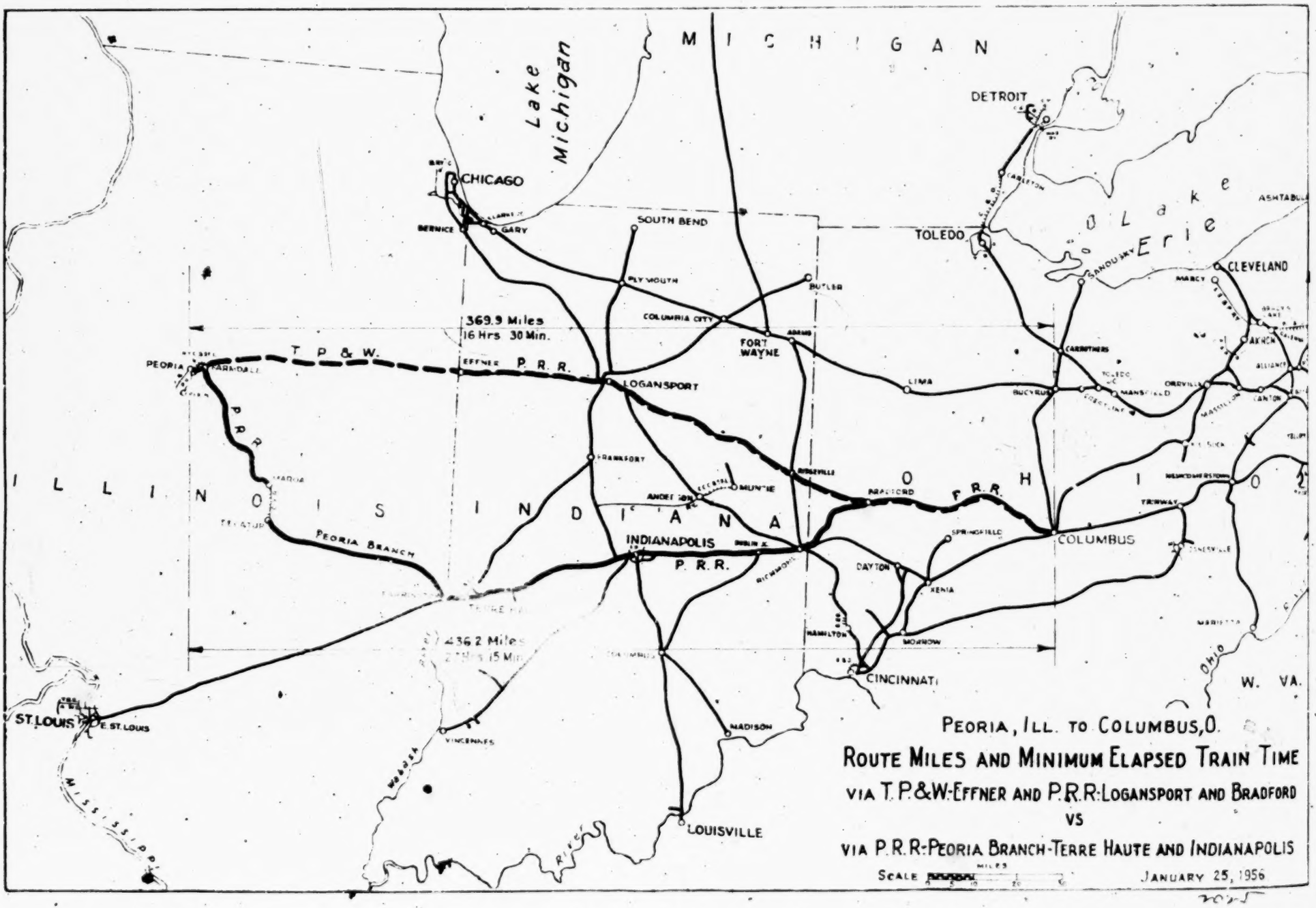
AT—PRR: J

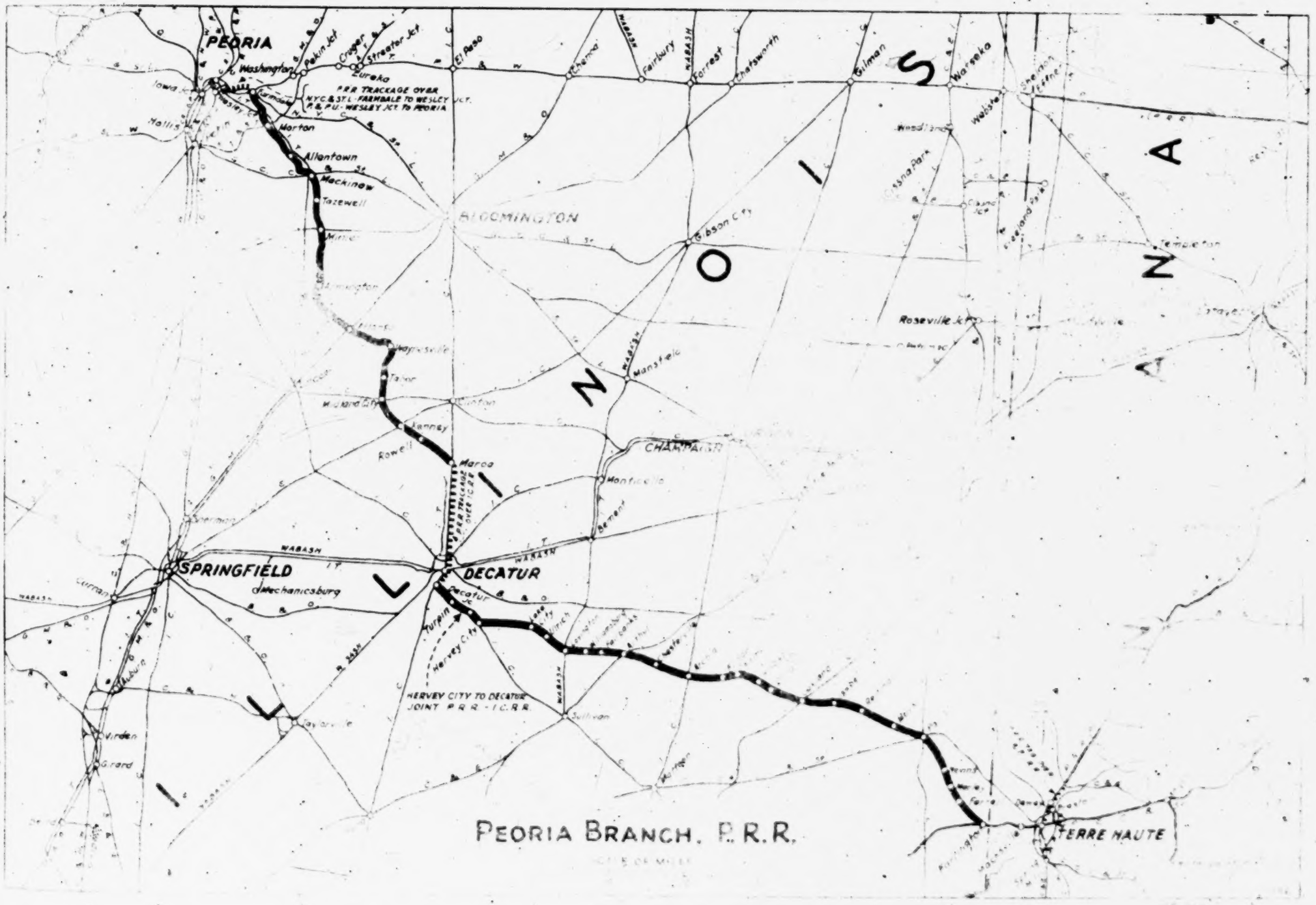
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[fol. 2025]


MICHIGAN
Lake Michigan
CHICAGO
BERNICE
GARY
SOUTH BEND
PLYMOUTH
BUTLER
COLUMBIA CITY
FORT WAYNE
369.9 Miles
16 Hrs. 30 Min.
T P & W.
EFFNER P.R.R.
PEORIA
LOGANSPORT
LIMA
DETROIT
TOLEDO
Lake Erie
SANDUSKY
CLEVELAND
AKRON
CANTON
MANSFIELD
BUCYRUS
CRESTLINE
CARROTHERS
ILLINOIS
INDIANA
OHIO
PRR
PEORIA BRANCH
CRAWFORDSVILLE
MUNCIE
ANDERSON
INDIANAPOLIS
P.R.R.
RICHMOND
DAYTON
SPRINGFIELD
XENIA
COLUMBUS
ZANESVILLE
MARIETTA
Ohio
W. VA.
436.2 Miles
HAMILTON
MORROW
CINCINNATI
ST. LOUIS
E. ST. LOUIS
MADISON
VINCENNES
LOUISVILLE
Wabash R.
Mississippi R.
PEORIA, ILL. TO COLUMBUS, O.
ROUTE MILES AND MINIMUM ELAPSED TRAIN TIME
VIA T.P.&W.-EFFNER AND P.R.R.-LOGANSPORT AND BRADFORD
VS
VIA P.R.R.-PEORIA BRANCH-TERRE HAUTE AND INDIANAPOLIS
SCALE
JANUARY 25, 1956


PEORIA
Washington
Pekin Jct
Creager
Streator Jct
El Paso
Eureka
P.R.R. TRACKAGE OVER
N.Y.C. & ST.L. FARMDALE TO WESLEY JCT.
P. & P.U. WESLEY JCT. TO PEORIA
Iowa
Wesley Jct
Hollis
Horton
Allentown
Mackinaw
Tazewell
Minier
BLOOMINGTON
Chenoa
Fairbury
Forrest
Chatsworth
Gilman
Warsaw
Waterloo
Woodland
Wabash
Roseville Jct
Templeton
Wapella
Tolono
Willard City
Kenney
Rowell
Maroa
Monticello
Bement
CHAMPAIGN
Mansfield
SPRINGFIELD
Mechanicsburg
DECATUR
Pecatur
Turpin
Harvey City
HERVEY CITY TO DECATUR
JOINT P.R.R. - I.C.R.R.
Sullivan
Virden
Girard
Taylorville
PEORIA BRANCH, P.R.R.
TERRE HAUTE
ILLINOIS

[fol. 2027]

SHORT LINE MILEAGES

BETWEEN SELECTED CITIES ON THE PENNSYLVANIA RAILROAD AND SELECTED CITIES IN THE WEST

	MILEAGE TO AND FROM GATEWAYS		
	Chicago, Ill.	Peoria, Ill.	E. St. Louis, Ill.
WEST			
Minneapolis, Minn.	401	407	530
Omaha, Nebr.	476	377	416
Kansas City, Mo.	437	323	276
Dallas, Tex.	905	779	658
EAST			
New York, N. Y.	890	988	1037
Philadelphia, Pa.	814	912	961
Pittsburgh, Pa.	454	553	601
Cleveland, O.	332	431	518
Cincinnati, O.	283	314	336
Fort Wayne, Ind.	149	245	337
Indianapolis, Ind.	181	204	236

BETWEEN → / AND ↓	MINNEAPOLIS, MINN.			OMAHA, NEBR.			KANSAS CITY, MO.			DALLAS, TEX.			← BETWEEN / AND ↓
	Via Chicago	Via Peoria	Via E.St.Louis	Via Chicago	Via Peoria	Via E.St.Louis	Via Chicago	Via Peoria	Via E.St.Louis	Via Chicago	Via Peoria	Via E.St.Louis	
New York, N. Y.	1291#	1395	1567	1366	1365#	1453	1327	1311#	1313	1795	1767	1695#	New York, N. Y.
Philadelphia, Pa.	1215#	1319	1491	1290	1289#	1377	1251	1235#	1237	1719	1691	1619#	Philadelphia, Pa.
Pittsburgh, Pa.	855#	960	1131	930#	930#	1017	891	876#	877	1359	1332	1259#	Pittsburgh, Pa.
Cleveland, O.	733#	838	1048	808#	808#	934	769	754#	794	1237	1210	1176#	Cleveland, O.
Cincinnati, O.	684#	721	866	759	691#	752	720	637	612#	1188	1093	994#	Cincinnati, O.
Fort Wayne, Ind.	550#	652	867	625	622#	753	586	568#	613	1054	1024	995#	Fort Wayne, Ind.
Indianapolis, Ind.	582#	611	766	657	581#	652	618	527	512#	1086	983	894#	Indianapolis, Ind.

January 25, 1956

#Indicates shortest distance between points shown.

Sources: Mileages shown in interterritorial division sheets (Official - Western Trunk Line and Official - Southwestern), also Western Trunk Line Rate Committee short line miles between Chicago, Peoria and Mississippi River crossings.

2027

[fol. 2028]

MILEAGES VIA COMPETITIVE ROUTES BETWEEN PEORIA, ILL. AND SELECTED EASTERN CITIES ON THE PENNSYLVANIA RAILROAD

NEW YORK, N. Y.

1 Short line miles	[illegible]
2 TP&W-Effner-PRR	[illegible]
3 NKP-Buffalo-DL&W	[illegible]
4 PRR-Peoria Branch	1059
5 NYC (via Indianapolis)	1115
[illegible]	479
[illegible]-Effner-PRR	500
5 PRR-Peoria Branch	603

PHILADELPHIA, PA.

1 Short line miles	912
2 TP&W-Effner-PRR	919
3 PRR-Peoria Branch	983
4 NKP-Pittsburgh Jct.-P&WV-WM-Rdg.	1004
5 NYC-Newberry-Rdg. (via Indianapolis)	1165

PITTSBURGH, PA.

1 Short line miles	553
2 TP&W-Effner-PRR	561
3 NKP-Pittsburgh Jct.-P&WV	597
4 PRR-Peoria Branch	625
5 NYC-Youngstown-P&LE (via Indianapolis)	679

CINCINNATI, O.

1 Short line miles	314
2 NYC (via Indianapolis)	320
3 TP&W-Effner-PRR	350
4 NKP-Connersville-B&O	35[illegible]
5 PRR-Peoria Branch	384

FORT WAYNE, IND.

1 Short line miles	245
2 TP&W-Effner-PRR	247
3 NKP	290
4 PRR-Peoria Branch	304
5 NYC (via Indiana Harbor)	399

INDIANAPOLIS, IND.

1 Short line miles	204
2 NYC	211
3)NKP	246
4)PRR-Peoria Branch	246
5 TP&W-Effner-PRR	258

Comment: PRR distances via Effner-TP&W are 34 to 117 miles shorter than via Peoria Branch, excluding Indianapolis.

Sources: Short lines miles from interterritorial division sheets, PRR miles from Freight Distance Tariff 500-B, ICC 2950, other miles from the Official Railway Guide and Rdg. Co. tariff 11, ICC 1110.

PENNSYLVANIA RAILROAD MILEAGES TO VARIOUS GATEWAYS

From	To Chicago, Ill.	To Effner, Ind.	To Peoria via Effner	To Peoria via PRR	To East St.Louis,Ill.
New York, N.Y. (Desbrosses St.)	[illegible]	884	995	1059	1050
Philadelphia,Pa.(Wash.Ave. & f.)	[illegible]	[illegible]	[illegible]	983	974
Pittsburgh, Pa. (11th St.)	[illegible]	[illegible]	[illegible]	625	616
Cleveland, O. (Davenport Ave.)	[illegible]	[illegible]	[illegible]	603	595
Cincinnati, O.	[illegible]	[illegible]	[illegible]	384	375
Fort Wayne, Ind.	[illegible]	[illegible]	247	304	356
Indianapolis, Ind.	[illegible]	147	[illegible]	246	237

Comment: Peoria via PRR is 9 miles further than East St. Louis. Chicago is 12 to 18 miles further than Effner, Peoria via Effner-TP&W is [illegible] miles beyond Effner. From Pittsburgh and East, Peoria via PRR is [illegible] miles further than Chicago and 175 miles further than Effner. East St. Louis is 148 miles further than Chicago and 160 miles further than Effner..

Sources: PRR Freight Distance Table 500-B and TP&W miles in the Official Railway Guide.

2028

[fol. 2029]

PENNSYLVANIA RAILROAD

COMPARATIVE PEORIA TRAFFIC VIA T.P.& W.-EFFNER
AND VIA P.R.R. PEORIA BRANCH
LOADED CARLOADS-YEAR ENDED JUNE 30, 1955

		Via Peoria Branch			Via TP&W-Effner
		Competitive* (1)	Non-Competitive (2)	Total (3)	(4)
1.	Originating at Peoria	2,933	289	3,222	2,879
2.	Terminating at Peoria	852	277	1,129	743
3.	Total Originated and Terminated	3,785	566	4,351	3,618
	Interchanged at Peoria:				
4.	Eastbound	1,907	1,015	2,922	18,596
5.	Westbound	1,585	1,552	3,137	7,139
6.	Total Interchange	3,492	2,567	6,059	25,735
7.	Grand Total	7,277	3,133	10,410	29,353

* Competitive traffic with TP&W moves to and from Indianapolis and East. Non-competitive traffic remains west of Indianapolis.

Source: P.R.R. and T.P.& W. R.R. records.

[fol. 2030]

DETAIL OF FREIGHT SCHEDULES ON PEORIA, ILL. TRAFFIC VIA TP&W-EFFNER, IND.-PRR

EASTBOUND

Lv. East Peoria	2:00AM (TP&W 20)						12:01PM (TP&W 22)						
Ar. Effner	6:30AM (TP&W 20)						4:15PM (TP&W 22)						
Lv. Effner	8:15AM (LD-12)						5:15PM (LD-20)						
Ar. Logansport	10:00AM (LD-12)						8:15PM (LD-20)						
Lv. Logansport	1:45PM	3:00PM		7:00PM		10:30PM	12:01AM	1:30AM	3:30AM				6:50AM
Ar. Columbus	(7:30PM)			2:15AM*				7:45AM	10:30AM				
Lv. Columbus				4:15AM*	1:15PM*			8:45AM	11:30AM	1:15PM			
Ar. Pitcairn				10:35AM*	8:45PM*(Scully)					8:45PM(Scully)			
Ar. Enola		1:35PM*		9:30PM*				11:59PM	5:00AM*				
Lv. Enola		6:30PM*	6:00PM*					1:00AM*			6:00PM*	6:30PM*	
Ar. Waverly	2:40PM*		11:45PM*					5:00AM*			11:45PM*		
Ar. Greenville	3:10PM*	2:00AM#						6:30AM*				2:00AM#	
Ar. Harsimus Cove	7:20PM*(Runner)		12:45AM#					Early PM*(Runner)			12:45AM#		
Ar. Indianapolis							2:10AM						
Ar. Cincinnati						7:10AM*							7:00PM
	CNY-2	CG-2	NY-4	NW-82	VL-6	CO-8	IL-2	CG-8	NW-88	VL-6	NY-4	CG-2	CO-2

WESTBOUND

	CO-3	WC-1	B-3	FF-1	PWC-1	NW-85	IL-1
Lv. Cincinnati	11:00AM						
Lv. Indianapolis							11:25PM#
Lv. Harsimus Cove		10:30PM#					
Lv. Greenville			6:00AM#				
Lv. Waverly							
Ar. Enola		5:00AM#	1:55PM#				
Lv. Enola				6:15PM#			
Lv. Pitcairn					3:00AM#		
Ar. Columbus							
Lv. Columbus						9:30PM#	
Ar. Logansport	6:15PM			7:45PM	1:00AM	2:45AM	2:30AM

Lv. Logansport	2:30AM(LD-11)	11:00AM(LD-19)	Layover 24 hours minimum off IL-1.
Ar. Effner	6:00AM(LD-11)	4:00PM(LD-19)	
Lv. Effner	8:15AM(TP&W 21)	4:15PM(TP&W 23)	
Ar. East Peoria	10:48AM(TP&W 21)	6:48PM(TP&W 23)	

* Indicates day after leaving Logansport. # Indicates two days after leaving Logansport. # Indicates day prior to Logansport arrival.
Indicates two days prior to Logansport arrival.

Source: P.R.R. Freight Train Schedules.

January 25, 1956

V030

PENNSYLVANIA RAILROAD

INSTRUCTIONS TO FILE NOT DIVERT DATA WILL BE MADE ON SHIPMENTS VIA EFFNER AND TOLEDO, PEORIA AND WESTERN

COPY

Philadelphia, March 8, 1950
File C

Messrs.
W. R. Cox
R. R. Miller
I. T. Marine
R. J. Wood
A. S. Jennings
E. W. Fisher
B. D. Rhodes
A. J. Ball
P. C. Reed

Please have it understood by all concerned that where traffic is specifically routed by shipper or consignee via Effner and TP&W, no action will be taken by any of our people to change or interfere with such routing.

Furthermore, please make it clear to your people that we are entirely willing, when conditions justify, to cooperate with the Toledo, Peoria & Western Railroad in handling traffic through the Effner gateway.

W. McL. Pomeroy

Copies to -
H. W. Large
John Yocum

COPY

Philadelphia, January 6, 1955
E

R. J. W.
I. T. M.
H. M. P.
C. G. M.
W. K. C.
E. W. F.
B. D. R.
E. D. Z.
R. C. H.

Please refer to our letter of March 8, 1950, reading as follows:

"Please have it understood by all concerned that where traffic is specifically routed by shipper or consignee via Effner and TP&W, no action will be taken by any of our people to change or interfere with such routing.

"Furthermore, please make it clear to your people that we are entirely willing, when conditions justify, to cooperate with the Toledo, Peoria & Western Railroad in handling traffic through the Effner gateway."

Indications are that the foregoing understanding is being overlooked at times. Please renew your advices to your people and also ask them to instruct our freight agents accordingly.

W. McL. P.

cc - W. P. S.
J. Y.

17231

[fol. 2032]

CORRESPONDENCE WITH WABASH RAILROAD REGARDING COMPLIANCE WITH [illegible] ATTACHED BY THE [illegible]

COPY

THE PENNSYLVANIA RAILROAD COMPANY

Personal
Mr. L. E. Clarahan, V.P. [illegible]

July 29, 1955
File O

Personal

Mr. L. E. Clarahan
Vice President - Traffic
Wabash Railroad Company
St. Louis 2, Mo.

Dear Mr. Clarahan:

In the application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5 (a) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock (Finance Docket No. 18991) there is published the agreement, dated as of June 28, 1955, between the AT&SF Railway, Pennsylvania Company and PRR setting forth the conditions under which acquisition of joint control is proposed.

Among other covenants in this agreement are the following:

"TP&W will continue to be operated as a separate and independent carrier with responsible management located along its lines in order to preserve to shippers and communities the present direct access to its officials."

"All existing routes and channels of trade via TP&W will be maintained and kept open without discrimination between connecting lines of railroad."

It is quite possible that those in opposition to the application will contend that Santa Fe and PRR intend, notwithstanding the foregoing assurances, to alter present conditions or relations with TP&W to their respective advantages.

To assist us in refuting such a contention, should it be advanced, we would appreciate answers from you to the following questions for use in our testimony at the hearing:

Since the approval by the Interstate Commerce Commission of acquisition of control in Wabash Railroad Company Control, Finance Docket No. 13836, 247 I.C.C. 365:

1. Has the Wabash or Ann Arbor [illegible] to join in any rates or routes competitive [illegible] Railroad, when such rates or routes have [illegible] advantageous to the interests of those [illegible]

2. Acquisition by Pennsylvania Railroad Company and Pennsylvania Company of control of the Wabash (and indirectly the Ann Arbor) was approved upon the following condition pertaining to joint rates, joint routes, etc.:

"xxx(c) that the Pennsylvania Railroad Company shall maintain joint rates, joint routes, interchange points and channels of trade through gateways of the Wabash Railroad Company now existing under the present operation of those properties xxx."

Has there been a full compliance by P.R.R. Wabash and Ann Arbor with the foregoing condition attached by the Interstate Commerce Commission in the Wabash proceedings?

Your assistance in this matter will be greatly appreciated.

With kindest regards,

Sincerely,

(s) FRED CARPI

Vice President - Traffic

2032

CORRESPONDENCE WITH DETROIT, TOLEDO & IRONTON RAILROAD COMPANY REGARDING COMPLIANCE WITH INSTRUCTIONS ATTACHED BY INTERSTATE COMMERCE COMMISSION

THE PENNSYLVANIA RAILROAD COMPANY

COPY

July 29, 1955
File O

Personal
Mr. O. C. Grimshaw
Vice President - Traffic
D. T. & I. Railroad Co.
Schaefer Building
Dearborn, Mich.

Dear Mr. Grimshaw:

In application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5 (2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock (Finance Docket 18991) there is set forth the agreement dated as of June 28, 1955, between the AT&SF Ry., Pennsylvania Company and the Pennsylvania Railroad which among other covenants contains the following:

"TP&W will continue to be operated as a separate and independent carrier with responsible management located along its lines in order to preserve to shippers and communities the present direct access to its officials."

"All existing routes and channels of trade via TP&W will be maintained and kept open without discrimination between connecting lines of the railroad."

Our opponents at the hearing will probably contend that Santa Fe and PRR intend, notwithstanding the foregoing assurances, to alter present conditions or relations with TP&W to their respective advantages.

To assist us in refuting such a contention should it be advanced we would appreciate answers from you to the following for use in our testimony at the hearing:

Since the approval by the Interstate Commerce Commission of the acquisition of control in Detroit, Toledo & Ironton Railroad Company, et al. (also Springfield Suburban Railway Company, control, etc., Finance Docket No. 16426, 275 I.C.C. 455:

1. Has D.T.& I.R.R. refused to join in any rates or routes competitive with the Pennsylvania Railroad, when such rates or routes have been considered to be advantageous to the D.T.& I.R.R.?

2. Conditions prescribed by the I.C.C. as a basis for its approval of the acquisition of control in Finance Docket No. 16426 are set forth in the attached statement. Has there been a full compliance by PRR, Wabash and D.T.& I. with each one of the conditions attached by the I.C.C. as abasis for its approval in the D.T.& I. proceeding above mentioned

Your assistance in this matter will be greatly appreciated.

With kindest regards,

Sincerely,

(s) FRED CARPI

Vice President - Traffic.

2033

[fol. 2034]

INTERSTATE COMMERCE COMMISSION

PRESCRIBED IN FINANCE DOCKET NO. 16426 (ATTACHMENT TO LETTER ON PAGE 9)

Conditions prescribed by the Interstate Commerce Commission as a basis for its approval of the acquisition of control in the proceeding set out below:

Detroit, Toledo & Ironton Railroad Company, et al. (also Springfield Suburban Railroad Company) Control, etc., Finance Docket No. 16426, 275 I.C.C. 455.

"1. That under applicants' control, Ironton and Springfield Suburban shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise authorized by us.

"2. The present neutrality of handling traffic in-bound and out-bound by Ironton and Springfield Suburban shall be continued so as to permit equal opportunity for service to and from all lines reaching the rails of those carriers without discrimination as to routing or movement of traffic and without discrimination in the arrangement of schedules or otherwise.

"3. The present traffic and operating relationships existing between Ironton and Springfield Suburban, on the one hand, and all lines connecting with their tracks, on the other, shall be continued insofar as such matters are within the control of the applicants.

"4. Ironton and Springfield Suburban shall accept, handle, and deliver all cars in-bound and out-bound, loaded and empty, without discrimination in promptness or frequency of service as between cars destined to or received from competing carriers and irrespective of destination or route of movement.

"5. Applicants shall not do anything to restrain or curtail the right of industries located on Ironton and Springfield Suburban to route traffic over any or all existing routes and gateways."

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REPRODUCTION OF REPLIES TO LETTERS ...

FORM CT-488

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

YOU CAN RELY ON THE D. T. AND I.

O. C. GRIMSHAW
Vice President-Traffic
H. H. COLEMAN
Traffic Manager
...
E. A. WALTHER
General Freight Agent

TRAFFIC DEPARTMENT
DEARBORN, MICHIGAN

August 2, 1955

Mr. Fred Carpi, Vice President-Traffic
The Pennsylvania Railroad Company
Suburban Station Building
Philadelphia 4, Pa.

Dear Mr. Carpi:

Replying to your letter July 29th, file O, requesting certain information in connection with Finance Docket 18991, Application of the ATSF, PRR and Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company:

Answers to your questions follow:

1. The DT&I RR has not refused to join in any rates or routes competitive with the Pennsylvania Railroad when such rates or routes have been considered to be advantageous to the DT&I RR. On the contrary, the DT&I frequently seeks concurrence of its connections in rates and routes competitive with the Pennsylvania Railroad when they are considered to be advantageous to its interests.

2. The conditions prescribed by the Interstate Commerce Commission in Finance Docket No. 16426, Detroit, Toledo & Ironton Railroad Co., et. al. (also Springfield Suburban Railroad Company) Control, (275 I.C.C. 455) on which acquisition of the DT&I was predicated have been and are being strictly adhered to.

I trust the foregoing gives you the information desired. If we can be of further assistance, please call upon us.

Very truly yours,

O C Grimshaw
Vice President-Traffic

WABASH RAILROAD COMPANY

RAILWAY EXCHANGE BUILDING
ST LOUIS 1, MO

LEO E. CLARAHAN
Vice President - Traffic

August 4, 1955

J - 23199 (TP&W)

Dear Mr. Carpi:

This refers to your letter of July 29, file O, regarding application of the Atchison, Topeka and Santa Fe Railway Company, the Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5 (a) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company.

As to Question No. 1, the Ann Arbor and Wabash Railroads have never refused to join their connections in any rates [illegible] competitive with the Pennsylvania Railroad when such rates or routes are considered in the best interest of the Ann Arbor Railroad or the Wabash Railroad. It has also been the policy of the Wabash Railroad not to dictate the rates or routes that the Ann Arbor Railroad may desire to establish, even though such rates or routes may be competitive with the Wabash Railroad.

Regarding Question No. 2, the Pennsylvania Railroad, Ann Arbor Railroad and Wabash Railroad have complied fully with the requirements set forth by the Interstate Commerce Commission when the Pennsylvania Railroad Company and the Pennsylvania Company acquired control of the Wabash and Ann Arbor as to maintaining joint rates, joint routes, interchange points, and channels of trade through the gateways of the Ann Arbor and Wabash Railroads.

With kindest regards.

Sincerely,

L E Clarahan

PERSONAL

Mr. Fred Carpi,
Vice President - Traffic,
Pennsylvania Railroad Company,
1617 Pennsylvania Blvd.,
Philadelphia 4, Pa.

2035

[fol. 2036]

EXHIBIT H-18

FINANCE DOCKET NO. 18991
EXHIBIT NO. H-18
WITNESS—

BEFORE THE

Interstate Commerce Commission

Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	Finance Docket No. 18991

AT—PRR: L

[fol. 2037]

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Loaded Cars Interchanged Between Toledo, Peoria and Western Railroad and New York Central Railroad for 12 Months Ended June 30, 1955	Map	7

2037

[fol. 2038]

TOLEDO, PEORIA AND WESTERN RAILROAD

Road Haul/Interchange and Interchange Points
for Selected Connections

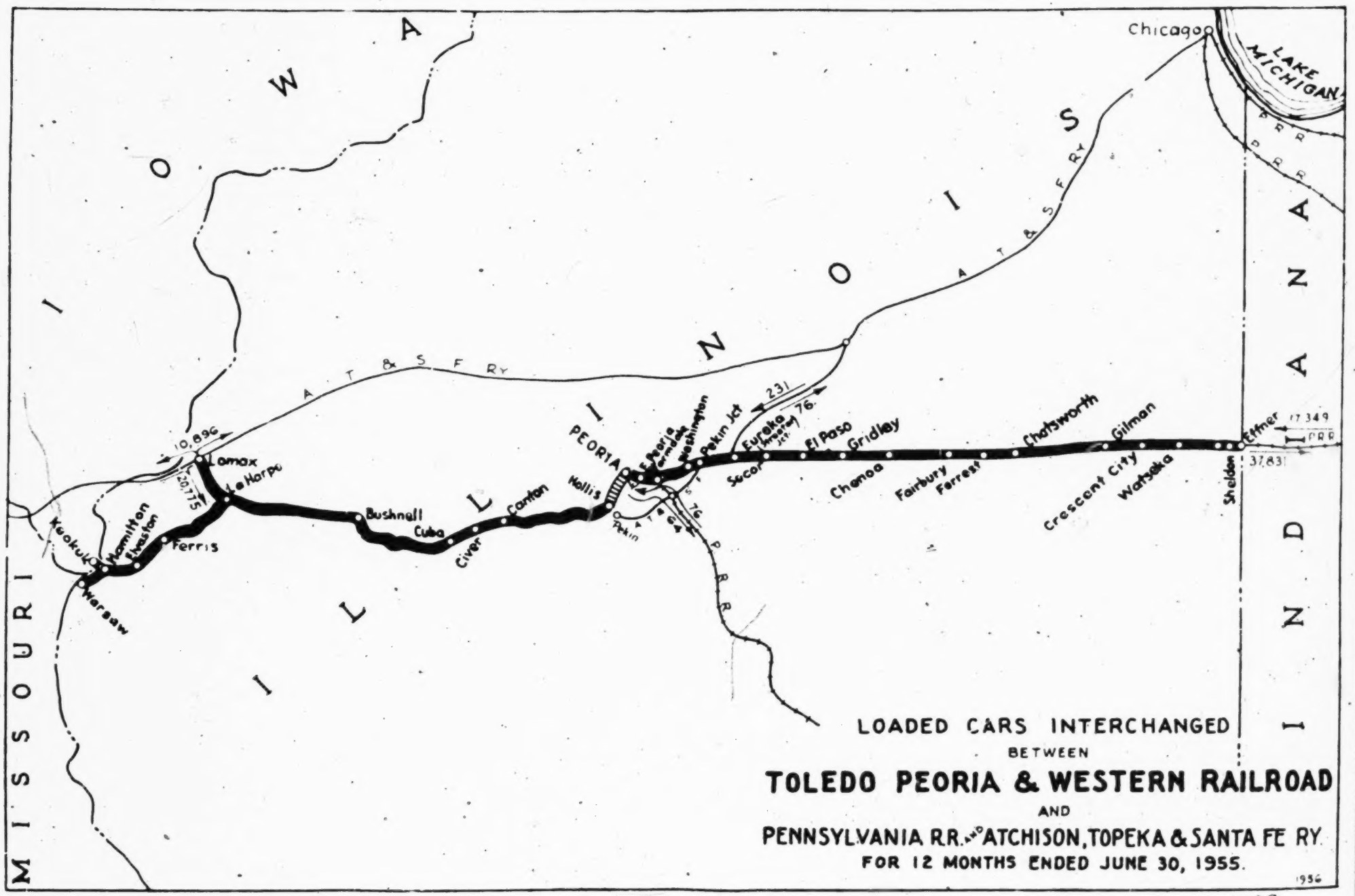
12 Months Ending June 30, 1955

	TP&W RECEIVED Cars	TP&W DELIVERED Cars	TOTAL Cars
P.R.R.			
Effner	17,349	37,831	55,180
Peoria	76	64	140
Total	17,425	37,895	55,320
A.T.& S.F.Ry.			
Lomax	20,775	10,896	31,671
Eureka	231	76	307
Total	21,006	10,972	31,978
M.& St.L.R.R.			
Peoria	5,665	4,046	9,711
C.R.I.& P.R.R.			
Keokuk	3,003	3,088	6,091
Peoria	3,745	1,716	5,461
Total	6,748	4,804	11,552
N.Y.C.& St.L.R.R.			
Peoria	753	3,037	3,790
Farmdale	2,929	6,871	9,800
Total	3,682	9,908	13,590
C.B.& Q.R.R.			
Keokuk	1,130	1,789	2,919
Bushnell	145	290	435
Canton	1	5	6
Peoria	11,661	1,365	13,026
Total	12,937	3,449	16,386
N.Y.C.R.R.			
Peoria	3,515	925	4,440
Sheldon	2,590	6,499	9,089
Total	6,105	7,424	13,529

Source: Toledo, Peoria and Western Railroad

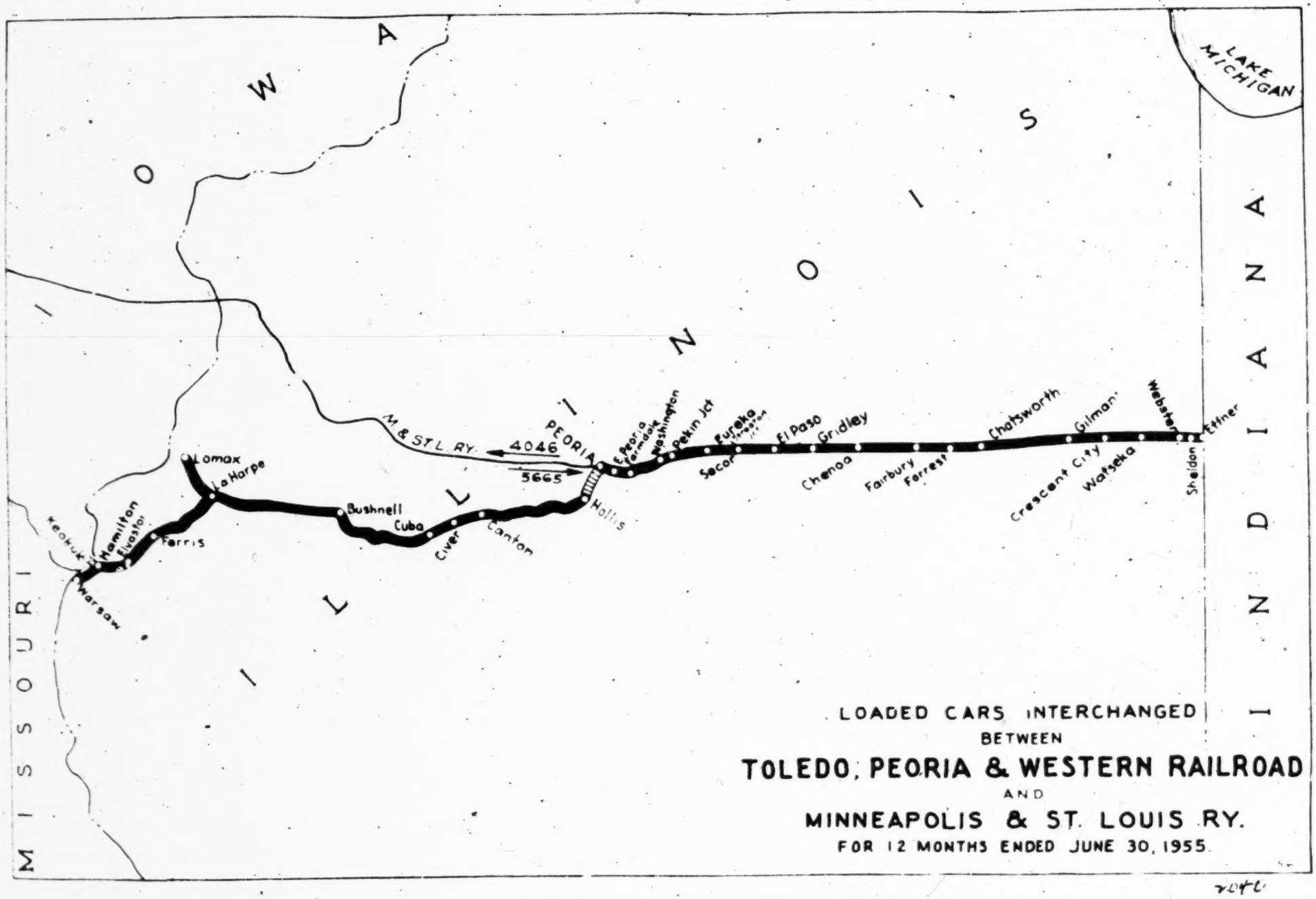
V038

[fol. 2039]

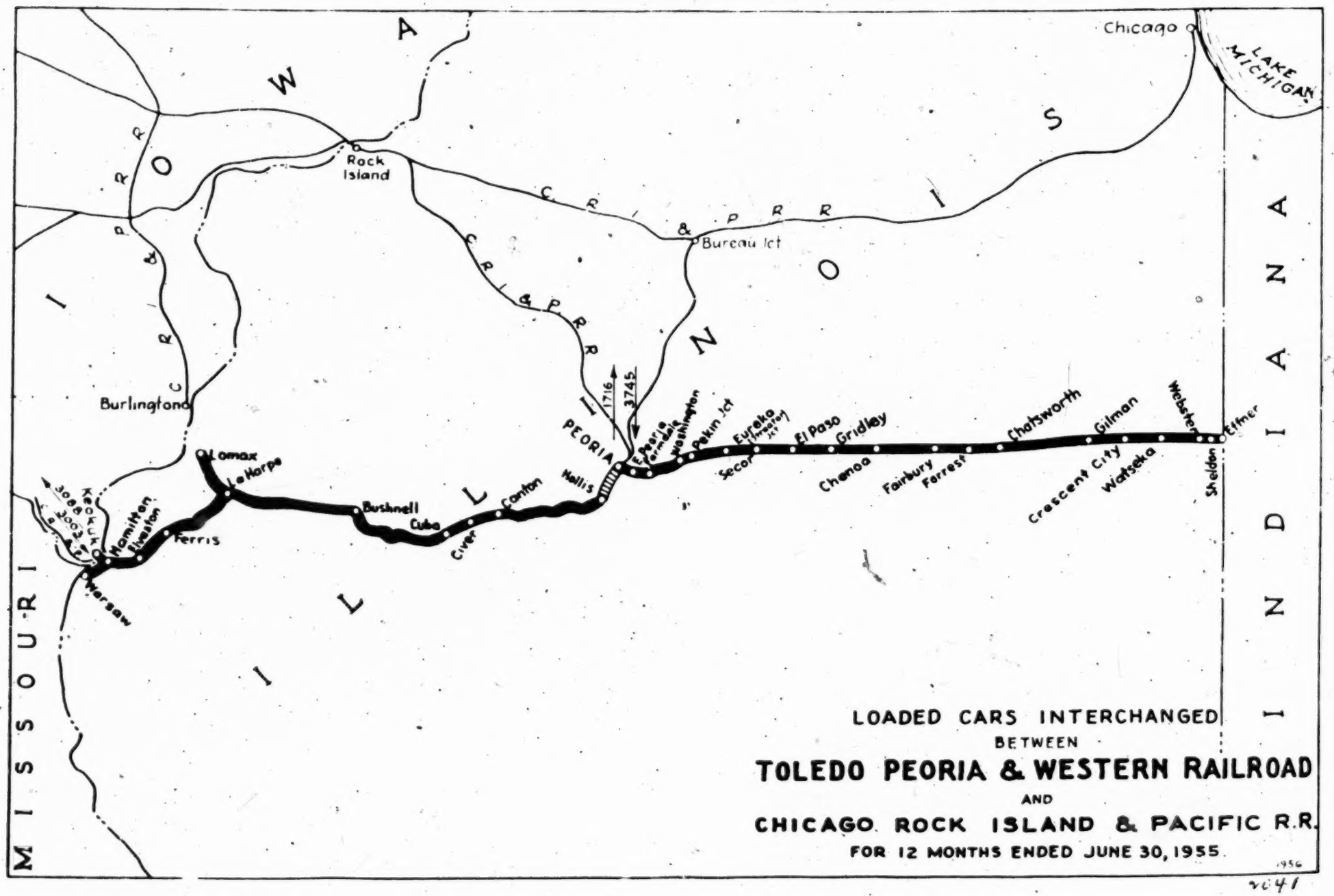


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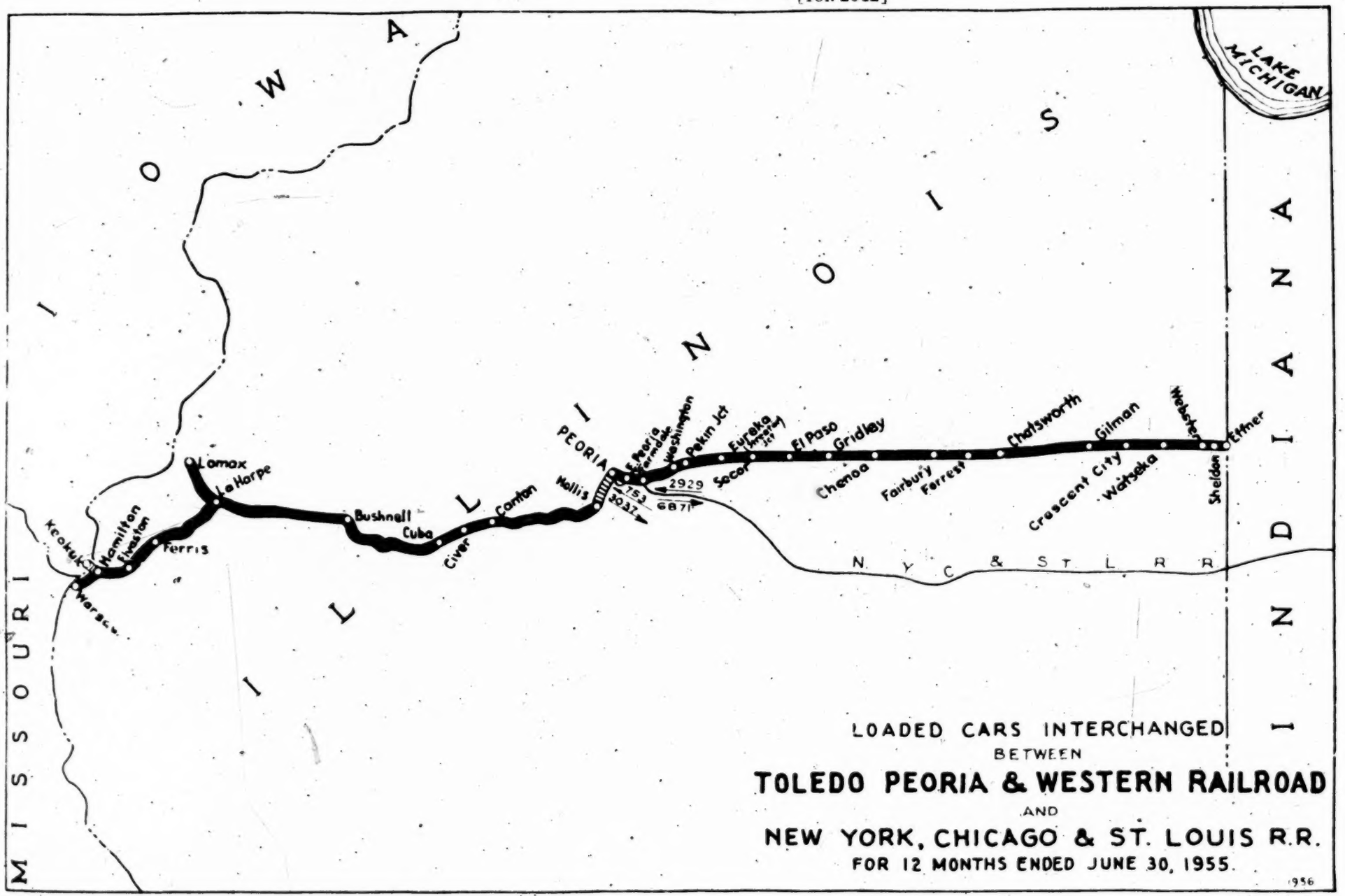
[fol. 2040]


IOWA
ILLINOIS
INDIANA
MISSOURI
LAKE MICHIGAN
M & ST L RY
4046
5665
PEORIA
E Peoria
Farmdale
Washington
Pekin Jct
Eureka
Secor
El Paso
Gridley
Chenoa
Fairbury
Forrest
Chatsworth
Crescent City
Gilman
Watseka
Webster
Ettner
Sheldon
Lomax
La Harpe
Hamilton
Elvaston
Keokuk
Ferris
Warsaw
Bushnell
Cuba
Ever
Canton
Hollis
LOADED CARS INTERCHANGED
BETWEEN
TOLEDO, PEORIA & WESTERN RAILROAD
AND
MINNEAPOLIS & ST. LOUIS RY.
FOR 12 MONTHS ENDED JUNE 30, 1955
2040

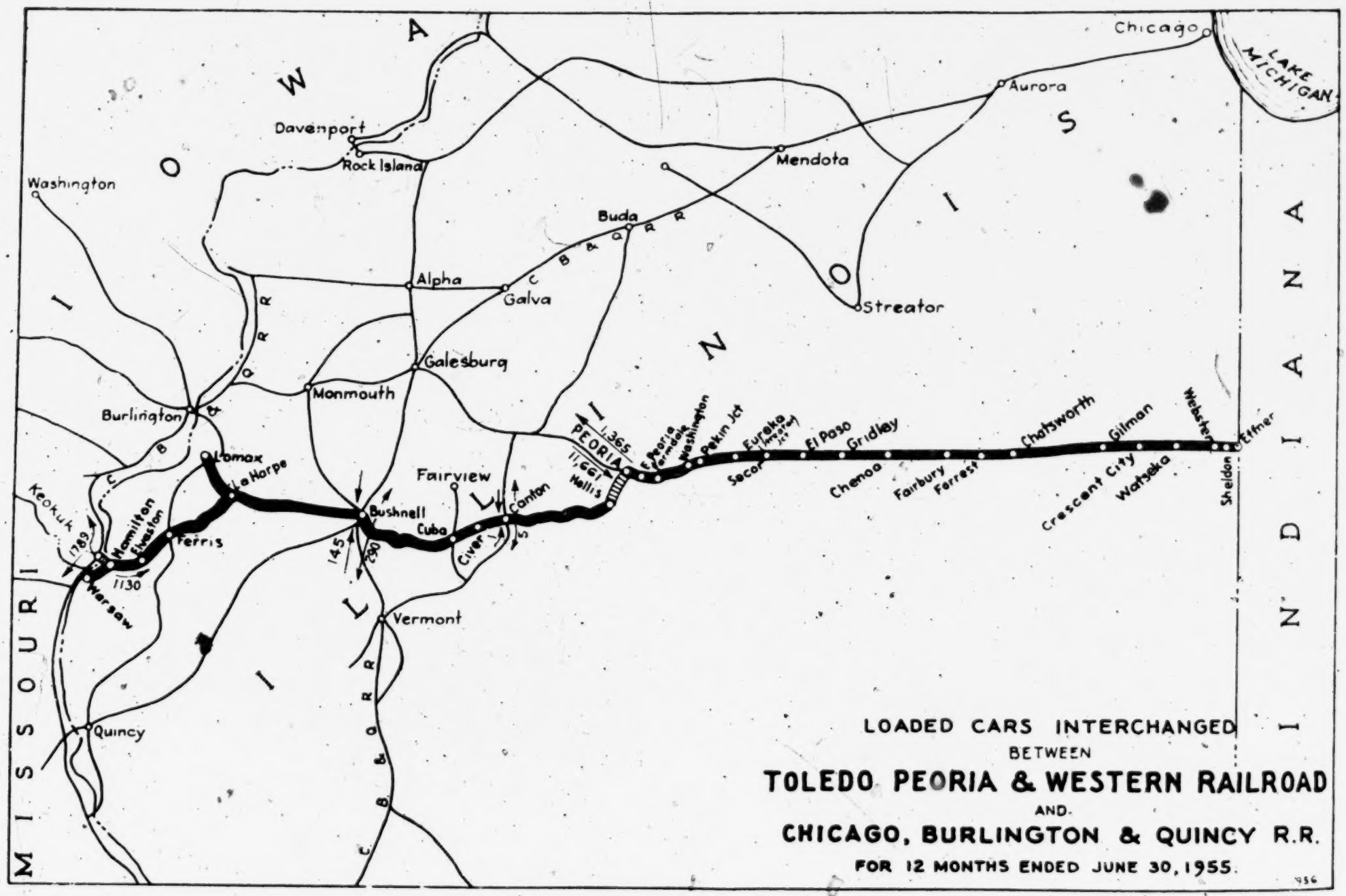
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Chicago
LAKE MICHIGAN
IOWA
Rock Island
C R I & P R R
Bureau Jct
I & P R R
Burlington
INDIANA
ILLINOIS
MISSOURI
1716
3745
PEORIA
E. Peoria
Washington
Pekin Jct
Eureka
El Paso
Gridley
Chatsworth
Gilman
Webster
Elmer
Sheldon
Secor
Chenoa
Fairbury
Forrest
Crescent City
Watseka
Lomax
La Harpe
Bushnell
Cuba
Canton
Hollis
Keokuk
Hamilton
Nauvoo
Ferris
Niver
LOADED CARS INTERCHANGED
BETWEEN
TOLEDO PEORIA & WESTERN RAILROAD
AND
CHICAGO ROCK ISLAND & PACIFIC R.R.
FOR 12 MONTHS ENDED JUNE 30, 1955.
1956
2041

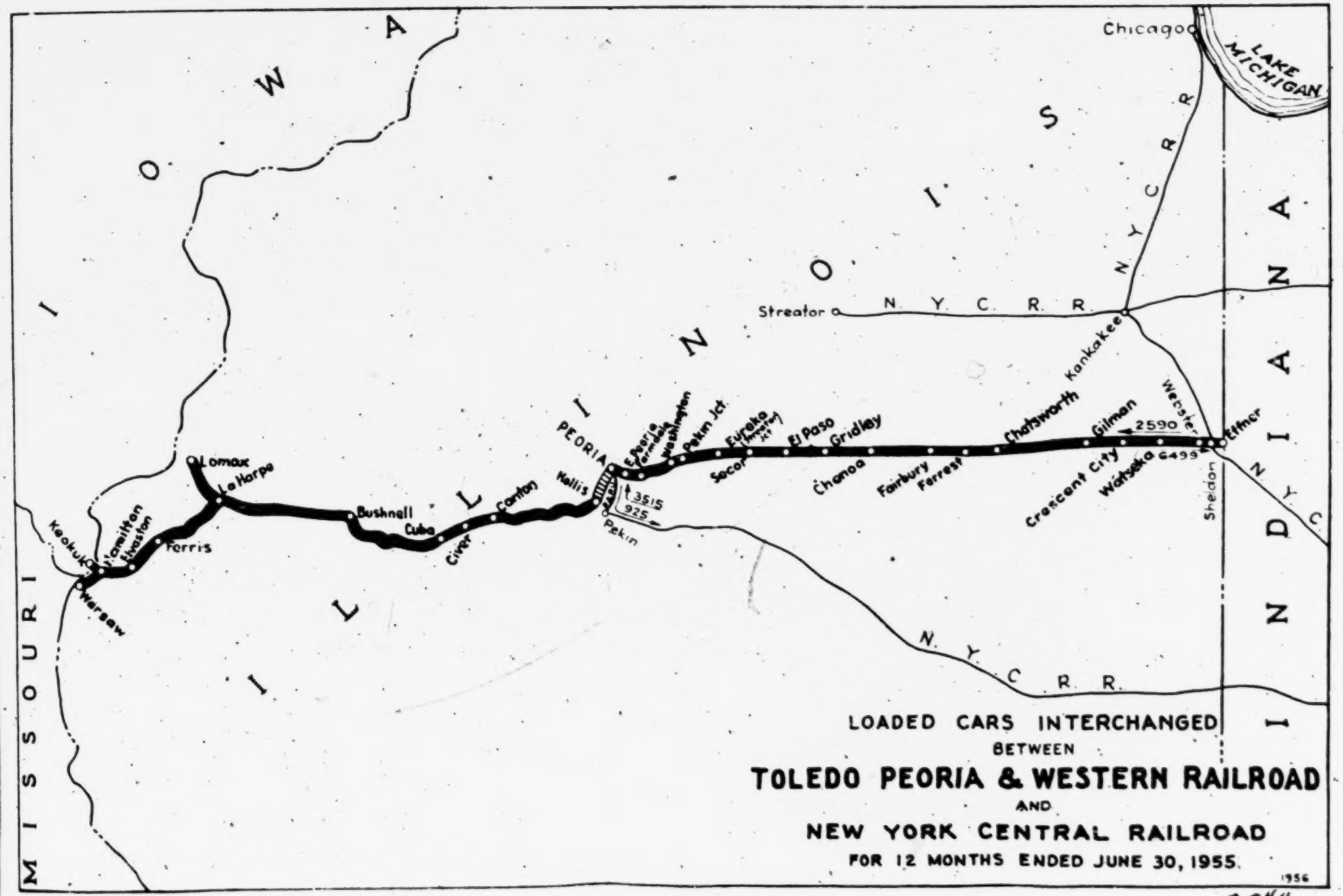
[fol. 2042]


IOWA
ILLINOIS
INDIANA
MISSOURI
LAKE MICHIGAN
Keokuk
Hamilton
Elvaston
Ferris
Warsaw
Lomax
La Harpe
Bushnell
Cuba
Civer
Canton
Wallis
PEORIA
E. Peoria
Farmdale
Washington
Pekin Jct
Eureka
Mossman Jct
El Paso
Gridley
Chenoa
Fairbury
Forrest
Charlsworth
Crescent City
Gilman
Watseka
Webster
Sheldon
Ettner
2929
753
3037
6871
N Y C & St L R R
LOADED CARS INTERCHANGED
BETWEEN
TOLEDO PEORIA & WESTERN RAILROAD
AND
NEW YORK, CHICAGO & ST. LOUIS R.R.
FOR 12 MONTHS ENDED JUNE 30, 1955.
1956
2042

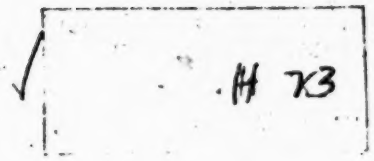
[fol. 2043]


Chicago
LAKE MICHIGAN
Aurora
Mendota
Davenport
Rock Island
Washington
Buda
Alpha
Galva
Streator
Galesburg
Monmouth
Burlington
Lomax
La Harpe
Fairview
Bushnell
Cuba
Canton
Keokuk
Hamilton
Ferris
Warsaw
Vermont
Quincy
PEORIA
1,365
11,661
Hollis
E. Peoria
Pekin Jct
Eureka
El Paso
Gridley
Chatsworth
Gilman
Webster
Elmer
Sheldon
Secor
Chenoa
Fairbury
Forrest
Crescent City
Watseka
1789
1130
145
290
IOWA
ILLINOIS
INDIANA
MISSOURI
LOADED CARS INTERCHANGED
BETWEEN
TOLEDO PEORIA & WESTERN RAILROAD
AND
CHICAGO, BURLINGTON & QUINCY R.R.
FOR 12 MONTHS ENDED JUNE 30, 1955.

[fol. 2044]



2044



THE MINNEAPOLIS & ST.LOUIS RAILWAY COMPANY

AND

TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

COMBINED AND PRO FORMA FINANCIAL DATA

2045

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2046

January 30, 1956

[fol. 2047]

Schedule 1

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY
COMBINED AND PRO FORMA CONSOLIDATED BALANCE SHEETS
DECEMBER 31, 1955

	Actual			Pro Forma	
	The Minneapolis & St. Louis Railway Company	Toledo, Peoria & Western Railroad Company	Combined	Transactions	Consolidated (Note)
INVESTMENTS:					
Road and equipment property	$ 75,119,169	$ 10,191,540	$ 85,310,709	$	$ 85,310,709
Acquisition adjustment - Cr.	(29,509,296)	-	(29,509,296)	-	(29,509,296)
Donations and grants - Cr.	(37,356)	(2,165,370)	(2,202,726)	-	(2,202,726)
Accrued depreciation - Road and equipment	(12,066,879)	(2,161,565)	(14,228,444)	-	(14,228,444)
Accrued amortization of defense projects-Equipment-Cr.	(3,689,684)	-	(3,689,684)	-	(3,689,684)
Sinking funds	-	14,095	14,095	-	14,095
Capital and other reserve funds	2,589	3,952	6,541	-	6,541
Miscellaneous physical property	637,969	777,553	1,415,522	-	1,415,522
Accrued depreciation - Miscellaneous physical property-Cr.	(89,067)	(78,443)	(167,510)	-	(167,510)
Investments in affiliated companies -					
Stock	91,501	43,000	134,501	-	134,501
Advances	313,148	-	313,148	-	313,148
Other investments	757	108,862	109,619	-	109,619
Excess cost of investment in subsidiary company over equity in net assets	-	-	-	5,503,195	5,503,195
Total	$ 30,772,851	$ 6,733,624	$ 37,506,475	$ 5,503,195	$ 43,009,670
CURRENT ASSETS:					
Cash	$ 2,281,366	$ 1,267,661	$ 3,549,027	$(150,000)	$ 3,399,027
Temporary cash investments	-	1,200,906	1,200,906	-	1,200,906
Special deposits	47,537	-	47,537	-	47,537
Traffic and car-service balances - Dr.	17,563	133,918	151,481	-	151,481
Net balance receivable from agents and conductors	370,081	87,263	457,344	-	457,344
Miscellaneous accounts receivable	412,517	81,180	493,697	-	493,697
Material and supplies	2,249,697	568,051	2,817,748	-	2,817,748
Accrued accounts receivable	644,751	256,412	901,163	-	901,163
Other current assets	109,332	18,960	128,292	-	128,292
Total	$ 6,132,844	$ 3,614,351	$ 9,747,195	$(150,000)	$ 9,597,195
DEFERRED ASSETS:					
Working fund advances	$ 14,216	$ 7,142	$ 21,358	$ -	$ 21,358
Other deferred assets	13,556	20,037	33,593	-	33,593
Total	$ 27,772	$ 27,179	$ 54,951	$ -	$ 54,951
UNADJUSTED DEBITS:					
Prepayments	$ 29,056	$ 49,320	$ 78,376	$ -	$ 78,376
Discount on funded debt	10,839	8,944	19,783	-	19,783
Other unadjusted debits	37,634	45,581	83,215	-	83,215
Total	$ 37,010,996	$ 10,478,999	$ 47,489,995	$ 5,353,195	$ 52,843,190

2047

[fol. 2048]

Schedule 1
(continued)

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY AND TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY
COMBINED AND PRO FORMA CONSOLIDATED BALANCE SHEETS
DECEMBER 31, 1955

	Actual			Pro Forma	
	The Minneapolis & St. Louis Railway Company	Toledo Peoria & Western Railroad Company	Combined	Transactions	Consolidated (Note)
CAPITAL STOCK (Authorized 800,000 shares with stated value of $25 per share):					
Capital stock, less 34,700 shares in M&StL treasury	$18,816,525	$ 3,600,000	$22,416,525	$(3,600,000)	$18,816,525
Stock liability for conversion	315,975		315,975		315,975
Total	$19,132,500	$ 3,600,000	$22,732,500	$(3,600,000)	$19,132,500
LONG TERM DEBT:					
Funded debt unmatured	$ 807,955	$ 1,477,000	$ 2,284,955	$12,000,000	$14,284,955
Equipment obligations	6,176,929	155,916	6,332,845		6,332,845
Current balances include amounts payable within one year as follows: M&StL / TP&W / Combined					
Funded debt unmatured $ 46,019 / $ / $ 46,019					
Equipment obligations 1,056,930 / 35,100 / 1,092,030					
Total $1,102,949 / $ 35,100 / $1,138,049	$ 6,984,884	$ 1,632,916	$ 8,617,800	$12,000,000	$20,617,800
CURRENT LIABILITIES:					
Audited accounts and wages payable	$ 512,881	$ 210,158	$ 723,039	$	$ 723,039
Miscellaneous accounts payable	263,157	88,168	351,325		351,325
Dividends matured unpaid	51,357		51,357		51,357
Unmatured interest accrued	17,283		17,283		17,283
Unmatured dividends declared					
Accrued accounts payable	281,847	173,806	455,653		455,653
Taxes accrued	2,267,076	1,652,272	3,919,348		3,919,348
Other current liabilities	882,556	52,476	935,032		935,032
Total current liabilities	$ 4,276,157	$ 2,176,880	$ 6,453,037	$	$ 6,453,037
DEFERRED LIABILITIES	$ 123,318	$ 20,923	$ 144,241	$	$ 144,241
UNADJUSTED CREDITS:					
Insurance reserves	$ 47,019	$	$ 47,019	$	$ 47,019
Other unadjusted credits	48,917	1,475	50,392		50,392
Total	$ 95,936	$ 1,475	$ 97,411	$	$ 97,411
SURPLUS:					
Capital surplus	$ 93,610	$	$ 93,610	$	$ 93,610
Earned surplus	6,304,591	3,046,805	9,351,396	(3,046,805)	6,304,591
Total	$ 6,398,201	$ 3,046,805	$ 9,445,006	$(3,046,805)	$ 6,398,201
Grand Total	$37,010,996	$10,478,999	$47,489,995	$ 5,353,195	$52,843,190

NOTE: The pro forma consolidated balance sheet reflects the changes in capital stock, long-term debt, earned surplus and investment in road and equipment resulting from the sale and issuance of $12,000,000 principal amount of 4-1/4% First Mortgage Bonds for a 100% interest in common stock of Toledo, Peoria & Western Railroad Company if it were acquired as of December 31, 1955.

No effect has been given on this pro forma balance sheet to any discount, premium or expense of issuance of the bonds. Such net premium or expense will be amortized over the life of the bonds.

7048

[fol. 2049]

Schedule 2

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY AND TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

STATEMENTS OF INCOME AND EARNED SURPLUS FOR THE EIGHT YEARS ENDED DECEMBER 31, 1955 (NOTE 1)

(000 omitted)

Year ended December 31,	Operating Revenues	Operating Expenses	Net Railway Operating Revenue	Taxes Other Than Income Taxes	Net Equipment and Joint Facility Rents	Miscellaneous Income and (Deductions)	Income Before Fixed Charges and Taxes on Income	Fixed Charges	Income Before Taxes On Income	Provision For Taxes On Income	Net Income	Earned Surplus: Balance at Beginning of Year	Earned Surplus: Cash Dividends	Earned Surplus: Other (Net) (Note 2)	Earned Surplus: Balance at End of Year
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY															
1955	$20,941	$16,434	$ 4,507	$ 1,382	$(3)	$ 175	$ 3,303	$ 242	$ 3,061	$ 1,232	$ 1,829	$ 5,656	$(1104)	$(76)	$ 6,305
1954	20,543	16,275	4,268	1,290	130	131	2,979	272	2,707	1,060	1,647	10,411	(940)	(5,462)	5,656
1953	22,001	17,019	4,982	1,280	255	169	3,616	290	3,326	1,323	2,003	9,399	(900)	(91)	10,411
1952	22,901	17,318	5,583	1,307	486	155	3,945	240	3,705	1,554	2,151	7,984	(660)	(76)	9,399
1951	21,894	16,474	5,420	1,241	813	150	3,516	153	3,363	1,667	1,696	6,932	(600)	(44)	7,984
1950	20,882	15,009	5,873	1,181	521	448	4,619	148	4,471	1,668	2,803	4,911	(750)	(82)	6,932
1949	18,865	15,394	3,471	1,087	249	127	2,262	148	2,114	779	1,335	4,237	(600)	(62)	4,911
1948	20,287	15,382	4,905	1,126	211	159	3,727	165	3,562	1,288	2,274	2,747	(750)	(34)	4,237
Average	21,039	16,163	4,876	1,237	332	189	3,496	207	3,289	1,322	1,967	6,535	(788)	(735)	6,979
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY															
1955	$ 7,084	$ 4,411	$ 2,673	$ 326	$ 735	$ 74	$ 1,686	$ 66	$ 1,620	$ 830	$ 790	$ 2,512	$(288)	$ 33	$ 4,047
1954	6,806	4,466	2,340	299	714	57	1,384	76	1,308	667	641	2,136	(248)	(17)	2,512
1953	7,751	4,624	3,127	288	672	45	2,212	72	2,140	1,305	835	4,941	(262)	(3,378)	2,136
1952	7,118	4,291	2,827	271	530	66	2,092	75	2,017	1,156	861	4,365	(240)	(45)	4,941
1951	6,681	4,155	2,526	267	536	39	1,762	72	1,690	940	750	3,931	(295)	(21)	4,365
1950	5,904	3,210	2,694	242	463	25	2,014	76	1,938	875	1,063	3,174	(295)	(11)	3,931
1949	4,750	3,294	1,456	231	331	21	915	67	848	245	603	2,961	(239)	(155)	3,174
1948	4,694	3,052	1,642	170	266	17	1,223	69	1,154	355	799	4,714	(2,590)	38	2,961
Average	6,349	3,938	2,411	262	531	43	1,661	72	1,589	796	793	3,592	(557)	(445)	3,183
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY AND TOLEDO, PEORIA & WESTERN RAILROAD COMPANY COMBINED															
1955	$28,025	$20,845	$ 7,180	$ 1,708	$ 732	$ 249	$ 4,989	$ 308	$ 4,681	$ 2,062	$ 2,619	$ 8,168	$(1,392)	$(43)	$ 9,352
1954	27,349	20,741	6,608	1,589	844	188	4,363	348	4,015	1,727	2,288	12,547	(1,188)	(5,479)	8,168
1953	29,752	21,643	8,109	1,568	927	214	5,828	362	5,466	2,628	2,838	14,340	(1,162)	(3,469)	12,547
1952	30,019	21,609	8,410	1,578	1,016	221	6,037	315	5,722	2,710	3,012	12,349	(900)	(121)	14,340
1951	28,575	20,629	7,946	1,508	1,349	189	5,278	225	5,053	2,607	2,446	10,863	(895)	(65)	12,349
1950	26,786	18,219	8,567	1,423	984	473	6,633	224	6,409	2,543	3,866	8,085	(1,045)	(43)	10,863
1949	23,615	18,688	4,927	1,318	580	148	3,177	215	2,962	1,024	1,938	7,198	(835)	(216)	8,085
1948	24,981	18,434	6,547	1,296	477	178	4,950	234	4,716	1,643	3,073	7,461	(3,340)	4	7,198
Average	27,387	20,101	7,286	1,498	864	233	5,157	279	4,878	2,118	2,760	10,126	(1,345)	(1,179)	10,362

NOTES:

(1) This schedule has been prepared only for the eight years ended December 31, 1955, since operations of the T.P.& W. were suspended from October 1, 1945 to June 11, 1947.

(2) Other earned surplus charges in the year 1954 include a stock dividend of $5,000,000 for the M.& St.L.

2049

[fol. 2050]

Schedule 3

THE MINNEAPOLIS & ST.LOUIS RAILWAY COMPANY

AND

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

PRO FORMA CONDENSED COMBINED STATEMENTS OF INCOME AND EARNED SURPLUS

FOR THE EIGHT YEARS ENDED DECEMBER 31, 1955 (NOTE)

(000 omitted)

Year Ended December 31	Income Before Fixed Charges and Taxes on Income	Fixed Charges	Ratio of Income Before Fixed Charges and Taxes on Income to Fixed Charges	Provision For Taxes on Income	Income Available For Fixed Charges	Ratio of Income Available For Fixed Charges to Fixed Charges	Net Income	Earned Surplus			
								Balance Beginning of Year	Cash Dividends	Other (Net)	Balance at End of Year
1955	$ 4,989	$ 818	6.1	$ 1,797	$ 3,192	3.9	$ 2,374	$ 6,453	$(1,392)	$ (43)	$ 7,392
1954	4,363	858	5.1	1,462	2,901	3.4	2,043	11,077	(1,188)	(5,479)	6,453
1953	5,828	872	6.7	2,363	3,465	4.0	2,593	13,115	(1,162)	(3,469)	11,077
1952	6,037	825	7.3	2,445	3,592	4.4	2,767	11,369	(900)	(121)	13,115
1951	5,278	735	7.2	2,342	2,936	4.0	2,201	10,128	(895)	(65)	11,369
1950	6,633	734	9.0	2,278	4,355	5.9	3,621	7,595	(1,045)	(43)	10,128
1949	3,177	725	4.4	759	2,418	3.3	1,693	6,953	(839)	(216)	7,595
1948	4,950	744	6.7	1,378	3,572	4.8	2,828	7,461	(3,340)	4	6,923
Average	5,157	789	6.5	1,853	3,304	4.2	2,515				

NOTE: Effect has been given in combining the income and earned surplus accounts of the two companies for the years shown above to the following:

(a) Additional annual fixed charges of $510,000 representing interest at 4-1/4% on $12,000,000 principal amount of first mortgage bonds assumed to have been outstanding since January 1, 1948.

(b) A related reduction in provision for taxes on income for each of the years of $265,000 representing the tax reduction (computed at 52%) resulting from the increased interest charges.

No effect has been given to estimated economies from unified operations.

2050

[fol. 2051]

Schedule 4

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY
PRO FORMA SCHEDULE OF EXCESS OF TOTAL DEPRECIATION OVER LONG-TERM DEBT AND PROPOSED BOND SINKING FUND REQUIREMENTS
(000 Omitted)

	The Minneapolis & St. Louis Railway Company					Toledo, Peoria & Western Railroad Company					Combined				
	Long-Term Debt Maturities					Long-Term Debt Maturities									
Year	Equipment Obligations	General Office Building Mortgage	Total	Depreciation (Note 1)	Excess of Depreciation over total long-term debt Maturities	Equipment Obligations	First Mortgage Bonds Due 1967	Total	Depreciation (Note 1)	Excess of Depreciation over total long-term debt Maturities	Total long-term Debt Maturities	Depreciation (Note 1)	Excess of Depreciation over total long-term debt Maturities	Proposed Bond Sinking fund requirements (Note 2)	Excess of Total depreciation over Long-term debt Maturities and proposed Bond Sinking Fund Requirements (Note 3)
1956	$ 1,057	$ 46	$1,103	$ 1,239	$ 136	$ 35	$	$ 35	$ 215	$ 180	$1,138	$ 1,454	$ 316	$	$ 316
1957	1,010	48	1,058	1,239	181	35		35	215	180	1,093	1,454	361		361
1958	773	50	823	1,239	416	35		35	215	180	858	1,454	596		596
1959	705	52	757	1,239	482	35		35	215	180	792	1,454	662		662
1960	623	54	677	1,239	563	16		16	215	199	693	1,454	761		761
1961	370	56	426	1,239	813				215	215	426	1,454	1,028	480	548
1962	326	58	384	1,239	855				215	215	384	1,454	1,070	480	590
1963	303	61	364	1,239	875				215	215	364	1,454	1,090	480	610
1964	303	63	366	1,239	873				215	215	366	1,454	1,088	480	608
1965	303	66	369	1,239	870				215	215	369	1,454	1,085	480	605
1966	302	69	371	1,239	869				215	215	371	1,454	1,083	480	603
1967	55	71	126	1,239	1,113		1,477	1,477	215	215	126	1,454	(149)	480	(629)
1968	16	74	90	1,239	1,149				215	(1,262)	1,567	1,454	1,364	480	884
1969	16	39	55	1,239	1,184				215	215	55	1,454	1,399	480	919
1970	16		16	1,239	1,223				215	215	16	1,454	1,438	480	958
1971				1,239	1,239				215	215		1,454	1,454	480	974
1972				1,239	1,239				215	215		1,454	1,454	480	974
1973				1,239	1,239				215	215		1,454	1,454	480	974
1974				1,239	1,239				215	215		1,454	1,454	480	974
1975				1,239	1,239				215	215		1,454	1,454	480	974
1976				1,239	1,239				215	215		1,454	1,454	480	974
1977				1,239	1,239				215	215		1,454	1,454	480	974
1978				1,239	1,239				215	215		1,454	1,454	480	974
1979				1,239	1,239				215	215		1,454	1,454	480	974
1980				1,239	1,239				215	215		1,454	1,454	480	974
1981				1,239	1,239				215	215		1,454	1,454	480	974
1982				1,239	1,239				215	215		1,454	1,454	480	974
1983				1,239	1,239				215	215		1,454	1,454	480	974
1984				1,239	1,239				215	215		1,454	1,454	480	974
1985				1,239	1,239				215	215		1,454	1,454	480	974
	$6,178	$ 807	$6,985	$37,170	$30,185	$ 156	$1,477	$1,633	$6,450	$4,817	$8,618	$43,620	$35,002	$12,000	$23,002

NOTES: (1) Amounts shown for depreciation represent provisions for the year 1955 as follows:

	The Minneapolis & St. Louis Railway Company	Toledo, Peoria & Western Railroad Company	Combined
Equipment	$ 905	$ 137	$1,042
Road property	334	78	412
Total	$1,239	$ 215	$1,454

(2) Sinking fund requirements are based on the proposed issue of $12,000,000 principal amount of 30-year sinking fund bonds with equal annual sinking fund payments of $480,000 commencing in 1961.

(3) Since this schedule is intended to show only the excess of total depreciation over long-term debt maturities and proposed sinking fund requirements, it does not show funds provided from net income nor funds expended for new equipment or additions and betterments.

2051

[fol. 2052]

Schedule 5

THE MINNEAPOLIS & ST.LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY
COMBINED STATEMENTS OF OPERATING EXPENSES AND RATIOS
FOR THE EIGHT YEARS ENDED DECEMBER 31, 1955

Year Ended December 31	Operating Expenses (000 omitted)						Operating Ratios					
	Transportation	Maintenance of Way	Maintenance of Equipment	Traffic	General and Miscellaneous	Total	Transportation	Maintenance of Way	Maintenance of Equipment	Traffic	General and Miscellaneous	Total
THE MINNEAPOLIS & ST.LOUIS RAILWAY COMPANY												
1955	$ 7,056	$ 3,290	$ 3,315	$ 1,212	$ 1,561	$ 16,434	33.7	15.7	15.8	5.8	7.5	78.5
1954	7,053	3,518	3,203	1,259	1,242	16,275	34.3	17.1	15.6	6.1	6.1	79.2
1953	7,067	3,820	3,243	1,520	1,369	17,019	32.1	17.4	14.8	6.9	6.2	77.4
1952	7,339	4,007	3,239	1,455	1,278	17,318	32.1	17.5	14.1	6.3	5.6	75.6
1951	7,039	3,663	3,066	1,402	1,304	16,474	32.2	16.7	14.0	6.4	6.0	75.3
1950	6,248	3,278	3,029	1,305	1,149	15,009	29.9	15.7	14.5	6.3	5.5	71.9
1949	6,351	3,463	3,139	1,322	1,119	15,394	33.7	18.4	16.6	7.0	5.9	81.6
1948	6,682	3,305	3,118	1,230	1,047	15,382	32.9	16.3	15.4	6.1	5.1	75.8
Average	6,854	3,543	3,169	1,338	1,259	16,163	32.6	16.8	15.1	6.4	6.0	76.9
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY												
1955	$ 1,712	$ 967	$ 635	$ 578	$ 519	$ 4,411	24.2	13.6	9.0	8.2	7.3	62.3
1954	1,618	1,080	689	561	518	4,466	23.8	15.9	10.1	8.2	7.6	65.6
1953	1,648	1,272	611	608	485	4,624	21.3	16.4	7.9	7.8	6.3	59.7
1952	1,567	1,229	497	552	446	4,291	22.0	17.3	7.0	7.7	6.3	60.3
1951	1,638	1,096	468	521	432	4,155	24.5	16.4	7.0	7.8	6.5	62.2
1950	1,285	758	410	458	299	3,210	21.8	12.8	6.9	7.8	5.1	54.4
1949	1,276	884	416	411	307	3,294	26.9	18.6	8.7	8.6	6.5	69.3
1948	1,216	737	293	409	397	3,052	25.9	15.7	6.2	8.7	8.5	65.0
Average	1,495	1,003	502	512	425	3,937	23.8	15.8	7.8	8.1	6.8	62.3
M&ST.L AND TP&W COMBINED												
1955	$ 8,768	$ 4,257	$ 3,950	$ 1,790	$ 2,080	$ 20,845	31.3	15.2	14.1	6.4	7.4	74.4
1954	8,671	4,598	3,892	1,820	1,760	20,741	31.7	16.8	14.2	6.7	6.4	75.8
1953	8,715	5,092	3,854	2,128	1,854	21,643	29.3	17.1	13.0	7.1	6.2	72.7
1952	8,906	5,236	3,736	2,007	1,724	21,609	29.7	17.5	12.4	6.7	5.7	72.0
1951	8,677	4,759	3,534	1,923	1,736	20,629	30.4	16.6	12.4	6.7	6.1	72.2
1950	7,533	4,036	3,439	1,763	1,448	18,219	28.1	15.1	12.8	6.6	5.4	68.0
1949	7,627	4,347	3,555	1,733	1,426	18,688	32.3	18.4	15.1	7.3	6.0	79.1
1948	7,898	4,042	3,411	1,639	1,444	18,434	31.6	16.2	13.6	6.6	5.8	73.8
Average	8,349	4,546	3,672	1,850	1,684	20,101	30.6	16.6	13.4	6.8	6.1	73.5

[fol. 2053]

Sched...

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

PRO FORMA STATEMENT OF DEBT-STOCK RATIO

DECEMBER 31, 1955

Capital stock	$19,132,500
Long - Term Debt	20,617,800
Total stock and debt	$39,750,300
Surplus	6,398,201
Total stock, debt and surplus	$46,148,501

Ratios -

Percent of long-term debt to total stock and debt	51.87%
Percent of long-term debt to total stock, debt and surplus	44.68%

NOTE -- The data on this schedule is based on amounts shown on the pro forma consolidated balance sheet (Schedule 1). 2053

[fol. 2055]

EXHIBIT H-24

Howard G. Mayer and Dale O'Brien
Tribune Tower, Chicago 11
Superior 7-6670

For: Investors in The Minneapolis & St. Louis Railway Company Chicago

FOR RELEASE IN NEWSPAPERS OF SUNDAY, MAY 9, 1954

The incumbent management of The Minneapolis & St. Louis Railway Company was charged today with issuing "grossly misleading" figures on the road's first quarter operations this year "in a brazen attempt to influence stockholders" in a proxy fight for control of the road.

Ben W. Heineman, spokesman for a group of major shareholders seeking the election of a majority of the M&StL board of directors, said the management deferred maintenance expenditures during the first quarter of 1954 in order to show an increase in net income. The amount deferred, he said, will have to be spent eventually.

Lucian C. Sprague, chairman of the board, told the road's stockholders in a proxy solicitation that net income for the first three months of 1954 was $484,951.12, compared with $476,788.72 last year, or an increase of $8,162.40.

In his letter to shareholders, Sprague boasted that the M&StL was "one of the few Class I railroads" in the country to make such a record.

"The management's figures are grossly misleading," Heineman said in a statement. "What Mr. Sprague does not tell stockholders is that in order to make such a record, the management had to cut maintenance expenditures by $94,624.20 in the first quarter.

"This is not money saved. It is only a deferred expense, and because of the delay in making repairs and maintaining the property, more than this amount will probably have to be spent later.

[fol. 2056] "It is an even more brazen attempt to influence stockholders when it is realized that in the first quarter the management failed to reduce general and

overhead expenses, where the investors in the road have charged gross waste, extravagance and misuse of company funds.

"Instead, they chose to bleed the road to make a good showing."

Heineman and his group, which includes the largest stockholders in the road, seek to elect seven out of 11 members of the M&StL board of directors at the annual shareholders' meeting next Tuesday, May 11, in New York.

[fol. 2057]

EXHIBIT 25

INVESTORS IN THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
135 South LaSalle Street, Suite 1406
Chicago 3, Illinois

Arthur S. Bowes
Henry DeMeester
Ben W. Heineman
Franklin Lyons
John P. Wagner

March 5, 1954

TO THE SHAREHOLDER:

INVESTORS IN THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY consists of major shareholders in the Company organized to solicit your support in the election of a majority of the Board of Directors of the Company at the annual meeting on May 11, 1954.

We seek your support for the following reasons:

1. Dividends to shareholders of the Company have not been adequate. They can and should be maintained at a minimum of 50 percent of net income. 1953 earnings warranted dividends of $1.60 a share. Had our program been

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Note: Please execute, date and return promptly the enclosed Blue Proxy, using the accompanying return addressed envelope which requires no postage if mailed in the United States.

in effect in 1953, earnings of $4.00 to $4.25 and dividends of $2.00 a share would have been feasible.

2. A new, more aggressive and efficient Board of Directors having a real stake in the Company can materially cut operating expenses, increase net income and dividends and effect a substantial improvement in the conduct of the Company's affairs.

3. Prompt consideration should be given to capitalizing upon the strategic position of the M&StL through its merger or consolidation with other railroads.

4. In important areas, the present Board of Directors and management of the Company have been wasteful, extravagant, self-serving and inefficient. They cannot be depended upon to carry out this constructive program for the benefit of the road, its shareholders, its employees or the public that it serves.

These goals have been set and these statements made only after the most careful consideration and study.

The entire management slate elected to the Board at the last annual meeting owned but 3,690 shares of the Company stock, or less than two-thirds of one percent. Beginning in July 1953, and repeatedly thereafter, we outlined to the management and to the Board an aggressive program for the improvement of the road and urged its adoption. Further, we pointed out to the management that the real owners of the road—the shareholders—were without adequate representation on the Board. We were hopeful that if we were accorded minority representation, the program we urged could be put into effect. But the refusal of the incumbent Board to give us even minority representation has left us no alternative but to seek your support in electing a majority of the Board.

Originally, in July 1953, at the behest of owners and representatives of 125,000 shares of stock, we requested that three large shareholders be elected to the eleven-man Board, and that two of the three be members of the five-man Executive Committee which we proposed be created. We also pointed out that new Directors could add real

strength to the Board, which then had two members nearing eighty years of age and two other members, in addition to the President, who were salaried corporate officers whose contributions to the Company would be the same whether or not they were Directors. On December 21, 1953, Lucian C. Sprague, then President and now Chairman of the Board, recognized the validity of our goals and signed a letter of agreement, personally undertaking to meet these requests. But the Board of Directors, at meetings on December 30, 1953, and January 29, 1954, persisted in its course and refused to honor his commitments.

Throughout this period, it should be noted, we merely requested a voice in the Company's affairs. At no time did we seek or demand control of the Company. We now [fol. 2058] seek to elect a majority of the Board of Directors because after careful study and consideration we feel that (a) a continuation of the present Board and its policies will prevent the full realization of the potential of the M&StL, and (b) only a Board with a real financial interest in the Company can be depended upon for the wholehearted prosecution of the program we regard as vital.

Our Program

Improved Net Income

We have made numerous studies of railroads comparable to the M&StL and (after great resistance by the Board of Directors and management) we have had a firm of nationally known independent certified public accountants provide us with data from certain general and traffic expense records of the M&StL for the year 1952 and for January, February and December of 1953. The facts and figures so obtained provide firm support for our opinion that net income in 1953 could have been improved by $1,200,000 before taxes, or approximately $1.00 a share in net income after taxes.

So that you may understand the basis for this statement, we are setting out the critical figures in some detail. We urge you to take the time and effort to study them carefully.

The capital structure of the Company is such that any improvement in net income reflects itself directly in increased net income available to your shares of common stock, and hence available for dividends.

The ratio of total operating expenses to total operating revenues (usually referred to as the "operating ratio") for the year ended December 31, 1953, was 77.36 percent. The Company's total operating revenues for the year 1953 amounted to $22,001,000. Thus, each decrease of one percentage point in the operating ratio yields additional net income before taxes of $220,000. Our studies have satisfied us that, taking into account the M&StL's favorable transportation ratio, the operating ratio should have been no higher than approximately 71 percent.

Total operating revenues, total operating expenses and net income for the five years ended December 31, 1953, are as follows:

	Total Operating Revenues	Total Operating Expenses	Operating Ratio	Net Income		Dividends Per Share
				Total	Per Share	
1953	$22,001,000	$17,019,000	77.36%	$1,949,000	$3.25	$1.50
1951	21,894,000	16,476,000	75.25	1,664,000	2.77	1.00
1952	22,901,000	17,318,000	75.62	2,102,000	3.50	1.10
1950	20,882,000	15,009,000	71.88	2,765,000	4.61	1.25
1949	18,865,000	15,394,000	81.60	1,306,000	2.18	1.00

Analysis of the Company's expense data makes clear the savings that can be realized by an aggressive, forward-looking Board of Directors. For the five years ended December 31, 1953, the principal classifications of operating expenses, expressed as percentages of total operating revenues, were as follows:

	Transportation Expense	Maintenance of Way, Structure and Equipment	Traffic	General	Total Operating Expenses
1953	32.13%	32.10%	6.91%	6.22%	77.36%
1952	32.05	31.64	6.35	5.58	75.62
1951	32.15	30.74	6.40	5.96	75.25
1950	29.92	30.21	6.25	5.50	71.88
1949	33.66	35.00	7.01	5.93	81.60

These traffic and general expenses of your Company are substantially higher than those of any comparable railroad, and indeed are among the two or three highest in the [fol. 2059] United States. Still keeping in mind that a reduction of one percent in any of these expenses is equivalent to an increase of $220,000 in net income before taxes, the following comparisons are significant:

Comparison of Traffic and General Expenses of The Minneapolis & St. Louis Railway Company, the Chicago Great Western and the Monon for Twelve Months Ended December 31, 1953

	Total Operating Revenues	General Expense		Traffic Expense		Combined Total	
		Dollars	Percent of Operating Revenues	Dollars	Percent of Operating Revenues	Dollars	Percent of Operating Revenues
M&StL	$22,001,000	$1,346,000	6.22	$1,520,000	6.91	$2,866,000	13.13
CGW	31,436,000	923,000	2.94	1,342,000	4.27	2,265,000	7.21
Monon	21,888,000	952,000	4.40	1,062,000	4.80	2,014,000	9.20

It is obvious that these expenditures of your Company for traffic and general expenses are excessive. If the Company had spent no more than the Chicago Great Western, without adjusting for the greater size of the latter, savings of $600,000 before taxes, or approximately 50¢ a share after taxes, would have been realized from these two accounts alone. If your Company had the same general and traffic expense ratios as the Chicago Great Western, savings of more than $1,280,000 before taxes, or savings of approximately $1.00 a share after taxes would have been realized in these two accounts alone. The Monon, with almost the same operating revenues, had traffic and general expenses of $850,000 less.

We have analyzed the underlying accounts to determine the reason for this discrepancy. The following table discloses that it lies primarily in excessive and wasteful salaries and expenses and unnecessary costs of traffic solicitation.

The following tables are self-explanatory:

Comparison of Certain General and Traffic Expenses of The Minneapolis & St. Louis Railway Company, the Chicago Great Western and the Monon for the Twelve Months Ended December 31, 1953

	M&StL	CGW	Monon
Total Operating Revenues	$22,001,000	$31,436,900	$21,888,000
General Expense:			
Salaries and expenses of general officers	$ 307,000	$ 149,000	$ 164,000
Salaries and expenses of clerks and attendants	618,000	446,000	403,000
Law expenses	155,000	115,000	42,000
Pensions and gratuities	77,000	35,000	43,000
Other expenses	85,000	62,000	69,000
[Other items omitted]			
Total General Expense	$ 1,346,000	$ 923,000	$ 952,000
Traffic Expense:			
Superintendence	$ 531,000	$ 228,000	$ 409,000
Advertising	212,000	14,000	65,000
[Other items omitted]			
Total Traffic Expense	$ 1,520,000	$ 1,342,000	$ 1,062,000
Total General and Traffic Expenses	$ 2,866,000	$ 2,265,000	$ 2,014,000

[fol. 2060] We have compared the Company with the Chicago Great Western because it has closely similar traffic and geographical characteristics. We use the Monon because it has nearly identical total operating revenues, although it has different traffic density and operating characteristics. But these differences are of no consequence for the purposes used. For if the same comparisons were made with any Class I railroad in the United States of more than 300 miles in length they would show substantially the same thing. Any such comparison would show that there is room for a material reduction in the general and

traffic expenses of the M&StL. To drive this point home, we have analyzed for the year 1953 the general expense and the traffic expense of various classifications of railroads. These are as follows:

Comparisons of the General and Traffic Expense Ratios of The M&StL for the Year 1953 with Those of All Roads in the Northwest Region, Exclusive of The M&StL, with Seven Roads Having Total Operating Revenues of $10 Million to $25 Million (Group I), Fourteen Roads Having Total Operating Revenues of $25 Million to $50 Million (Group II), and Fifteen Roads Having Total Operating Revenues of $50 Million to $100 Million (Group III)

	M&StL	Northwest Region	Group I	Group II	Group III
Traffic expense	6.91%	2.04%	2.82%	3.08%	2.31%
General expense ..	6.22	4.37	4.12	4.34	4.15
Combined	13.13	6.41	6.94	7.42	6.46

Thus, the traffic and general expense accounts of the M&StL are conspicuous examples of how material increases in net income could have been realized under the direction of a new board having a sufficient financial interest in the Company to review and prune management expenses.

Increased Dividends

We have been consistently of the opinion that the Company could pay substantially higher dividends than it has been paying. For the last five years, dividend payments have averaged less than 36 percent of the available net income. In view of the conservative nature of the capital structure of the Company we see no reason why it should not be able to pay out at least 50 percent of its net income in dividends. Under a new Board of Directors, and in the absence of adverse economic circumstances affecting railroads generally, we would expect that net income and dividends would be materially improved. Thus, had our program been in effect in 1953, earnings of $4.00 to $4.25 and dividends of $2.00 a share would have been practical real-

ities. Even without the savings and accompanying increase in net income that we foresee under a new Board of Directors having adequate shareholder representation, the Company should pay regular dividends of at least $1.60 a share on the present shares.

Payments approached this figure for the first time in 1953. In the first half of 1953 the Board, following its prior practice, paid two quarterly dividends of 25¢ each. After we presented our program to the incumbent management and began to exert consistent pressure for representation and improvement in the direction of the Company's affairs, the Board took a different tack, declaring quarterly dividends of 30¢ each in each of the last two quarters, extras totaling 40¢, and a stock dividend of thirty-three and one third percent.

The continuance of these dividend policies should not depend upon the ability of shareholders to bring intermittent pressure on Directors. Only a Board with substantial shareholders predominant among its members can be counted on for a consistent policy of adequate dividends.

Merger

In our opinion your Company enjoys a strategic geographical position as well as basic efficiencies in its actual physical operations. We believe that these factors can be best capitalized upon by merger or consolidation with other railroads. Indeed, in our opinion, only through such a program, long neglected by the present management, can full recognition of the intrinsic value of the Company be [fol. 2061] had. Discussions to this end should, in our opinion, be instituted in the near future. A new Board pledged to efficient, aggressive management of the Company, and having significant shareholder representation, would both create the necessary foundation for an advantageous program of consolidation or merger and pursue such a program vigorously.

Improved Management

In an effort to determine whether the present management of your Company was conducting its affairs properly and efficiently, we obtained access to the Company's books

and records. In addition we engaged Arthur Andersen & Co., a nationally known firm of independent public accountants, to examine and report on certain disbursement records of the Company. Our study, together with the data furnished us by Arthur Andersen & Co., convinces us that your Company is being operated with appalling waste and extravagance. Indeed, the present management is unable to explain even where its expenditures go. We need only quote in its entirety a letter from Arthur Andersen & Co. supplementary to a detailed report on its examination of the Company's records. The letter is as follows:

ARTHUR ANDERSEN & Co.
Accountants and Auditors
Northwestern Bank Building
Minneapolis 2
February 13, 1954

Mr. Ben W. Heineman
135 South LaSalle Street
Chicago 3, Illinois

Dear Mr. Heineman:

As you have requested, we have reviewed certain records of the Minneapolis & St. Louis Railway Company for the year 1952 and have submitted our report dated January 29, 1954 thereon.

This report disclosed certain deficiencies and improprieties in disbursement procedures. Under existing company policy, each department head approves disbursements for his own department, and the accounting department does not have the authority to review or question the amount, character, or propriety of the expenditures of other departments. In our work we attempted to determine the nature and validity of certain of the company's disbursements. We found that such determination was impossible since numerous cash payments were neither explained nor substantiated by any documentary evidence made available to us so that we were unable to determine that these payments were for corporate purposes.

Very truly yours,

ARTHUR ANDERSEN & Co.

We are satisfied that a Board which permits the continuance of practices of the character described can not safely continue to manage the Company. We pledge an immediate end to laxness and inefficiency and an immediate drive for the reduction of unnecessary expense. As a first step in this direction, we intend to propose at the annual meeting that Arthur Andersen & Co. be selected as independent auditors annually to audit the books and accounts of the Company, and to insure the most careful and scrupulous accounting for your funds.

RETURN SIGNED PROXIES

A formal proxy statement is attached hereto and should be examined by you. We urge you to sign and date the enclosed proxy promptly and return it to us at once in the enclosed self-addressed envelope which requires no postage if mailed in the United States.

If stock is not held in your name but is held in the name of a bank, broker or other nominee, please instruct the record holder promptly to execute and mail the enclosed proxy.

Very truly yours,

ARTHUR S. BOWES
HENRY DEMEESTER
BEN W. HEINEMAN
FRANKLIN LYONS
JOHN P. WAGNER
as Investors in The Minneapolis & St. Louis Railway Company.

[fol. 2062]

PROXY STATEMENT

Annual Meeting of Shareholders to be Held

May 11, 1954

This statement is furnished in connection with the solicitation by a group of investors in The Minneapolis & St. Louis Railway Company (herein called the Company) of proxies to be used at the next annual meeting of shareholders of the Company to be held on Tuesday, May 11, 1954 at 2:00 p. m. (Eastern Daylight Saving Time) on the 50th floor of the Chanin Building, 122 East 42nd St., New

York, New York. The enclosed proxy is revocable at any time prior to its exercise by filing with the Secretary of the Company a subsequently executed proxy or by giving him written notice of revocation.

The Board of Directors has fixed April 13, 1954, as the record date for the determination of shareholders entitled to notice of and to vote at the meeting. As of December 31, 1953, there were issued and outstanding 589,035 shares of stock of the Company. Each such share of the Company's stock is entitled to one vote.

The Investors Soliciting Your Proxy

Your proxy is being solicited by, and at the sole expense of, the following five persons who, with their immediate families, own beneficially an aggregate of 65,994 shares having a market value at the close of business on March 3, 1954, of more than $1,550,000.

Name	Shares Held as at 3/1/54
Arthur S. Bowes	5,000
Henry DeMeester	2,169
Ben W. Heineman	5,925*
Franklin Lyons	25,000
John P. Wagner	27,900

* In addition, Mr. Heineman has options, partially contingent, to purchase 3,581 shares from certain shareholders on or before June 8, 1955, at prices of $19.29 per share and $19.68 per share.

Election of Directors

One of the purposes of the meeting is to elect eleven (11) Directors to hold office until the annual meeting of shareholders in 1955 and until their successors shall have been duly elected and shall have qualified.

The shares represented by the proxies that we are soliciting will be voted for the election as Directors of Messrs. Arthur S. Bowes, Henry DeMeester, William E. Fay, Ben W. Heineman, Franklin Lyons, Joseph S. Nye, and Jouett Shouse. None of these nominees are presently Directors of the Company, but all have indicated their willingness to

serve. Should any of these nominees for Directors become unable to accept nomination or election, the shares represented by such proxies will be voted for the election of [fol. 2063] such other person or persons for Director as the undersigned may recommend in the place of such nominee.

Information Regarding Nominees for Directors

The following is the requisite information with respect to the nominees for election as Directors for whom votes pursuant to the enclosed proxy will be cast:

Nominee	Principal Business and Business Affiliation	Beneficial Holdings of Common Stock
ır S. Bowes	Investor: Member of the Board of Directors of the Automatic Canteen Company of America and Pepsi-Cola General Bottlers, Inc.; President, Bowes Industries, Inc., manufacturers of paper products and now merged with the Continental Can Company, from 1948 to 1953	5,000
DeMeester	Investor, President and Vice-President, Northwest Cities Gas Co., 1949-1950	2,169
n E. Fay	President of Champion Machinery Co., machinery manufacturers; Director, Wisconsin Public Service Corp. and First National Bank of Joliet; Federal Court appointee to Reorganization Committee of Chicago, Rock Island & Pacific Railway Company and Director of reorganized company until 1951	1,000

Nominee	Principal Business and Business Affiliation	Beneficial Holdings of Common Stock
Ben W. Heineman	Partner, Swiren & Heineman, Attorneys	5,125*
Franklin Lyons	Investor; Member of the Executive Committee of Four Wheel Drive Auto Company, manufacturer of heavy duty trucks	25,000
Joseph S. Nye	Investor; rail analyst; partner, Neergaard, Miller & Co., members, New York Stock Exchange, 1951-2; partner, Freeman & Company, investment bankers, until 1951; former chairman, National Association of Securities Dealers, District 13 (New York, New Jersey and Connecticut)	1,000
Jouett Shouse	Attorney; director, General Aniline & Film Corp., General Dyestuff Corp.; Chairman of the Board, Anton Smitt & Co., and the Kinsey Bank, Kinsey, Kansas	750*

* Members of Mr. Heineman's immediate family and his law partner own 4,125 additional shares, and, in addition, Mr. Heineman has options, partially contingent, to purchase 3,581 shares from certain shareholders on or before June 8, 1955, at prices of $19.29 per share and $19.68 per share. Mr. Shouse's wife, Catherine Filene Shouse, owns an additional 500 shares.

Stock Dividend

On October 28, 1953, the Board of Directors of the Company voted a stock dividend payable in shares at the rate of one-third share of stock for each share of presently authorized common stock. This declaration was expressly made subject to approval by the Interstate Commerce Commission and by the shareholders. On February 4, 1954, the Interstate Commerce Commission gave the necessary au- [fol. 2064] thority. We recommend that the shareholders take the necessary action to make possible the payment of this stock dividend by increasing the presently authorized number of shares from 600,000 to 800,000.

Selection of Auditors

The undersigned intend to propose that Arthur Andersen & Co., independent certified public accountants, be selected by shareholders as independent auditors for the Company to make an annual audit of the Company. Arthur Andersen & Co. have no direct or indirect financial interest in the Company or its subsidiaries, nor do they have or have they had any connection with them.

Other Matters

We are not aware of any other matters which may be brought before the meeting. However, if any other matters not now known come before the meeting, the persons named in the accompanying form of proxy (or their substitutes) will vote the proxies in accordance with their best judgment on such matters.

The cost of preparing, assembling and mailing this statement, the form of proxy and any additional material relating to the meeting which may be furnished to the shareholders subsequent to the furnishing of this statement is being borne by the undersigned and the Company will be asked to reimburse the undersigned for the costs of the solicitation of proxies. Solicitations will be made by mail, and in addition, by The Kissel Organization. It is anticipated that 14 employees of The Kissel Organization will be utilized for that purpose at an anticipated cost of $5,000.

We will reimburse bankers, brokers and others holding stock in their name or in the names of nominees for out-of-pocket expense incurred in sending proxies and proxy material to the beneficial owners of such stock.

Respectfully submitted,

ARTHUR S. BOWES — BEN W. HEINEMAN
HENRY DEMEESTER — FRANKLIN LYONS
JOHN P. WAGNER,
as Investors in The Minneapolis & St. Louis Railway Company

March 5, 1954

[fol. 2065]

EXHIBIT H-27

(See Opposite) ☞

[fol. 2065]

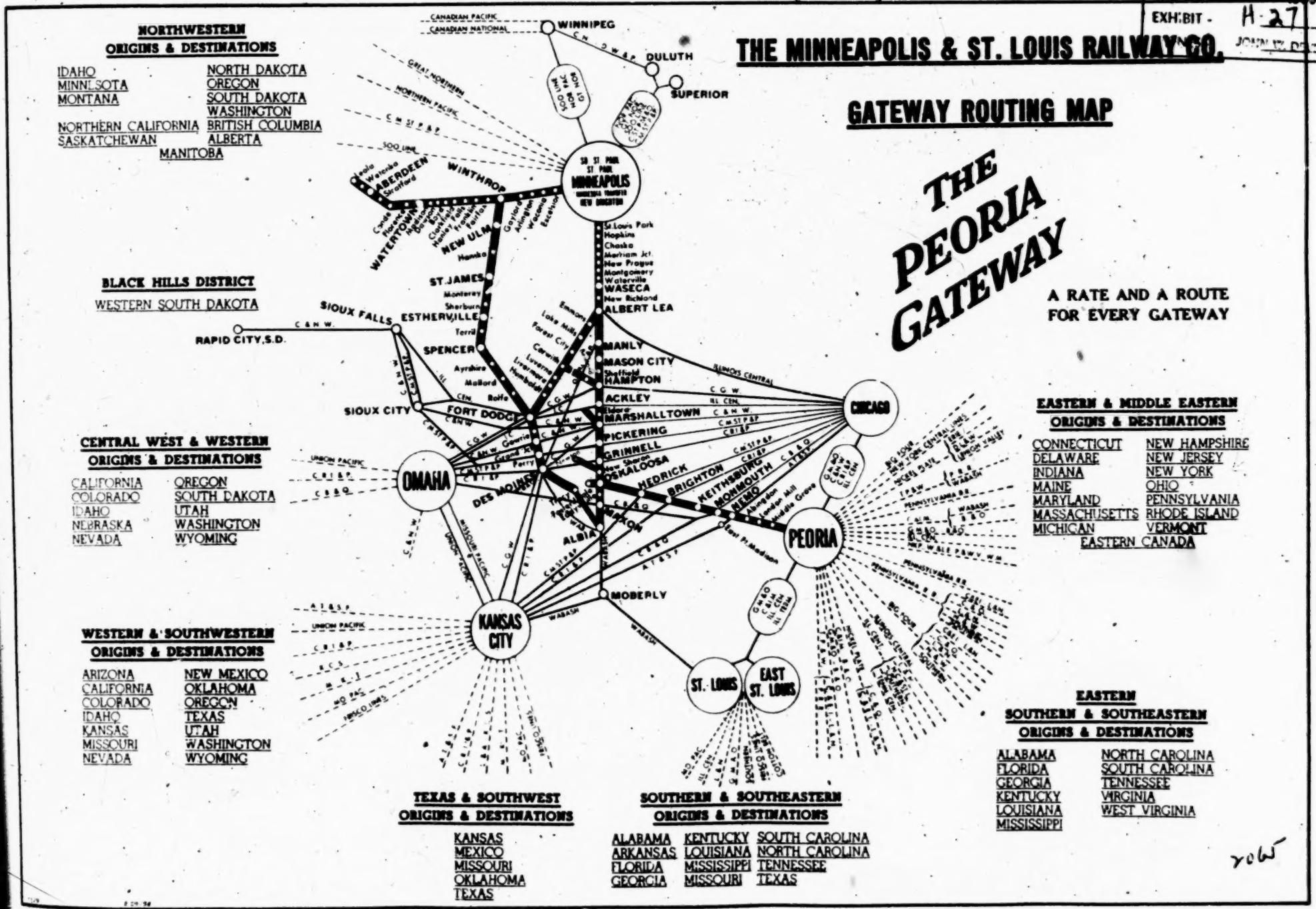
ICC DOCKET 18991
ICC DOCKET 19096
EXHIBIT - H-27
JOHN W. DAVIS

THE MINNEAPOLIS & ST. LOUIS RAILWAY CO.

GATEWAY ROUTING MAP

THE PEORIA GATEWAY

A RATE AND A ROUTE FOR EVERY GATEWAY



NORTHWESTERN
ORIGINS & DESTINATIONS

IDAHO
MINNESOTA
MONTANA
NORTHERN CALIFORNIA
SASKATCHEWAN
NORTH DAKOTA
OREGON
SOUTH DAKOTA
WASHINGTON
BRITISH COLUMBIA
ALBERTA
MANITOBA

BLACK HILLS DISTRICT
WESTERN SOUTH DAKOTA

CENTRAL WEST & WESTERN
ORIGINS & DESTINATIONS

CALIFORNIA
COLORADO
IDAHO
NEBRASKA
NEVADA
OREGON
SOUTH DAKOTA
UTAH
WASHINGTON
WYOMING

WESTERN & SOUTHWESTERN
ORIGINS & DESTINATIONS

ARIZONA
CALIFORNIA
COLORADO
IDAHO
KANSAS
MISSOURI
NEVADA
NEW MEXICO
OKLAHOMA
OREGON
TEXAS
UTAH
WASHINGTON
WYOMING

TEXAS & SOUTHWEST
ORIGINS & DESTINATIONS

KANSAS
MEXICO
MISSOURI
OKLAHOMA
TEXAS

SOUTHERN & SOUTHEASTERN
ORIGINS & DESTINATIONS

ALABAMA
ARKANSAS
FLORIDA
GEORGIA
KENTUCKY
LOUISIANA
MISSISSIPPI
MISSOURI
NORTH CAROLINA
SOUTH CAROLINA
TENNESSEE
TEXAS

EASTERN & MIDDLE EASTERN
ORIGINS & DESTINATIONS

CONNECTICUT
DELAWARE
INDIANA
MAINE
MARYLAND
MASSACHUSETTS
MICHIGAN
NEW HAMPSHIRE
NEW JERSEY
NEW YORK
OHIO
PENNSYLVANIA
RHODE ISLAND
VERMONT
EASTERN CANADA

EASTERN
SOUTHERN & SOUTHEASTERN
ORIGINS & DESTINATIONS

ALABAMA
FLORIDA
GEORGIA
KENTUCKY
LOUISIANA
MISSISSIPPI
NORTH CAROLINA
SOUTH CAROLINA
TENNESSEE
VIRGINIA
WEST VIRGINIA

[fol. 2066]

EXHIBIT H-28

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

COMBINED STATEMENTS OF REVENUE TONS BY PRODUCT CLASSIFICATION
FOR THE FIVE YEARS ENDED DECEMBER 31, 1954
(000 OMITTED)

ICC DOCKET 18995
ACC EXHIBIT 1905
EXHIBIT H-28
WITNESS

fol. 2066

	M. & St. L.						T. P. & W.						Combined					
	Average	1954	1953	1952	1951	1950	Average	1954	1953	1952	1951	1950	Average	1954	1953	1952	1951	1950
Agriculture:																		
Wheat	300	255	265	354	372	254	44	26	55	16	104	21	344	281	319	370	476	275
Corn	478	553	491	519	442	390	125	147	138	117	131	92	604	700	629	635	573	482
Flour-wheat	270	194	236	305	311	301	177	162	177	206	180	161	447	356	413	512	492	463
Soybeans	151	181	149	158	151	112	35	33	36	53	34	19	185	215	185	211	185	131
All others	821	664	824	836	954	829	287	278	273	256	330	294	1,108	941	1,098	1,092	1,285	1,123
Total	2,020	1,847	1,965	2,172	2,230	1,886	668	646	679	648	779	587	2,688	2,493	2,644	2,820	3,010	2,473
Percent to total	25.7%	25.9%	26.0%	26.7%	26.5%	23.2%	20.2%	19.8%	20.1%	19.2%	21.9%	19.7%	24.0%	24.0%	24.2%	24.5%	25.1%	22.3%
Animals and products:																		
Meats-fresh	61	56	55	70	65	56	81	104	92	75	61	72	141	160	148	145	126	128
Packing house products-edible	35	37	37	34	37	33	7	6	5	6	10	9	43	44	42	40	47	42
All others	79	70	74	74	84	89	65	71	79	67	60	50	144	141	153	142	145	138
Total	175	163	166	178	186	178	153	181	176	148	131	131	328	345	343	327	318	308
Percent to total	2.2%	2.3%	2.2%	2.2%	2.2%	2.2%	4.6%	5.5%	5.2%	4.4%	3.7%	4.4%	2.9%	3.3%	3.1%	2.9%	2.7%	2.8%
Products of mines:																		
Bituminous coal	1,527	1,260	1,303	1,528	1,770	1,775	264	342	212	251	261	253	1,791	1,602	1,514	1,779	2,031	2,027
Ores and concentrates	229	234	239	247	231	194	5	5	3	5	6	3	233	239	242	252	236	197
All others	559	444	545	623	593	588	284	302	281	293	252	295	843	745	826	916	845	884
Total	2,315	1,938	2,087	2,398	2,594	2,557	553	649	496	549	519	551	2,867	2,586	2,582	2,947	3,112	3,108
Percent to total	29.4%	27.2%	27.6%	29.5%	30.8%	31.5%	16.7%	19.8%	14.7%	16.2%	14.6%	18.5%	25.7%	24.9%	23.6%	25.6%	26.0%	28.0%
Products of forests:																		
Lumber, shingles and lath	588	636	597	589	576	545	134	140	150	135	139	106	722	776	748	724	715	651
All others	115	114	121	123	115	102	31	28	34	30	38	26	146	141	155	153	153	128
Total	703	750	718	712	691	647	165	168	184	165	177	132	868	917	903	877	868	779
Percent to total	8.9%	10.5%	9.5%	8.8%	8.2%	8.0%	5.0%	5.1%	5.4%	4.9%	5.0%	4.4%	7.8%	8.8%	8.3%	7.6%	7.2%	7.0%
Manufactures and miscellaneous:																		
Manufactured iron and steel	116	85	126	127	127	117	222	158	246	269	247	189	338	243	372	396	373	306
Iron and steel pipe fittings, N.O.S.	156	122	147	146	190	176	207	171	216	206	252	192	364	293	363	352	441	368
Cement-natural and portland	305	314	289	323	285	318	42	35	40	40	46	50	348	349	329	362	331	368
Food products, N.O.S. in cans, etc.	142	151	146	139	137	135	87	88	78	86	96	87	229	240	224	225	234	222
All others	1,881	1,703	1,856	1,878	1,924	2,042	1,195	1,165	1,250	1,247	1,279	1,033	3,075	2,867	3,106	3,126	3,293	3,034
Total	2,600	2,375	2,564	2,613	2,663	2,788	1,753	1,617	1,830	1,848	1,920	1,551	4,354	3,992	4,394	4,461	4,582	4,338
Percent to total	33.1%	33.4%	34.0%	32.1%	31.6%	34.4%	52.9%	49.4%	54.1%	54.7%	54.0%	52.2%	38.9%	38.4%	40.2%	38.8%	38.3%	39.1%
Forwarder traffic	1	1	1	1	1	1	16	10	15	16	20	18	17	11	16	16	22	19
Percent to total	.0%	.0%	.0%	.0%	.0%	.0%	.4%	.3%	.4%	.5%	.6%	.6%	.2%	.1%	.1%	.1%	.2%	.2%
L.C.L. freight	54	47	51	54	57	61	4	3	4	4	6	4	58	50	54	58	63	65
Percent to total	.7%	.7%	.7%	.7%	.7%	.7%	.1%	.1%	.1%	.1%	.2%	.2%	.5%	.5%	.5%	.5%	.6%	.6%
Total tons handled	7,868	7,121	7,552	8,128	8,422	8,118	3,312	3,274	3,384	3,378	3,252	2,974	11,180	10,394	10,936	11,506	11,992	11,092

ICC DOCKET 18001
11 29

[Vol. 2067]

Exhibit H-29

STATEMENT SHOWING LOADED CARS

INTERCHANGED BETWEEN T&W AND VARIOUS CONNECTING CARRIERS

WITH PERCENTAGE COMPARISON OF SUCH BUSINESS TO

TOTAL REVENUE CARS HANDLED BY EACH SUCH CONNECTING CARRIER

FOR YEARS 1948 THROUGH 1954

Index

Page 1 - M. & St. L. Ry.

Page 2 - A. T. & S. F. Ry.

Page 3 - Pennsylvania R.R.

Page 4 - C. R. I. & P. R.R.

Page 5 - N. Y. C. & St. L. R.R.

2067

1747

STATEMENT SHOWING LOADED CARS
INTERCHANGED BETWEEN MAStL AND TP&W AT PEORIA, ILLINOIS
AND PERCENTAGE SUCH BUSINESS BEARS TO ALL REVENUE CARLOADS HANDLED
BY THE MAStL FOR THE YEARS 1948 THROUGH 1954

Line	Column A Year	Column B Loaded Cars Interchanged Between MAStL and TP&W At Peoria	Column C Total Revenue Cars Handled By MAStL	Percentage Column B of Column C
1	1948	9,879	246,509	4.00
2	1949	9,847	220,499	4.47
3	1950	11,875	236,836	5.01
4	1951	14,254	233,615	6.10
5	1952	13,749	227,499	6.04
6	1953	14,138	222,531	6.35
7	1954	11,999	211,800	5.67

1748 [fol. 2068]

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1749

STATEMENT SHOWING LOADED CARS
INTERCHANGED BETWEEN AT&SF AND TP&W AT LOMAX, ILLINOIS
AND PERCENTAGE SUCH BUSINESS BEARS TO ALL REVENUE CARLOADS HANDLED
BY THE AT&SF FOR THE YEARS 1948 THROUGH 1954

Line	Column A Year	Column B Loaded Cars Interchanged Between AT&SF and TP&W At Lomax, Illinois	Column C Total Revenue Cars Handled By AT&SF	Percentage Column B of Column C
1	1948	21,540	1,812,482	1.19
2	1949	22,020	1,622,837	1.36
3	1950	28,571	1,714,710	1.68
4	1951	31,862	1,825,090	1.75
5	1952	31,351	1,815,754	1.73
6	1953	34,404	1,768,879	1.94
7	1954	32,223	1,657,187	1.94

[fol. 2069]

2069.

STATEMENT SHOWING LOADED CARS
INTERCHANGED BETWEEN M&StL AND TP&W AT PEORIA, ILLINOIS

STATEMENT SHOWING LOADED CARS
INTERCHANGED BETWEEN PENNSYLVANIA R.R. AND TP&W AT EFFNER, ILLINOIS-INDIANA
AND PERCENTAGE SUCH BUSINESS BEARS TO ALL REVENUE CARLOADS HANDLED
BY THE PENNSYLVANIA R.R. FOR THE YEARS 1948 THROUGH 1954

Line	Column A Year	Column B Loaded Cars Interchanged Between PRR and TP&W At Effner, Ill. - Ind.	Column C Total Revenue Cars Handled By PRR	Percentage Column B of Column C
1	1948	42,152	5,653,968	0.75
2	1949	42,197	4,414,565	0.96
3	1950	51,395	4,899,456	1.05
4	1951	61,925	5,299,255	1.17
5	1952	60,059	4,831,359	1.24
6	1953	62,619	4,907,444	1.28
7	1954	56,293	4,126,589	1.36

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Page 3

STATEMENT SHOWING LOADED CARS
INTERCHANGED BETWEEN ORIAF AND TP&W AT PENN'A
AND PERCENTAGE SUCH

STATEMENT SHOWING LOADED CARS
INTERCHANGED BETWEEN CRI&P AND TP&W AT PEORIA, ILLINOIS AND KEOKUK, IOWA
AND PERCENTAGE SUCH BUSINESS BEARS TO ALL REVENUE CARLOADS HANDLED
BY THE CRI&P FOR THE YEARS 1948 THROUGH 1954

Line	Column A Year	Column B Loaded Cars Interchanged Between CRI&P and TP&W			Column C Total Revenue Cars Handled By CRI&P	Percentage Column B Total of Column C
		At Peoria	At Keokuk	Total		
1	1948	5,567	5,866	11,433	1,206,268	0.95
2	1949	5,020	6,668	11,688	1,116,209	1.05
3	1950	5,805	7,554	13,359	1,095.713	1.22
4	1951	7,847	7,562	15,409	1,172,396	1.31
5	1952	7,138	8,394	15,532	1,167,357	1.33
6	1953	8,251	8,372	16,623	1,131,939	1.47
7	1954	7,626	6,812	14,438	1,077,302	1.34

[Vol. 2071]

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1751

STATEMENT SHOWING LOADED CARS
INTERCHANGED BETWEEN NYC&STL AND TP&W AT FARMDALE, ILLINOIS
AND PERCENTAGE SUCH BUSINESS BEARS TO ALL REVENUE CARLOADS HANDLED
BY THE NYC&STL FOR THE YEARS 1948 THROUGH 1954

Line	Column A Year	Column B Loaded Cars Interchanged Between NYC&StL and TP&W At Farmdale, Illinois	Column C Total Revenue Cars-Handled By NYC&StL	Percentage Column B of Column C
1	1948	8,859	*1,534,008	0.68
2	1949	9,848	*1,235,281	0.90
3	1950	12,348	1,327,845	0.93
4	1951	12,666	1,396,411	0.91
5	1952	13,171	1,302,448	1.01
6	1953	14,316	1,318,902	1.09
7	1954	14,406	1,131,756	1.27

* Includes NALE

2072

Page 5

1752 [fol. 2072]

1753

EXHIBIT H-30

[fol. 2073]

GROSS FREIGHT REVENUES (000 Omitted)

Line	Col. 1 Year	Col. 2 TP&W	Col. 3 MAStL	Col. 4 Percentage Col. 2 of Col. 3	Col. 5 PRR	Col. 6 Percentage Col. 2 of Col. 5	Col. 7 Santa Fe	Col. 8 Percentage Col. 2 of Col. 7	Col. 9 Rock Island	Col. 10 Percentage Col. 2 of Col. 9	Col. 11 Nickel Plate	Col. 12 Percentage Col. 2 of Col. 11
1	1948	4,611	19,515	23.6	752,968	0.6	427,135	1.1	158,950	2.9	105,422	4.4
2	1949	4,681	18,195	25.7	619,091	0.8	391,244	1.2	150,251	3.1	94,797	4.9
3	1950	5,808	20,018	29.0	685,833	0.8	422,155	1.4	144,446	4.0	140,145	4.1
4	1951	6,583	20,969	31.4	783,635	0.8	466,225	1.4	160,154	4.1	153,111	4.3
5	1952	7,006	21,953	31.9	767,354	0.9	491,592	1.4	174,423	4.0	154,944	4.5
6	1953	7,604	21,069	36.1	787,465	1.0	511,143	1.5	169,844	4.5	159,446	4.8
7	1954	6,704	19,681	34.1	628,135	1.1	437,978	1.5	151,963	4.4	138,165	4.9
8	Average 7 Years	6,142	20,200	30.4	717,783	0.9	449,639	1.4	158,576	3.9	135,147	4.5
9	Total Miles Operated	239	1,397	17.1	10,034	2.4	13,076	1.8	7,920	3.0	2,178	11.0

STATEMENT SHOWING LOADED CARS
[illegible] AND TP&W AT FARMDALE, ILLINOIS

[fol. 2074]

Exhibit II-31

ICC Docket 1[illegible]
ICC Docket 1[illegible]
Exhibit [illegible]
Witness: J. A. Swanson

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

SUMMARY OF GROSS FREIGHT REVENUE AND REVENUE CARS HANDLED WITH T. P. & W. AT PEORIA, ILLINOIS, FOR FOUR YEARS ENDED DECEMBER 31, 1955

Line		1955	1954	1953	1952
	M&StL Gross Freight Revenue:				
1	Interline received	$ 341,871	$ 299,962	$ 578,802	$ 486,[illegible]
2	Interline forwarded	407,689	447,724	363,389	346,[illegible]
3	Intermediate - Eastbound	468,004	364,290	324,143	362,[illegible]
4	Intermediate - Westbound	302,142	369,788	670,851	589,362
	Total	$1,519,706	$1,481,764	$1,937,185	$1,784,836
	T&W Gross Freight Revenue:				
5	Interline received	$ 78,410	$ 69,550	$ 136,470	$ 114,568
6	Interline forwarded	164,355	173,482	154,756	161,428
7	Intermediate - Eastbound	207,202	237,466	147,872	164,060
8	Intermediate - Westbound	134,606	210,206	350,527	303,466
	Total	$ 584,573	$ 690,704	$ 789,631	$ 745,512
	Revenue Cars Handled:				
9	Interline received	1,631	1,502	2,514	2,233
10	Interline forwarded	3,141	3,265	2,751	2,931
11	Intermediate - Eastbound	4,633	3,908	3,028	3,272
12	Intermediate - Westbound	2,691	3,324	5,845	5,313
	Total	12,096	11,999	14,138	13,749
	Percent to total M&StL:				
13	Freight Revenue	9.24	9.24	9.14	9.2[illegible]
14	Revenue cars handled	6.5	6.7	6.4	6.[illegible]

NOTE: The car data above was prepared on the basis of revenue cars interchanged with the T.P.& W. at Peoria, Illinois, and the revenue data is based upon an 80% sample of the cars interchanged.

2074

[fol. 2075]

EXHIBIT H-32

2075

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

SUMMARY OF TRAFFIC MOVING BETWEEN NEMO, ILLINOIS AND PEORIA, ILLINOIS, INTERCHANGED BY M. & ST. L. AND A.T. & S.F. AT NEMO, ILLINOIS

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

[fol. 2076]

SCHEDULE 1

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

TRAFFIC HANDLED BY M&ST.L AND ATCHISON, TOPEKA & SANTA FE

RAILWAY COMPANY BETWEEN NEMO, ILLINOIS AND PEORIA, ILLINOIS

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

		Interline (Note 1)			Bridge (Note 2)	
M.& ST.L. GROSS REVENUE:	Total	Received (Schedule 2)	Forwarded (Schedule 3)	Total	Eastbound (Schedule 4)	Westbound (Schedule 5)
Amount -						
Seven months ended July 31, 1955	$ [illegible]	$ [illegible]	$15,503	$ 331,187	$115,713	$215,474
1954	691,549	4,333	22,213	664,397	201,830	462,567
1953	932,043	5,194	26,666	897,183	278,454	618,729
1952	1,116,271	8,051	44,793	1,063,427	369,336	694,091
Percent to total M.& St.L. freight revenue -						
Seven months ended July 31, 1955	[illegible]%	[illegible]%	.14%	3.00%	1.05%	1.95%
1954	.81	.02	.11	3.38	1.03	2.35
1953	4.42	.04	.12	4.26	1.32	2.94
1952	5.08	.04	.20	4.84	1.68	3.16
REVENUE CARLOADS HANDLED:						
Number -						
Seven months ended July 31, 1955	[illegible]	59	174	5,280	1,839	3,441
1954	10,250	117	242	9,891	3,311	6,580
1953	13,196	186	324	12,686	4,482	8,204
1952	15,436	159	546	14,731	5,627	9,104
Percent to total revenue carloads handled -						
Seven months ended July 31, 1955	[illegible]%	.05%	.14%	4.39%	1.52%	2.87%
1954	4.84	.06	.11	4.67	1.56	3.11
1953	5.93	.08	.15	5.70	2.01	3.69
1952	6.79	.07	.24	6.48	2.48	4.00
WEIGHT (00 OMITTED):						
Seven months ended July 31, 1955	2,991,146	29,014	70,055	2,892,077	1,225,442	1,666,635
1954	5,671,973	49,654	103,844	5,518,475	2,083,346	3,435,129
1953	7,369,080	85,382	146,587	7,137,116	2,778,810	4,358,306
1952	8,950,867	93,639	258,521	8,598,707	3,779,257	4,819,450

NOTES:

(1) Interline received traffic over this route is received by the M.& St.L. from the Santa Fe at Nemo and is delivered to consignees at Peoria. Interline forwarded traffic originates at Peoria and is delivered to the Santa Fe at Nemo.

(2) Eastbound bridge traffic is received by the M.& St.L. from the Santa Fe at Nemo and is delivered to connecting railroads at Peoria. Westbound bridge traffic is received by the M.& St.L. from connecting railroads at Peoria and is delivered to the Santa Fe at Nemo.

2076

[fol. 2077]

SCHEDULE 2

THE MINNEAPOLIS & ST.LOUIS RAILWAY COMPANY

INTERLINE RECEIVED CARLOAD TRAFFIC
FROM MEMO TO PEORIA

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L. Gross Revenue: Seven Months Ended July 31, 1955	1954	1953	1952	Number of Revenue Carloads Handled: Seven Months Ended July 31, 1955	1954	1953	1952	Weight (00 omitted): Seven Months Ended July 31, 1955	1954	1953	1952
15	Flour, wheat	$ 599	$1,413	$1,429	$1,444	13	32	33	25	7,977	16,389	17,899	17,413
507	Petroleum products refined, N.O.S.	954	2,214	1,455	384	21	48	29	8	10,205	22,911	13,891	3,752
787	Containers-returned empty	320	393	1,558	1,734	13	20	68	68	1,063	5,269	21,841	24,226
627	Tires and tubes, rubber	358	345	69	65	5	6	1	-	1,570	1,332	200	-
617	Vehicles, motor, N.O.S.	226	-	-	-	1	-	-	1	740	-	-	200
789	Scrap iron and scrap steel	178	-	1,973	2,519	2	-	25	29	1,745	-	20,128	25,620
19	Flour, edible, N.O.S.	54	-	56	58	1	-	1	1	630	-	655	705
23	Mill products, N.O.S.	50	-	-	-	1	-	-	-	576	-	-	-
403	Posts, poles and piling, wooden	55	-	-	-	1	-	-	-	550	-	-	-
543	Tar, pitch and creosote	88	-	-	-	1	-	-	-	958	-	-	-
697	Glass bottles, jars and packing glasses N.O.S.	-	20	-	84	-	1	-	3	-	264	-	1,208
203	Cattle and calves, single-deck	-	166	264	-	-	5	8	-	-	1,095	1,669	-
591	Agricultural implements, N.O.S.	-	97	253	61	-	1	2	1	-	510	1,116	200
593	Agricultural implement parts, N.O.S.	-	90	-	-	-	1	-	-	-	461	-	-
411	Lumber, shingles and lath	-	44	-	-	-	1	-	-	-	614	-	-
107	Seeds, N.O.S.	-	142	-	-	-	1	-	-	-	600	-	-
749	Liquors, malt	-	15	-	23	-	1	-	1	-	209	-	296
3	Corn	-	-	69	602	-	-	1	9	-	-	1,137	9,496
773	Feed, animal and poultry, N.O.S.	-	-	106	-	-	-	2	-	-	-	1,211	-
527	Chemicals, N.O.S.	-	-	60	-	-	-	1	-	-	-	539	-
709	Laundry equipment	-	-	96	-	-	-	1	-	-	-	220	-
661	Wrapping paper	-	-	487	-	-	-	10	-	-	-	3,976	-
781	Containers, wooden	-	-	50	-	-	-	1	-	-	-	202	-
505	Lubricating oils and greases	-	-	33	-	-	-	1	-	-	--	276	-
685	Electrical equipment and parts, N.O.S.	-	-	236	-	-	-	2	-	-	-	422	-
5	Sorghum grains	-	-	-	532	-	-	-	6	-	-	-	6,670
539	Fertilizers, N.O.S.	-	-	-	76	-	-	-	1	-	-	-	800
711	Stoves, ranges and parts	-	-	-	56	-	-	-	1	-	-	-	200
745	Liquors, alcoholic, N.O.S.	-	-	-	203	-	-	-	2	-	-	-	1,377
23	Mill products, N.O.S.	-	-	-	52	-	-	-	1	-	-	-	603
65	Potatoes, other than sweet	-	-	1	33	-	-	-	1	-	-	-	360
623	Vehicle parts, N.O.S.	-	-	-	125	-	-	-	1	-	-	-	513
	Total-	$2,882	$4,939	$6,194	$8,051	89	117	186	159	39,014	49,854	85,382	93,639

2077

[fol. 2078]

SCHEDULE 3

THE MINNEAPOLIS & ST.LOUIS RAILWAY COMPANY

INTERLINE FORWARDED CARLOAD TRAFFIC
FROM PEORIA TO NEMO

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
581	Iron and steel nails and wire N.O.S.	$ 1,164	$ 1,276	$ 4,162	$ 8,177	15	16	50	93	7,789	8,295	24,484	49,091
583	Manufactured iron and steel	-	-	170	1,034	-	-	2	20	-	-	1,212	9,737
591	Agricultural implements, N.O.S.	417	93	-	114	3	1	-	1	1,447	476	-	426
593	Agricultural implement parts N.O.S.	362	288	77	61	3	3	1	1	1,282	1,091	340	340
595	Machinery and machines N.O.S.	1,862	3,818	1,455	5,830	20	36	18	55	8,160	15,869	6,124	21,206
597	Machinery parts	-	52	337	316	-	1	4	4	-	450	1,520	1,695
613	Automobiles, passenger	-	-	-	129	-	-	-	1	-	-	-	573
617	Vehicles, motor N.O.S.	6,942	8,950	6,265	5,133	60	81	60	49	27,189	38,532	29,313	20,127
623	Vehicle parts N.O.S.	-	311	304	256	-	3	3	2	-	1,599	2,254	1,913
663	Paper bags	88	-	-	231	1	-	-	2	503	-	-	1,013
691	Hardware, N.O.S.	-	-	-	924	-	-	-	17	-	-	-	8,867
709	Laundry equipment	1,659	2,107	3,004	2,953	32	41	60	62	6,620	8,873	12,751	13,393
719	Tools and parts, N.O.S.	-	-	-	233	-	-	-	3	-	-	-	1,881
745	Liquors, alcoholic, N.O.S.	671	2,691	5,082	5,338	5	22	40	49	2,568	12,164	23,286	23,908
749	Liquors, malt	1,712	1,946	5,474	13,199	22	26	80	175	11,288	13,027	43,131	98,787
763	Food products N.O.S in cans and packages, not frozen	-	-	-	69	-	-	-	1	-	-	-	594
773	Feed, animal and poultry, N.O.S.	-	-	-	76	-	-	-	2	-	-	-	613
781	Containers, wooden	132	309	-	41	2	5	-	1	548	1,282	-	217
787	Containers, returned empty	-	82	48	62	-	1	1	1	-	340	200	278
547	Paint, paint material, putty and varnish	-	-	-	72	-	-	-	1	-	-	-	222
535	Alcohol, N.O.S.	-	-	160	363	-	-	2	4	-	-	1,088	2,567
411	Lumber, shingles and lath	-	-	-	83	-	-	-	1	-	-	-	402
505	Lubricating oils and greases	-	-	-	99	-	-	-	1	-	-	-	671
213	Swine, double-deck	179	143	71	-	5	4	2	-	1,314	1,047	519	-
209	Sheep and goats, double-deck	-	34	-	-	-	1	-	-	-	221	-	-
627	Tires and tubes, rubber	-	113	-	-	-	1	-	-	-	578	-	-
799	Manufactures and miscellaneous, N.O.S.	-	-	57	-	-	-	1	-	-	-	360	-
707	Refrigerators, freezing apparatus, and parts	315	-	-	-	6	-	-	-	1,347	-	-	-
	Total	$15,503	$22,213	$26,666	$44,793	174	242	324	546	70,055	103,844	146,582	258,521

2078

[fol. 2079]

SCHEDULE 4

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

EASTBOUND BRIDGE TRAFFIC BETWEEN NEMO AND PEORIA

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
11	Rice	$ 963	$ 2,107	$ 1,564	$ 3,274	13	34	20	47	7,105	31,009	12,076	25,543
15	Flour, wheat	11,242	24,090	32,861	53,460	202	473	580	980	152,811	325,283	457,494	771,227
19	Flour, edible, N.O.S.	995	1,554	697	1,417	18	29	14	27	12,051	18,855	8,628	20,71
33	Cotton in bales	803	812	7,344	5,407	13	13	104	85	6,405	6,623	54,538	43,426
61	Oranges and grapefruit	1,173	3,015	15,301	9 887	39	103	502	329	16,216	41,505	196,752	129,105
71	Fruits, dried, dehydrated, and evaporated, N.O.S.	1,247	1,810	596	518	19	24	8	6	14,271	17,959	6,622	4,441
199	Products of agriculture, N.O.S.	350	1,346	3,067	2,448	8	19	23	30	2,443	10,978	17,773	20,987
235	Wool and mohair in grease	940	4,171	5,533	5,177	11	48	70	70	4,302	17,961	24,835	25,789
323	Clay and bentonite	745	485	551	476	15	10	14	15	11,860	9,787	10,863	9,277
339	Asphalt	3,015	4,341	2,675	3,485	50	68	32	44	40,555	55,218	27,294	35,313
399	Products of Mines, N.O.S.	8,995	12,042	11,416	22,568	150	168	184	346	138,778	150,478	170,387	323,863
411	Lumber, shingles and lath	5,399	7,243	6,293	6,375	149	196	188	194	90,218	117,784	114,415	112,625
503	Fuel, road and petroleum residual oils, N.O.S.	2,688	2,685	366	5,211	42	60	6	78	29,890	44,126	3,199	51,919
507	Petroleum products, refined, N.O.S.	9,132	23,223	25,460	32,191	176	446	444	583	87,046	213,543	209,502	276,724
511	Cottonseed oil	2,389	8,561	7,652	1,773	30	98	95	19	18,730	62,226	59,312	13,368
523	Rubber, crude natural, and synthetic	3,603	1,023	3,813	2,511	33	10	49	29	26,274	7,964	40,335	23,125
527	Chemicals, N.O.S.	6,133	15,902	31,468	35,144	79	224	384	414	56,488	160,935	281,108	301,738
531	Acids, N.O.S.	1,191	2,662	2,914	2,161	23	25	39	31	17,776	20,200	30,413	28,648
533	Sodium (soda) products	174	749	411	1,295	3	12	7	18	2,729	10,268	6,371	17,132
535	Alcohol, N.O.S.	1,467	4,166	-	113	21	48	-	1	11,893	27,086	-	662
537	Blacks, N.O.S.	24,319	31,651	49,243	63,137	218	298	402	551	150,325	198,356	267,278	372,881
547	Paint, paint material, putty and varnish	274	2,079	1,266	630	4	27	19	8	2,950	20,958	13,810	5,608
563	Lead and zinc: Bar, ingot and pig	794	2,645	2,582	1,796	12	33	30	23	9,432	28,426	25,515	18,408
583	Manufactured iron and steel	930	682	2,375	2,857	12	10	26	30	8,002	5,475	22,905	21,230
595	Machinery and machines, N.O.S.	310	723	201	2,326	7	17	3	22	1,856	4,929	1,216	13,597
617	Vehicles, motor, N.O.S.	53	161	53	823	1	2	1	7	353	637	240	4,262
625	Airplanes, aircraft and parts	358	604	639	1,052	6	11	11	16	1,348	1,618	2,182	4,014
647	Plaster. Stucco and wall	1,547	3,482	5,788	6,577	25	101	148	151	19,372	50,649	86,602	92,626
669	Paperboard, fiberboard and pulpboard	5,699	6,624	12,229	7,903	102	122	234	153	51,889	63,389	121,130	80,207
721	Abrasives, other than crude	426	954	58	-	7	15	1	-	7,785	13,603	1,040	-
747	Wine	3,383	3,396	2,086	2,873	65	72	45	59	38,886	41,490	26,775	32,826
763	Food products, N.O.S., in cans and packages, not frozen	3,542	4,294	2,858	5,163	50	82	53	71	29,936	58,375	36,592	52,243
773	Feed, animal and poultry, N.O.S.	426	2,289	1,635	1,642	10	54	39	36	5,683	33,332	23,285	21,950
779	Containers, metal	94	481	322	416	2	13	5	4	658	3,188	2,200	2,188
785	Containers, N.O.S.	642	389	170	-	21	13	5	-	7,444	4,024	1,592	-
789	Scrap iron and scrap steel	4,151	3,561	2,382	5,898	87	67	29	99	78,537	67,295	31,704	86,154
799	Manufactures and miscellaneous, N.O.S.	594	1,147	1,526	5,025	12	21	40	73	4,688	8,690	14,641	29,326
	Total carried forward	$110,086	$187,149	$245,395	$303,009	1,735	3,066	3,854	4,649	1,166,985	1,954,222	2,412,624	3,073,139

2079

(Continued -1)

[fol. 2080]

SCHEDULE 4

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

EASTBOUND BRIDGE TRAFFIC BETWEEN NEMO AND PEORIA

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St. L Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
	Total brought forward	$110,086	$187,149	$245,395	$303,009	1,735	3,066	3,854	4,649	1,166,985	1,954,222	2,412,624	3,073,139
401	Logs, butts and bolts	218	-	-	-	4	-	-	-	2,644	-	-	-
505	Lubricating oils and greases	527	1,877	961	843	13	44	26	23	6,260	21,006	11,792	10,587
663	Paper Bags	133	-	-	336	1	-	-	3	665	-	-	1,758
677	Building woodwork and millwork	32	235	30	266	1	3	1	5	537	1,889	538	2,991
35	Cotton linters, nolls and regin	1,663	1,164	726	1,933	27	21	14	36	16,574	10,300	7,053	16,962
229	Butter	131	54	-	-	1	1	-	-	363	300	-	-
239	Hides, skins and pelts, N.O.S.	204	673	1,007	642	3	10	15	11	2,599	8,442	11,970	8,292
539	Fertilizers, N.O.S.	71	71	41	67	1	3	-	1	816	1,200	407	681
557	Aluminum, N.O.S.	102	-	-	949	1	-	-	14	686	-	-	7,199
639	Brick, N.O.S. and building tile	210	50	-	-	6	1	-	-	4,378	724	-	-
85	Potatoes, other than sweet	209	28	-	28	5	1	-	2	1,800	364	-	728
89	Vegetables, fresh, N.O.S., not frozen	43	126	89	93	2	4	2	3	426	1,385	1,155	1,204
203	Cattle and calves, single-deck	106	60	188	114	4	3	6	4	707	641	1,409	887
345	Sulphur	188	323	1,422	18,496	3	5	22	298	2,749	4,448	23,407	380,474
635	Cement, N.O.S.	24	-	-	-	1	-	-	-	400	-	-	-
665	Paper and paper articles, N.O.S.	116	-	-	274	1	-	-	2	599	-	-	1,313
671	Wallboard	95	95	2,293	85	1	2	35	2	663	931	20,429	1,161
707	Refrigerators, freezing apparatus and parts	51	-	-	1,516	1	-	-	22	223	-	-	5,337
45	Soybean oil cake and meal	72	43	-	43	1	1	-	1	1,008	605	-	606
91	Beans and peas, dried	96	239	1,395	1,014	2	5	22	14	1,405	3,221	13,928	9,661
499	Products of forests, N.O.S.	37	-	-	-	1	-	-	-	610	-	-	-
509	Gases, other than petroleum, N.O.S.	49	2,007	2,641	5,260	1	15	27	50	478	6,258	12,701	22,826
529	Sulphric acid	39	-	-	-	1	-	-	-	1,001	-	-	-
667	Printed matters, N.O.S.	24	-	-	-	1	-	-	-	400	-	-	-
673	Building paper and prepared roofing material	174	-	-	-	2	-	-	-	1,717	-	-	-
687	Furnaces, heaters, radiators and parts	43	-	189	544	1	-	4	9	347	-	1,033	2,669
517	Vegetable and nut oil, N.O.S.	38	-	-	220	1	-	-	6	604	-	-	3,658
595	Cast iron pipe and fittings	27	-	26	609	1	-	1	4	195	-	402	4,058
631	Ammunition and explosives	63	-	-	7,829	1	-	-	39	309	-	-	31,343
633	Cement: Natural and Portland	24	-	146	32	1	-	3	1	400	-	2,100	680
23	Mill products, N.O.S.	51	280	1,413	1,073	1	3	29	19	716	2,012	20,230	14,306
501	Gasoline	131	218	570	445	2	4	9	8	1,334	2,116	4,418	3,682
597	Machinery parts	336	82	2,094	685	5	1	24	4	2,528	774	9,891	3,432
611	Vehicles, other than motor	80	-	-	980	1	-	-	4	120	-	-	1,152
661	Wrapping paper	149	-	-	444	2	-	-	9	1,371	-	-	3,723
685	Electrical equipment and parts, N.O.S.	54	1,125	116	557	1	13	3	7	450	5,501	1,291	2,877
715	Furniture, N.O.S.	71	601	325	1,083	2	8	6	14	375	1,720	1,449	5,874
	Total carried forward	$115,713	$196,500	$261,067	$349,469	1,839	3,214	4,104	5,264	1,225,442	2,028,059	2,558,217	3,623,230

2080

(Continued -2)

[fol. 2081]

SCHEDULE 4

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

EASTBOUND BRIDGE TRAFFIC BETWEEN NEMO AND PEORIA

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L. Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
	Total brought forward	$115,713	$196,500	$261,087	$349,469	1,839	3,214	4,104	5,264	1,225,442	2,028,059	2,558,217	3,623,230
59	Lemons, limes and citrus fruits, N.O.S.	-	339	4,638	3,366	-	12	162	112	-	4,884	60,848	43,659
329	Stone and rock: Broken, ground and crushed	-	879	1,985	454	-	16	38	9	-	18,129	43,200	10,221
727	Cotton cloth and cotton fabrics, N.O.S.	-	-	40	-	-	-	1	-	-	-	400	-
787	Containers, returned empty	-	189	415	608	-	9	29	39	-	2,328	7,607	8,965
589	Tanks, N.O.S.	-	62	51	165	-	1	2	1	-	350	300	1,032
815	Automobiles, freight	-	-	330	1,748	-	-	6	22	-	-	1,308	5,294
705	Household utensils, N.O.S.	-	-	172	-	-	-	2	-	-	-	987	-
21	Cereal food preparations, N.O.S.	-	-	144	123	-	-	3	3	-	-	2,016	2,419
551	Cellulose articles, N.O.S.	-	-	124	149	-	-	4	1	-	-	625	657
587	Iron and steel pipe and fittings, N.O.S.	-	72	1,032	876	-	1	8	11	-	899	4,398	6,650
735	Rope cordage, and binder twine, N.O.S.	-	-	227	-	-	-	2	-	-	-	1,728	-
769	Soap and cleaning and washing compounds	-	53	191	474	-	1	4	8	-	575	2,699	5,042
627	Tires and tubes, rubber	-	205	1,093	1,571	-	3	16	19	-	1,241	6,754	7,797
1	Wheat	-	112	3,882	154	-	2	47	2	-	1,564	55,006	2,201
575	Iron and steel: Billet bloom and ingot	-	-	226	-	-	-	4	-	-	-	4,533	-
325	Sand, industrial	-	-	194	-	-	-	2	-	-	-	2,226	-
413	Box, crate and cooperage materials	-	-	37	-	-	-	1	-	-	-	564	-
209	Sheep and goats, double deck	-	129	224	216	-	5	11	10	-	935	2,006	3,383
521	Oil foots sediment and tank bottoms	-	-	1,416	-	-	-	18	-	-	-	13,019	-
605	Railway equipment, S.U., not moved on own wheels	-	-	35	-	-	-	1	-	-	-	563	-
13	Grain, N.O.S.	-	-	36	80	-	-	1	2	-	-	497	816
57	Grapes, fresh	-	-	27	29	-	-	1	1	-	-	282	383
69	Fruits, fresh, N.O.S., not frozen	-	-	70	-	-	-	1	-	-	-	800	-
681	Buildings and houses, fabricated and portable, N.O.S.	-	-	148	1,217	-	-	1	10	-	-	507	7,937
703	Woodenware	-	27	28	-	-	1	1	-	-	230	340	-
541	Insecticides and fungicides, N.O.S.	-	-	49	1,570	-	-	1	1	-	-	944	651
95	Vegetables, fresh, frozen	-	407	40	81	-	8	1	2	-	4,501	133	1,075
641	Refractories	-	-	24	-	-	-	1	-	-	-	400	-
659	Printing paper, N.O.S.	-	-	95	100	-	-	1	2	-	-	920	1,127
709	Laundry equipment	-	-	61	-	-	-	1	-	-	-	400	-
745	Liquors, alcoholic, N.O.S.	-	-	46	-	-	-	1	-	-	-	807	-
781	Containers, wooden	-	-	48	-	-	-	1	-	-	-	540	-
215	Meats, fresh, N.O.S.	-	-	43	-	-	-	1	-	-	-	263	-
319	Ores and concentrates, N.O.S.	-	-	109	-	-	-	2	-	-	-	2,210	-
327	Gravel and sand, N.O.S.	-	-	55	-	-	-	1	-	-	-	808	-
591	Agricultural implements, N.O.S.	-	-	53	24	-	-	1	1	-	-	255	240
65	Pears, fresh, not frozen	-	35	-	57	-	1	-	2	-	384	-	744
	Total carried forward	$115,713	$199,009	$278,454	$362,531	1,839	3,274	4,492	5,522	1,225,442	2,064,079	2,778,810	3,734,123

2081.

(Continued -3)

[fol. 2082]

SCHEDULE 4

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

EASTBOUND BRIDGE TRAFFIC BETWEEN NEMO AND PEORIA

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
	Total brought forward	$115,713	$199,009	$278,454	$362,531	1,839	3,274	4,482	5,522	1,225,442	2,064,079	2,778,810	3,734,1
657	Newsprint paper	-	40	-	-	-	1	-	-	-	500	-	-
726	Bags: Burlap, cotton, gunny and jute, N.O.S.	-	41	-	-	-	1	-	-	-	321	-	-
[illegible]	Cabbage	-	65	-	-	-	1	-	-	-	483	-	-
107	[illegible]s, N.O.S.	-	474	-	-	-	4	-	-	-	2,374	-	-
623	Vehicle parts, N.O.S.	-	158	-	1,694	-	1	-	22	-	400	-	12,446
741	Athletic, gymnasium, playground and sporting equipment, N.O.S.	-	80	-	180	-	1	-	3	-	415	-	1,783
75	Coffee	-	181	-	-	-	1	-	-	-	1,008	-	-
403	Posts, poles and piling, wooden	-	29	-	-	-	1	-	-	-	415	-	-
571	Metals and alloys, N.O.S.	-	820	-	-	-	10	-	-	-	5,968	-	-
637	Brick, common	-	111	-	-	-	1	-	-	-	659	-	-
567	Magnesium metal and alloy	-	43	-	-	-	2	-	-	-	536	-	-
39	Cottonseed oil cake and meal	-	107	-	-	-	1	-	-	-	1,043	-	-
205	Calves, double deck	-	31	-	-	-	1	-	-	-	176	-	-
299	Animals and products, N.O.S.	-	70	-	82	-	1	-	1	-	816	-	595
765	Food products, N.O.S. frozen	-	52	-	280	-	1	-	6	-	685	-	3,54
795	Waste materials for remelting, N.O.S.	-	439	-	-	-	7	-	-	-	6,667	-	-
755	Syrup and molasses, refined	-	38	-	-	-	1	-	-	-	401	-	-
783	Containers, fiberboard and paperboard, K.D.	-	42	-	-	-	1	-	-	-	400	-	-
[illegible]	Meal, corn	-	-	-	77	-	-	-	2	-	-	-	1,209
675	Insulating material, N.O.S.	-	-	-	608	-	-	-	12	-	-	-	2,88
629	Guns, small arms and parts, N.O.S.	-	-	-	1,061	-	-	-	8	-	-	-	3,92
81	Lettuce	-	-	-	109	-	-	-	5	-	-	-	1,24
695	Glassware, N.O.S	-	-	-	31	-	-	-	1	-	-	-	40
49	Apples, fresh, not frozen	-	-	-	60	-	-	-	2	-	-	-	76
245	Fish and sea animal oil	-	-	-	187	-	-	-	3	-	-	-	1,57
767	Starch	-	-	-	19	-	-	-	1	-	-	-	40
33	Onions, dry	-	-	-	222	-	-	-	7	-	-	-	1,88
217	Meats, cooked, cured, dried and smoked	-	-	-	103	-	-	-	2	-	-	-	1,15
619	Military vehicles, N.O.S.	-	-	-	1,096	-	-	-	12	-	-	-	4,80
729	Cotton factory products	-	-	-	76	-	-	-	1	-	-	-	37
51	Bananas, fresh	-	-	-	29	-	-	-	1	-	-	-	39
55	Cantaloupes and melons, N.O.S.	-	-	-	101	-	-	-	3	-	-	-	73
797	Waste materials, N.O.S.	-	-	-	57	-	-	-	2	-	-	-	40
581	Iron and steel nails and wire (woven and not woven) N.O.S.	-	-	-	124	-	-	-	2	-	-	-	1,03
525	Rubber goods, N.O.S.	-	-	-	63	-	-	-	2	-	-	-	28
545	Tanning material, N.O.S.	-	-	-	186	-	-	-	1	-	-	-	90
950	Forwarder traffic (C.L.)	-	-	-	50	-	-	-	1	-	-	-	50
37	Cottonseed	-	-	-	117	-	-	-	1	-	-	-	66
225	Poultry, dressed and frozen	-	-	-	53	-	-	-	1	-	-	-	33
417	Rosin and turpentine	-	-	-	57	-	-	-	1	-	-	-	50
719	Tools and parts, N.O.S.	-	-	-	83	-	-	-	1	-	-	-	40
	Total	$115,713	$201,830	$278,454	$369,336	1,839	3,311	4,482	5,627	1,225,442	2,087,346	2,778,810	3,779,25

2082 (Concluded -4)

[fol. 2083]

SCHEDULE 5

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

WESTBOUND BRIDGE TRAFFIC BETWEEN PEORIA AND NEMO

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
15	Flour, wheat	$ 50	$ 30	$ 68	$ -	1	1	2	-	533	648	1,074	-
21	Cereal, food preparations, N.O.S.	36	41	753	689	1	1	21	19	240	315	6,899	5,970
23	Mill products, N.O.S.	-	37	108	-	-	1	2	-	-	404	917	-
199	Products of agriculture, N.O.S.	1,255	1,673	1,769	1,274	15	19	18	14	8,211	9,499	9,902	8,050
399	Products of mine, N.O.S.	1,558	3,143	3,181	2,321	53	105	109	83	47,784	88,546	90,343	71,362
505	Lubricating oils and greases	1,677	4,076	6,312	8,946	29	73	112	149	11,686	27,165	43,327	64,942
507	Petroleum products, refined, N.O.S.	45	743	311	1,104	1	10	6	18	356	5,028	2,009	8,760
517	Vegetable and nut oils, N.O.S.	1,071	2,168	2,043	6,976	22	45	45	101	14,477	29,343	28,215	59,455
523	Rubber, crude, natural and synthetic	919	11,471	11,852	7,589	16	106	118	66	7,210	83,981	94,182	55,403
527	Chemicals, N.O.S.	2,388	2,094	2,837	5,034	32	36	46	83	18,121	18,071	24,164	40,013
539	Fertilizers, N.O.S.	385	187	142	121	7	4	4	3	6,129	3,202	2,952	2,529
541	Insecticides and fungicides, N.O.S.	710	959	873	506	8	11	8	4	4,667	6,089	5,515	3,280
547	Paint, paint material, putty and varnish	3,751	3,844	4,134	3,206	54	55	57	50	38,231	37,393	35,797	33,858
553	Drugs, medicines and toilet preparations	348	2,750	2,418	3,912	5	44	29	53	2,414	17,676	13,523	23,511
561	Copper, brass and bronze, N.O.S.	3,884	6,010	7,176	7,102	59	94	108	117	33,490	59,274	64,661	65,746
571	Metals and alloys, N.O.S.	-	40	547	983	-	1	5	7	-	168	2,406	4,063
575	Iron and steel: Billet, bloom and ingot	-	-	186	65	-	-	2	1	-	-	1,496	500
581	Iron and steel nails and wire (woven and not woven) N.O.S.	-	-	-	-	-	-	-	-	-	-	-	-
583	Manufactured iron and steel	4,288	6,500	7,860	12,350	96	126	121	185	66,469	65,860	63,183	103,462
587	Iron and steel pipe fittings, N.O.S.	27,962	53,042	74,776	65,943	385	734	949	872	246,153	504,043	624,505	541,937
591	Agricultural implements, N.O.S.	55,464	184,322	264,813	283,346	604	1,995	2,670	2,873	396,764	1,305,003	1,840,708	1,996,612
595	Machinery and machines, N.O.S.	968	2,096	2,261	3,211	18	39	31	57	5,986	12,395	16,475	21,750
597	Machinery parts	8,441	15,450	19,426	19,686	122	237	294	274	41,637	77,403	100,132	103,404
603	Railway equipment moved on own wheels	1,289	5,679	6,833	5,057	14	61	62	61	7,689	27,965	36,496	31,722
611	Vehicles, other than motor	-	-	280	-	-	-	3	-	-	-	1,377	-
613	Automobiles, passenger	432	1,267	3,212	5,344	7	26	61	90	2,452	6,853	17,259	24,698
615	Automobiles, freight	258	243	2,545	3,073	6	8	56	70	878	1,082	7,583	10,492
617	Vehicles, motor, N.O.S.	407	2,719	6,767	12,307	10	47	100	99	1,689	9,493	21,855	24,571
619	Military vehicles, N.O.S.	1,116	1,862	4,039	5,079	17	22	53	56	6,036	9,097	24,028	25,250
623	Venicle parts, N.O.S.	-	1,538	239	4,383	-	10	3	50	-	10,205	1,099	16,612
625	Airplanes, aircraft and parts	10,134	11,367	12,690	15,352	190	209	202	213	64,764	72,745	75,593	90,762
627	Tires and tubes, rubber	1,599	3,520	3,669	1,515	23	38	48	20	9,851	15,563	19,488	6,415
639	Brick, N.O.S. and building tile	7,744	13,916	12,291	9,991	150	235	215	221	44,059	81,050	78,304	67,672
645	Lime, N.O.S.	4,017	2,388	1,742	1,270	89	52	40	27	59,758	35,498	26,108	18,967
649	Sewer pipe and drain tile (not metal)	-	135	264	111	-	5	7	3	-	3,000	4,200	1,800
		1,072	972	860	723	32	22	23	19	10,240	8,113	12,148	7,344
	Total carried forward	$143,268	$346,342	$469,277	$498,569	2,066	4,472	5,630	5,958	1,157,974	2,632,170	3,397,923	3,540,910

2083

(Continued - 1)

[fol. 2084]

SCHEDULE 5

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

WESTBOUND BRIDGE TRAFFIC BETWEEN PEORIA AND NEMO

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
	Total brought forward	$143,268	$346,342	$469,277	$498,569	2,066	4,472	5,630	5,958	1,157,974	2,632,170	3,397,923	3,540,910
657	Newsprint paper	203	184	288	241	3	3	4	4	1,126	1,491	2,102	1,791
659	Printing paper, N.O.S.	1,445	3,049	3,435	5,650	24	53	56	87	11,545	24,379	25,478	44,100
661	Wrapping paper	-	104	252	397	-	2	5	8	-	939	2,302	3,570
663	Paper bags	211	522	766	1,869	3	8	12	30	1,310	3,449	5,040	12,676
665	Paper and paper articles, N.O.S.	621	1,144	1,386	1,712	9	16	24	36	5,294	6,834	11,771	14,792
669	Paperboard, fiberboard and pulpboard	249	197	241	1,552	2	4	4	32	1,675	2,234	2,138	20,395
673	Building paper and prepared roofing material	-	344	1 692	2,829	-	15	44	83	-	8,042	23,392	41,813
675	Insulating materials, N.O.S.	170	879	1,141	2,436	5	21	31	64	1,260	6,200	7,829	16,627
679	Building materials, N.O.S.	682	1,656	1,559	1,798	11	27	25	29	3,991	9,289	9,187	9,420
685	Electrical equipment and parts, N.O.S.	2,917	9,394	10,227	11,370	49	136	181	163	13,478	44,482	46,334	53,190
687	Furnaces, heaters, radiators and parts	1,447	1,304	1,454	1,406	24	25	26	24	11,761	7,529	7,207	7,637
689	Bathroom and lavatory fixtures and sinks	948	1,029	1,830	2,497	15	16	27	35	5,735	7,237	9,983	10,571
691	Hardware, N.O.S.	92	144	1,420	1,589	2	3	18	17	855	1,338	7,120	7,254
693	Glass	420	1,101	1,279	1,330	8	13	17	17	3,121	7,235	9,023	10,333
695	Glassware, N.O.S.	1,311	2,427	2,216	2,045	46	87	67	64	13,180	19,057	17,191	17,636
697	Glass bottles, jars and packing glasses, N.O.S.	332	1,516	2,130	2,313	9	29	43	40	3,134	11,736	15,785	16,339
705	Household utensils, N.O.S.	182	370	468	293	4	10	14	8	1,145	2,282	2,998	1,793
707	Refrigerators, freezing apparatus and parts	9,419	9,485	13,224	17,383	229	215	329	395	43,813	43,759	68,938	80,371
709	Laundry equipment	1,506	3,220	2,597	2,076	29	61	46	43	5,880	12,742	11,001	10,529
711	Stoves, ranges and parts	1,271	876	1,644	2,183	23	17	37	44	5,122	3,992	9,096	10,962
713	Floor covering	1,260	3,459	4,322	6,708	20	50	67	104	3,416	23,766	33,561	53,865
715	Furniture, N.O.S.	6,281	7,988	10,703	12,622	138	174	227	279	28,168	34,412	45,952	56,105
717	Furniture parts	798	1,588	2,457	2,550	14	27	32	42	5,794	11,277	13,243	17,934
719	Tools and parts, N.O.S.	205	615	676	552	3	9	11	9	1,096	3,052	3,966	3,298
735	Rope, cordage and binder twine, N.O.S.	774	1,108	1,219	955	18	23	26	20	6,804	10,161	11,874	9,038
749	Liquors, malt	-	636	1,000	1,034	-	25	31	55	-	13,887	16,911	28,745
763	Food products, N.O.S. in cans and packages, not frozen	5,178	7,783	10,070	16,704	82	132	165	256	42,610	68,575	87,841	141,052
769	Soap and cleaning and washing compounds	14,265	21,985	21,868	24,820	263	423	394	356	131,281	193,879	174,625	167,361
777	Cigarettes	54	197	510	140	1	4	10	3	450	1,832	4,678	1,341
779	Containers, metal	197	1,547	1,978	3,808	5	27	41	85	1,337	7,599	10,404	22,115
785	Containers, N.O.S.	1,569	469	713	1,589	24	9	12	24	8,086	2,516	3,680	7,029
799	Manufactures and miscellaneous, N.O.S.	5,058	12,062	16,865	19,804	92	191	243	254	36,480	70,394	96,065	106,484
91	Beans and peas, dried	93	-	468	-	9	-	5	-	6,173	-	4,024	-
299	Animals and products, N.O.S.	57	-	85	-	1	-	2	-	600	-	1,006	-
15	Veneer, plywood and built-up wood	-	29	34	-	-	1	1	-	-	127	530	-
	Total carried forward	$202,483	$444,953	$591,494	$652,824	3,232	6,328	7,907	8,668	1,569,694	3,297,893	4,200,198	4,547,076

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(Continued - 2)

[fol. 2085]

SCHEDULE 5

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

WESTBOUND BRIDGE TRAFFIC BETWEEN PEORIA AND MENO

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
	Total brought forward	$202,483	$444,953	$591,494	$652,824	3,232	6,328	7,907	8,668	1,569,694	3,297,893	4,200,198	4,547,076
525	Rubber goods, N.O.S.	460	581	1,118	393	10	9	20	5	2,996	3,599	7,336	2,616
531	Acids, N.O.S.	-	239	532	279	-	4	8	6	-	1,253	2,778	2,449
635	Cement, N.O.S.	32	365	314	484	1	7	7	9	444	6,067	4,810	4,813
701	Chinaware, crockery and earthenware	393	41	857	527	6	1	15	10	1,855	415	5,497	3,962
723	Bagging: Burlap, cotton, gunny and jute, N.O.S.	-	-	55	-	-	-	1	-	-	-	378	-
729	Cotton factory products	-	26	491	178	-	1	10	3	-	165	2,436	515
745	Liquors, alcoholic, N.O.S.	2,735	440	218	350	27	4	3	4	18,514	3,481	1,100	2,018
751	Beverages, N.O.S.	-	-	88	-	-	-	2	-	-	-	555	-
787	Containers, returned empty	54	82	125	-	2	2	3	-	411	426	1,024	-
339	Asphalt	-	-	146	25	-	-	2	1	-	-	754	808
515	Soybean oil	-	-	114	-	-	-	2	-	-	-	541	-
533	Sodium (soda) products	840	1,588	1,164	2,341	10	16	13	22	5,014	10,177	8,429	15,726
569	Alloys for steel manufacture	-	712	291	708	-	9	5	12	-	11,128	3,232	12,638
579	Iron and steel, N.O.S.	-	218	1,138	2,150	-	4	9	16	-	1,465	9,200	16,491
585	Cast iron pipe and fittings	220	390	388	438	3	6	4	5	1,790	2,542	2,523	3,961
593	Agricultural implement parts, N.O.S.	368	148	181	328	7	2	3	5	2,970	900	1,652	2,265
671	Wallboard	209	110	390	359	4	3	10	8	2,410	1,814	4,876	4,144
691	Buildings and houses, fabricated and portable, N.O.S.	239	1,137	279	1,088	6	21	5	12	2,092	6,086	1,483	3,357
703	Woodenware	68	153	316	214	2	4	6	5	938	1,462	2,838	2,087
759	Sugar	-	-	262	95	-	-	7	1	-	-	3,160	989
329	Stone and rock: Broken, ground and crushed	-	-	63	18	-	-	1	1	-	-	620	804
557	Aluminum, N.O.S.	2,427	362	500	1,044	30	5	7	21	8,316	1,575	2,206	7,413
667	Printed matter, N.O.S.	288	92	237	57	3	1	3	3	1,396	823	1,619	916
737	Boots, shoes and findings, N.O.S.	-	61	358	635	-	1	2	10	-	218	1,052	3,583
743	Games and toys	260	143	60	430	2	3	1	7	788	603	201	1,719
761	Candy and confectionery	-	35	64	453	-	1	1	5		400	440	2,915
795	Waste materials for remelting, N.O.S.	-	48	226	521	-	2	3	6	-	350	2,273	4,113
245	Fish and sea animal oil	57	80	312	184	1	2	7	6	605	935	3,179	2,454
543	Tar, pitch and creosote	-	-	275	94	-	-	4	2	-	-	2,266	1,034
589	Tanks, N.O.S.	30	324	479	173	1	4	9	3	162	1,838	2,954	829
821	Automobiles and autotrucks, K.D.	-	-	35	26	-	-	1	1	-	-	120	125
741	Athletic, gymnasium, playground and sporting equipment, N.O.S.	55	-	44	102	1	-	1	2	408	-	294	584
775	Manufactured tobacco, N.O.S.	-	-	307	-	-	-	6	-	-	-	2,499	-
89	Vegetables, fresh, N.O.S., not frozen	-	-	49	-	-	-	1	-	-	-	1,032	-
537	Blacks, N.O.S.	105	143	184	360	1	1	1	2	697	652	811	1,457
	Total carried forward	$211,323	$452,471	$603,173	$666,878	3,349	6,441	8,090	8,861	1,621,440	3,356,267	4,286,366	4,653,861

2085

(Continued -3)

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SCHEDULE 5

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

WESTBOUND BRIDGE TRAFFIC BETWEEN PEORIA AND NEMO

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
	Total brought forward	$211,323	$452,471	$603,173	$666,878	3,349	6,441	8,090	8,861	1,621,440	3,356,267	4,286,366	4,653,861
329	Guns, small arms and parts, N.O.S.	-	-	123	269	-	-	5	3	-	-	1,951	1,134
631	Ammunition and explosives	198	3,784	11,926	16,272	3	19	56	83	987	12,591	44,318	58,436
789	Scrap iron and scrap steel	-	157	59	70	-	2	1	1	-	1,385	758	280
411	Lumber, shingles and lath	197	-	98	144	2	-	2	2	1,080	-	840	1,294
721	Abrasives, other than crude	55	185	119	20	1	3	2	1	376	862	1,002	100
305	Bituminous coal	-	-	49	49	-	-	1	1	-	-	289	1,333
503	Fuel, road and petroleum residual oils, N.O.S.	60	238	44	378	1	4	1	6	598	2,383	450	2,405
565	Lead and zinc, N.O.S.	-	79	48	-	-	1	1	-	-	738	294	-
669	Rails and railway track material, iron and steel	-	-	53	-	-	-	1	-	-	-	200	-
731	Synthetic fiber and yarns (rayon or nylon)	-	199	672	-	-	3	14	-	-	1,972	6,313	-
797	Waste materials, N.O.S.	84	-	345	1,207	2	-	5	12	550	-	2,348	8,262
33	Cotton in bales	-	-	226	-	-	-	2	-	-	-	1,439	-
747	Wire	-	79	87	173	-	1	1	2	-	438	438	879
950	Forwarder traffic (C.L.)	449	90	86	183	13	4	2	4	2,832	805	728	1,448
521	Oil foots, sediment and tank bottoms	-	-	105	-	-	-	1	-	-	-	621	-
567	Magnesium metal and alloy	44	395	233	-	1	3	2	-	430	2,610	1,556	-
755	Syrup and molasses, refined	-	192	92	-	-	4	1	-	-	1,754	649	-
767	Starch	681	105	766	112	10	2	10	3	5,026	1,066	4,330	1,270
563	Lead and zinc: Bar, ingot and pig	-	71	72	-	-	1	1	-	-	430	455	-
215	Meats, fresh, N.O.S.	-	45	48	-	-	1	1	-	-	280	336	-
529	Sulphuric acid	-	483	185	-	-	6	2	-	-	2,541	1,020	-
573	Iron, pig	-	206	61	-	-	3	1	-	-	1,487	1,136	-
783	Containers, fiberboard and paperboard, K.D.	85	281	59	501	2	5	1	8	670	2,264	463	2,737
107	Seeds, N.O.S.	-	-	-	53	-	-	-	1	-	-	-	438
217	Meats, cooked, cured, dried and smoked	-	-	-	155	-	-	-	2	-	-	-	1,020
727	Cotton cloth and cotton fabrics, N.O.S.	-	-	-	205	-	-	-	4	-	-	-	1,211
11	Rice	-	-	-	48	-	-	-	1	-	-	-	362
97	Peanuts	-	-	-	72	-	-	-	2	-	-	-	1,008
607	Railway equipment parts	-	-	-	110	-	-	-	2	-	-	-	889
221	Margarine, N.O.S.	-	-	-	41	-	-	-	1	-	-	-	102
323	Clay and bentonite	32	71	-	178	1	1	-	3	600	532	-	2,669
335	Alcohol, N.O.S.	-	-	-	2,664	-	-	-	40	-	-	-	16,524
641	Refractories	442	145	-	53	10	3	-	1	8,304	2,421	-	1,011
655	Scrap paper and rags	-	-	-	141	-	-	-	4	-	-	-	1,584
773	Feed, animal and poultry, N.O.S.	503	936	-	63	16	27	-	1	7,337	12,913	-	403
	Total carried forward	$214,153	$460,212	$618,729	$690,039	3,411	6,534	8,204	9,049	1,650,230	3,405,739	4,358,306	4,760,651

2086

(Continued -4)

[fol. 2087]

SCHEDULE 5

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

WESTBOUND BRIDGE TRAFFIC BETWEEN PEORIA AND NEMO

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1955

I.C.C. Classification	Commodity Description	M.& St.L Gross Revenue				Number of Revenue Carloads Handled				Weight (00 omitted)			
		Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952	Seven Months Ended July 31, 1955	1954	1953	1952
	Total brought forward	$214,153	$460,212	$618,729	$690,039	3,411	6,534	8,204	9,049	1,650,230	3,405,739	4,358,306	4,760,651
19	Flour, edible, N.O.S.	-	-	-	27	-	-	-	1	-	-	-	490
327	Gravel and sand, N.O.S.	-	-	-	89	-	-	-	1	-	-	-	679
511	Cottonseed oil	-	-	-	141	-	-	-	2	-	-	-	822
577	Iron and steel: Bar, rod and slab	405	1,113	-	3,096	7	17	-	40	4,814	9,423	-	50,987
501	Gasoline	-	-	-	60	-	-	-	1	-	-	-	426
633	Cement: Natural and Portland	-	35	-	56	-	1	-	1	-	402	-	606
683	Asbestos articles, N.O.S.	27	-	-	32	1	-	-	2	908	-	-	1,000
325	Sand, industrial	-	-	-	58	-	-	-	1	-	-	-	500
519	Oils, N.O.S.	48	-	-	79	1	-	-	1	675	-	-	604
551	Cellulose articles, N.O.S.	-	-	-	55	-	-	-	1	-	-	-	400
549	Plastics	105	370	-	89	2	5	-	1	802	2,685	-	535
757	Molasses, residual	-	-	-	134	-	-	-	1	-	-	-	832
781	Containers, wooden	-	-	-	46	-	-	-	1	-	-	-	300
643	Plaster: Stucco and wall	-	-	-	90	-	-	-	1	-	-	-	618
3	C .n	59	-	-	-	1	-	-	-	607	-	-	-
307	[illegible]	138	239	-	-	8	13	-	-	5,003	8,655	-	-
677	Building woodwork and millwork	155	74	-	-	3	1	-	-	852	335	-	-
57	Grapes, fresh	192	-	-	-	2	-	-	-	697	-	-	-
93	Vegetable, dried, dehydrated and evaporated, N.O.S.	9	-	-	-	1	-	-	-	605	-	-	-
647	Plaster: Stucco and wall	58	-	-	-	1	-	-	-	400	-	-	-
555	Aluminum: Bar, ingot, pig and slab	50	-	-	-	1	-	-	-	542	-	-	-
763	Food products, N.O.S., frozen	47	87	-	-	1	1	-	-	300	564	-	-
35	Cotton, linters, noils and regins	28	-	-	-	1	-	-	-	300	-	-	-
13	Grain, N.O.S.	-	59	-	-	-	1	-	-	-	607	-	-
45	Soybean oil cake and meal	-	45	-	-	-	1	-	-	-	343	-	-
61	Oranges and grapefruit	-	84	-	-	-	1	-	-	-	525	-	-
69	Fruits, fresh, N.O.S., not frozen	-	28	-	-	-	1	-	-	-	317	-	-
201	Horses, mules, ponies and asses	-	43	-	-	-	1	-	-	-	258	-	-
213	Swine, double-deck	-	41	-	-	-	1	-	-	-	368	-	-
509	Gases, other than petroleum, N.O.S.	-	92	-	-	-	1	-	-	-	400	-	-
643	Artificial stone, N.O.S.	-	45	-	-	-	1	-	-	-	508	-	-
	Total	$215,474	$462,567	$618,729	$694,091	3,441	6,580	8,204	9,104	1,666,635	3,431,129	4,358,306	4,819,450

2087 (Concluded - 5)

[fol. 2089]

EXHIBIT H-33

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

REVENUE FREIGHT TRAFFIC STATISTICS

FOR THE THREE YEARS AND SEVEN MONTHS ENDED JULY 31, 1954

	Seven Months Ended July 31, 1955	1954	1953	[illegible]
Freight revenue	$11,027,853	$19,680,[illegible]5	$21,069,27[illegible]	$[illegible]
Tons of revenue freight carried	4,019,868	7,120,633	7,561,887	[illegible]
Ton miles of revenue freight carried(000 omitted)	850,741	1,407,851	1,444,887	[illegible]
Tons of revenue freight carried per mile of road	2,878	5,097	5,40[illegible]	[illegible]
Average distance carried(miles)	212	198	191	[illegible]
Revenue per -				
Ton	$ 2.74	$ 2.76	$ 2.79	$ [illegible]
Mile of road	$13,539*	$14,088	$15,08[illegible]	$[illegible]
Ton per mile (cents)	1.3	1.4	1.5	[illegible]

2089

* Annualized

[fol. 2090]

EXHIBIT H-34

PERCENTAGE DIVISIONS

APPLICABLE BETWEEN

REPRESENTATIVE POINTS ON THE PENNSYLVANIA RAILROAD

AND

REPRESENTATIVE POINTS ON THE SANTA FE SYSTEM

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GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Tulsa, Okla. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Grand Rapids, Mich.	1 (C)	29.9	—	—	70.1	—
2		2 (E-L)	26.4	—	37.3	51.8	62.7
3		3 (P-L)	37.7	—	42.95	51.8	57.05
4		4 (P-N)	37.7	—	—	50.3	—
5		5 (E-N)	26.4	—	32.05	50.3	55.95
6		6 (D)	40.5	70.0	—	30.0	—
7		7 (S)	50.0	70.0	—	30.0	—
8		8-A (F)	13.5	70.0	—	30.0	—
9	Detroit, Mich.	1 (C)	32.5	—	—	67.5	—
10		2 (E-L)	30.7	—	40.95	48.8	59.05
11		3 (P-L)	41.0	—	46.1	48.8	53.9
12		4 (P-N)	41.0	—	—	47.4	—
13		5 (E-N)	30.7	—	35.85	47.4	52.55
14		6 (D)	43.7	72.4	—	27.6	—
15		7 (S)	52.0	71.2	—	28.8	—
16	Cleveland, Ohio	1 (C)	33.8	—	—	66.2	—
17		2 (E-L)	33.3	—	42.65	48.0	57.35
18		3 (P-L)	41.6	—	46.8	48.0	53.2
19		4 (P-N)	41.6	—	—	46.6	—
20		5 (E-N)	33.3	—	37.45	46.6	50.75
21		6 (D)	43.4	73.0	—	27.0	—
22		7 (S)	54.0	72.4	—	27.6	—
23		8-A (F)	25.3	73.0	—	27.0	—
24	Pittsburgh, Pa.	1 (C)	39.6	—	—	60.4	—
25		2 (E-L)	35.2	—	44.7	45.8	55.3
26		3 (P-L)	44.0	—	49.1	45.8	50.9
27		4 (P-N)	44.0	—	—	44.4	—
28		5 (E-N)	35.2	—	39.6	44.4	48.8
29		6 (D)	45.8	74.8	—	25.2	—
30		7 (S)	57.0	74.2	—	25.8	—
31		8 (E)	30.7	74.8	—	25.2	—

GENERAL PERCENTS

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Tulsa, Okla. And	Column 2 Route (See Page 42)	Column 3 FRR	Column 4 FRR Plus Wabash	Column 5 FRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Philadelphia, Pa. (Eastbound)	1 (C)	51.2	--	--	48.8	--
2		2(E-L)	45.7	--	53.85	38.0	46.15
3		3(F-L)	53.1	--	57.55	38.0	42.45
4		4(F-N)	53.1	--	--	36.8	--
5		5(E-N)	45.7	--	49.4	36.8	40.5
6		7 (S)	65.0	79.0	--	21.0	--
7		8 (L)	44.2	79.6	--	20.4	--
8	Philadelphia, Pa. (Westbound)	1 (C)	52.6	--	--	47.4	--
9		2(E-L)	46.9	--	54.9	37.1	45.1
10		3(F-L)	54.5	--	58.7	37.1	41.3
11		4(F-N)	54.5	--	--	36.9	--
12		5(E-N)	46.9	--	50.7	36.9	39.7
13		7 (S)	65.0	79.0	--	21.0	--
14		8 (L)	44.2	79.6	--	20.4	--
15	New York, N.Y. (Eastbound)	1 (C)	52.0	--	--	48.0	--
16		2(E-L)	47.0	--	54.9	37.2	45.1
17		3(F-L)	54.0	--	58.4	37.2	41.6
18		4(F-N)	54.0	--	--	36.0	--
19		5(E-N)	47.0	--	50.5	36.0	39.5
20		7 (S)	66.0	79.6	--	20.4	--
21		8 (L)	46.2	79.6	--	20.4	--
22	New York, N.Y. (Westbound)	1 (C)	53.6	--	--	46.4	--
23		2(E-L)	48.4	--	56.1	36.2	43.9
24		3(F-L)	55.6	--	59.7	36.2	40.3
25		4(F-N)	55.6	--	--	35.0	--
26		5(E-N)	48.4	--	52.0	35.0	38.6
27		7 (S)	66.0	79.6	--	20.4	--
28		8 (L)	46.2	79.6	--	20.4	--

2092 Page 2

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Tulsa, Okla. And	Column 2 Route (See Page 42)	Column 3 FRR	Column 4 FRR Plus Wabash	Column 5 FRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Fort Wayne, Ind.	1 (C)	28.6	—	--	71.4	—
2		2(E-L)	24.2	—	35.45	53.3	64.55
3		3(P-L)	36.1	—	41.4	53.3	58.6
4		4(P-N)	36.1	—	—	51.8	--
5		5(E-N)	24.2	—	30.15	51.8	57.75
6		6 (D)	38.9	68.8	--	31.2	—
7		7 (S)	46.0	67.6	--	32.4	—
8	Logansport, Ind.	1 (C)	21.0	—	--	79.0	—
9		2(E-L)	12.6	--	27.95	56.7	72.05
10		3(P-L)	31.5	--	37.4	56.7	62.6
11		4(P-N)	31.5	—	—	55.0	—
12		5(E-N)	12.6	—	22.05	55.0	64.45
13		6 (D)	32.1	66.4	--	33.6	—
14		7 (S)	44.0	66.4	—	33.6	—
15		8 (L)	—	66.4	--	33.6	—
16	Columbus, Ohio	1 (C)	36.0	—	--	64.0	—
17		2(E-L)	28.0	—	39.25	49.5	60.75
18		3(P-L)	40.0	—	45.25	49.5	54.75
19		4(P-N)	40.0	—	—	48.0	—
20		5(E-N)	28.0	—	34.0	48.0	54.0
21		6 (D)	41.1	71.2	--	28.8	--
22		7 (S)	50.0	70.0	--	30.0	—
23		8 (L)	22.4	71.2	—	28.8	—
24	Cincinnati, Ohio	1 (C)	36.0	—	--	64.0	—
25		2(E-L)	26.4	—	38.05	50.3	61.95
26		3(P-L)	39.4	—	44.55	50.3	55.45
27		4(P-N)	39.4	--	--	48.8	--
28		5(E-N)	26.4	—	32.9	48.8	55.3
29		6 (D)	38.9	68.8	--	31.2	--
30		7 (S)	46.0	67.6	--	32.4	—
31		8 (L)	18.2	68.8	--	31.2	--

2093

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

[1

31		8 (L)	18.2	68.8	—	31.2	—

2093 Page 3

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Oklahoma City, Okla, And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Grand Rapids, Mich.	1 (C)	28.0	—	—	72.0	—
2		2 (E-L)	24.7	—	35.15	54.4	64.85
3		3 (P-L)	35.3	—	40.45	54.4	59.55
4		4 (P-N)	35.3	—	—	52.9	—
5		5 (E-N)	24.7	—	30.0	52.9	58.2
6		6 (D)	37.3	66.5	—	33.5	—
7		7 (S)	46.0	66.5	—	33.5	—
8		8-A (F)	12.4	66.5	—	33.5	—
9	Detroit, Mich.	1 (C)	30.5	—	—	69.5	—
10		2 (E-L)	28.9	—	38.7	51.5	61.3
11		3 (P-L)	38.5	—	43.5	51.5	56.5
12		4 (P-N)	38.5	—	—	50.1	—
13		5 (E-N)	28.9	—	33.7	50.1	54.9
14		6 (D)	40.5	69.0	—	31.0	—
15		7 (S)	48.0	67.8	—	32.2	—
16	Cleveland, Ohio	1 (C)	31.2	—	—	68.8	—
17		2 (E-L)	30.7	—	39.7	51.3	60.3
18		3 (P-L)	38.4	—	43.55	51.3	56.45
19		4 (P-N)	38.4	—	—	49.8	—
20		5 (E-N)	30.7	—	34.55	49.8	53.65
21		6 (D)	41.1	70.2	—	29.8	—
22		7 (S)	50.0	69.0	—	31.0	—
23		8-A (F)	23.9	70.2	—	29.8	—
24	Pittsburgh, Pa.	1 (C)	36.7	—	—	63.3	—
25		2 (E-L)	32.6	—	41.95	49.1	58.05
26		3 (P-L)	40.8	—	45.85	49.1	54.15
27		4 (P-N)	40.8	—	—	47.7	—
28		5 (E-N)	32.6	—	36.7	47.7	51.8
29		6 (D)	42.7	71.5	—	28.5	—
30		7 (S)	53.0	70.9	—	29.1	—
31		8 (L)	28.6	71.5	—	28.5	—

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GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 Texas	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 Texas
1	Philadelphia, Pa. (Eastbound)	1 (C)	48.8	--	--	51.2	--
2		2(E-L)	43.5	--	51.45	40.6	45.55
3		3(P-L)	50.0	--	55.0	40.6	45.0
4		4(P-N)	50.6	--	--	39.3	--
5		5(E-N)	43.5	--	47.05	39.3	42.85
6		7 (S)	61.0	75.8	--	24.2	--
7		8 (L)	41.5	76.4	--	23.6	--
8	Philadelphia, Pa. (Westbound)	1 (C)	50.1	--	--	49.9	--
9		2(E-L)	44.7	--	52.5	39.7	47.5
10		3(P-L)	52.0	--	56.15	39.7	43.85
11		4 (P-N)	52.0	--	--	38.5	--
22		5(E-N)	44.7	--	48.35	38.5	42.15
13		7 (S)	62.0	75.8	--	24.2	--
14		8 (L)	41.5	76.4	--	23.6	--
15	New York, N.Y. (Eastbound)	1 (C)	49.6	--	--	50.4	--
16		2(E-L)	44.8	--	52.5	39.8	47.5
17		3(P-L)	52.5	--	55.85	39.8	44.15
18		4(P-N)	51.5	--	--	38.5	--
19		5(E-N)	44.8	--	48.15	38.5	41.85
20		7 (S)	62.0	76.4	--	23.6	--
21		8 (L)	44.1	77.1	--	22.9	--
22	New York, N.Y. (Westbound)	1 (C)	51.1	--	--	48.9	--
23		2(E-L)	46.1	--	53.65	38.8	46.35
24		3(P-L)	53.0	--	57.1	38.8	42.9
25		4(P-N)	53.0	--	--	37.6	--
26		5(E-N)	46.1	--	49.55	37.6	41.05
27		7 (S)	62.0	76.4	--	23.6	--
28		8 (L)	44.1	77.1	--	22.9	--

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

	Column 1 Between	Column 2	Column 3	Column 4

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Oklahoma City, Okla. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&H	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&H
1	Fort Wayne, Ind.	1 (C)	26.6	--	--	73.4	--
2		2 (E-L)	22.5	--	33.25	56.0	66.75
3		3 (P-L)	33.6	--	38.8	56.0	61.2
4		4 (P-N)	33.6	--	--	54.5	--
5		5 (E-N)	22.5	--	28.05	54.5	60.05
6		6 (D)	35.6	65.3	--	34.7	--
7		7 (S)	42.0	64.0	--	36.0	--
8	Logansport, Ind.	1 (C)	19.5	--	--	80.5	--
9		2 (E-L)	11.7	--	26.25	59.2	73.75
10		3 (P-L)	29.3	--	35.05	59.2	64.95
11		4 (P-N)	29.3	--	--	57.5	--
12		5 (E-N)	11.7	--	20.5	57.5	66.3
13		6 (D)	29.2	59.2	--	40.8	--
14		7 (S)	40.0	62.8	--	37.2	--
15		8 (L)	--	59.2	--	40.8	--
16	Columbus, Ohio	1 (C)	33.8	--	--	66.2	--
17		2 (E-L)	26.3	--	37.1	52.1	62.9
18		3 (P-L)	37.6	--	42.75	52.1	57.25
19		4 (P-N)	37.6	--	--	50.6	--
20		5 (E-N)	26.3	--	31.95	50.6	56.25
21		6 (D)	37.9	67.8	--	32.2	--
22		7 (S)	46.0	66.5	--	33.5	--
23		8 (L)	20.6	67.8	--	32.2	--
24	Cincinnati, Ohio	1 (C)	33.7	--	--	66.3	--
25		2 (E-L)	24.7	--	35.9	52.9	64.1
26		3 (P-L)	36.9	--	42.0	52.9	58.0
27		4 (P-N)	36.9	--	--	51.5	--
28		5 (E-N)	24.7	--	30.8	51.5	57.6
29		6 (D)	35.6	65.3	--	34.7	--
30		7 (S)	42.0	64.0	--	36.0	--
31		8 (L)	16.7	65.3	--	34.7	--

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Amarillo, Texas And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Grand Rapids, Mich.	1 (C)	25.4	--	--	74.6	--
2		2 (E-L)	22.4	--	31.85	58.7	68.15
3		3 (F-L)	32.0	--	36.65	58.7	63.35
4		4 (F-N)	32.0	--	--	57.4	--
5		5 (E-N)	22.4	--	27.2	57.4	62.2
6		6 (D)	33.2	59.9	--	40.1	--
7		7 (S)	40.0	59.2	--	40.8	--
8		8-A(F)	11.1	59.9	--	40.1	--
9	Detroit, Mich.	1 (C)	27.9	--	--	72.1	--
10		2 (E-L)	26.5	--	35.45	55.6	64.55
11		3 (F-L)	35.3	--	39.85	55.6	60.15
12		4 (F-N)	35.3	--	--	54.3	--
13		5 (E-N)	26.5	--	30.9	54.3	58.7
14		6 (D)	35.6	61.9	--	38.1	--
15		7 (S)	41.0	59.9	--	40.1	--
16	Cleveland, Ohio	1 (C)	28.6	--	--	71.4	--
17		2 (E-L)	28.2	--	36.35	55.5	63.65
18		3 (F-L)	35.2	--	39.85	55.5	60.15
19		4 (F-N)	35.2	--	--	54.1	--
20		5 (E-N)	28.2	--	31.7	54.1	57.6
21		6 (D)	36.3	63.3	--	36.7	--
22		7 (S)	43.0	61.2	--	38.8	--
23		8-A(F)	21.2	63.3	--	36.7	--
24	Pittsburgh, Pa.	1 (C)	33.8	--	--	66.2	--
25		2 (E-L)	30.1	--	38.45	53.2	61.55
26		3 (F-L)	37.6	--	42.2	53.2	57.8
27		4 (F-N)	37.6	--	--	51.8	--
28		5 (E-N)	30.1	--	33.85	51.8	55.55
29		6 (D)	38.7	65.3	--	34.	--
30		7 (S)	46.0	65.3	--	36.7	--
31		8 (I.	26.0	65.3	--	34.7	--

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GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Amarillo, Texas And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Philadelphia, Pa. (Eastbound)	1 (C)	45.6	--	--	54.4	--
2		2 (E-L)	40.7	--	46.1	44.5	51.9
3		3 (P-L)	47.3	--	51.9	44.5	49.1
4		4 (P-N)	47.3	--	--	43.3	--
5		5 (E-N)	40.7	--	44.0	43.3	46.8
6		7 (S)	54.0	68.7	--	31.3	--
7		8 (L)	38.2	70.8	--	29.2	--
8	Philadelphia, Pa. (Westbound)	1 (C)	46.9	--	--	53.1	--
9		2 (E-L)	44.3	--	49.1	43.6	50.9
10		3 (P-L)	48.6	--	52.5	43.6	47.5
11		4 (P-N)	48.6	--	--	42.5	--
12		5 (E-N)	41.8	--	45.2	42.5	45.9
13		7 (S)	54.0	68.7	--	31.3	--
14		8 (L)	38.2	70.8	--	29.2	--
15	New York, N.Y. (Eastbound)	1 (C)	46.4	--	--	53.6	--
16		2 (E-L)	41.8	--	49.05	43.7	50.95
17		3 (P-L)	48.1	--	52.2	43.7	47.8
18		4 (P-N)	48.1	--	--	42.6	--
19		5 (E-N)	41.8	--	44.95	42.6	45.75
20		7 (S)	55.0	69.4	--	30.6	--
21		8 (L)	40.6	71.4	--	28.6	--
22	New York, N.Y. (Westbound)	1 (C)	47.8	--	--	52.2	--
23		2 (E-L)	43.2	--	50.2	43.8	49.8
24		3 (P-L)	49.6	--	53.4	42.8	46.6
25		4 (P-N)	49.6	--	--	41.7	--
26		5 (E-N)	43.2	--	46.4	41.7	44.1
27		7 (S)	55.0	69.4	--	30.6	--
28		8 (L)	40.6	71.4	--	28.6	--

GENERAL PERCENTS

(FORMULA A -- SEE PAGE 43)

Line	Column 1 Between Amarillo, Texas And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Fort Wayne, Ind.	1 (C)	24.0	--	--	76.0	--
2		2 (E-L)	20.3	--	30.0	60.3	70.0
3		3 (P-L)	30.3	--	35.0	60.3	65.0
4		4 (P-N)	30.3	--	--	58.9	--
5		5 (E-N)	20.3	--	25.3	58.9	63.9
6		6 (D)	31.6	58.5	--	41.5	--
7		7 (S)	36.0	56.5	--	43.5	--
8	Logansport, Ind.	1 (C)	17.5	--	--	82.5	--
9		2 (E-L)	10.5	--	23.55	63.4	76.45
10		3 (P-L)	26.2	--	31.4	63.4	68.6
11		4 (P-N)	26.2	--	--	62.0	--
12		5 (E-N)	10.5	--	18.35	62.0	69.85
13		6 (D)	25.5	55.8	--	44.2	--
14		7 (S)	34.0	55.1	--	44.9	--
15		8 (L)	--	55.8	--	44.2	--
16	Columbus, Ohio	1 (C)	31.0	--	--	69.0	--
17		2 (E-L)	24.1	--	33.95	56.2	66.05
18		3 (P-L)	34.4	--	39.1	56.2	60.9
19		4 (P-N)	34.4	--	--	54.9	--
20		5 (E-N)	24.1	--	29.25	54.9	60.05
21		6 (D)	34.0	61.2	--	38.8	--
22		7 (S)	40.0	59.2	--	40.8	--
23		8 (L)	18.5	61.2	--	38.8	--
24	Cincinnati, Ohio	1 (C)	30.7	--	--	69.3	--
25		2 (E-L)	22.5	--	32.65	57.2	67.35
26		3 (P-L)	33.6	--	38.2	57.2	61.8
27		4 (P-N)	33.6	--	--	55.9	--
28		5 (E-N)	22.5	--	28.05	55.9	61.45
29		6 (D)	31.6	58.5	--	41.5	--
30		7 (S)	36.0	56.5	--	43.5	--
31		8 (L)	14.8	58.5	--	41.5	--

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GENERAL PERCENTS

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Fort Worth, Tex. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Grand Rapids, Mich.	1 (C)	25.3	--	--	74.7	--
2		2 (E-L)	22.4	--	31.95	58.5	68.05
3		3 (P-L)	32.0	--	36.75	58.5	63.25
4		4 (P-N)	32.0	--	--	57.2	--
5		5 (E-N)	22.4	--	27.2	57.2	62.0
6		6 (D)	34.0	61.1	--	38.9	--
7		7 (S)	42.0	61.1	--	38.9	--
8		8-A(F)	11.3	61.1	--	38.9	--
9	Detroit, Mich.	1 (C)	27.9	--	--	72.1	--
10		2 (E-L)	26.5	--	35.55	55.4	64.45
11		3 (P-L)	35.3	--	39.95	55.4	60.05
12		4 (P-N)	35.3	--	--	54.1	--
13		5 (E-N)	26.5	--	30.9	54.1	58.5
14		6 (D)	37.3	63.8	--	36.2	--
15		7 (S)	44.0	62.5	--	37.5	--
16	Cleveland, O.	1 (C)	28.6	--	--	71.4	--
17		2 (E-L)	28.2	--	36.5	55.2	63.5
18		3 (P-L)	35.2	--	40.0	55.2	60.0
19		4 (P-N)	35.2	--	--	53.9	--
20		5 (E-N)	28.2	--	31.7	53.9	57.6
21		6 (D)	37.1	64.5	--	35.5	--
22		7 (S)	46.0	63.8	--	36.2	--
23		8-A(F)	21.6	64.5	--	35.5	--
24	Pittsburgh, Pa.	1 (C)	33.8	--	--	66.2	--
25		2 (E-L)	30.1	--	38.55	53.0	61.45
26		3 (P-L)	37.6	--	42.3	53.0	57.7
27		4 (P-N)	37.6	--	--	51.6	--
28		5 (E-N)	30.1	--	33.85	51.6	55.35
29		6 (D)	39.5	66.5	--	33.5	--
30		7 (S)	49.0	65.8	--	34.2	--
31		8 (L)	26.5	66.5	--	33.5	--

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GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Fort Worth, Tex. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Philadelphia,	1 (C)	45.6	--	--	54.4	--
2	Pa	2 (E-L)	40.7	--	48.2	44.3	51.8
3	(Eastbound)	3(P-L)	47.3	--	51.5	44.3	48.5
4		4(P-N)	47.3	--	--	43.1	--
5		5(E-N)	40.7	--	44.0	43.1	46.4
6		7 (S)	57.0	71.2	--	28.8	--
7		8 (L)	38.9	71.9	--	28.1	--
8	Philadelphia,	1 (C)	46.9	--	--	53.1	--
9	Pa.	2(E-L)	41.8	--	49.15	43.5	50.85
10	(Westbound)	3(P-L)	48.6	--	52.55	43.5	47.45
11		4(P-N)	48.6	--	--	42.4	--
12		5(E-N)	41.8	--	45.2	42.4	45.8
13		7 (S)	57.0	71.2	--	28.8	--
14		8 (L)	38.9	71.9	--	28.1	--
15	New York, N.Y.	1 (C)	46.4	--	--	53.6	--
16	(Eastbound)	2(E-L)	41.8	--	49.1	43.6	50.9
17		3(P-L)	48.1	--	52.25	43.6	47.75
18		4(P-N)	48.1	--	--	42.4	--
19		5(E-N)	41.8	--	44.95	42.4	45.55
20		7 (S)	58.0	71.9	--	28.1	--
21		8 (L)	41.3	72.5	--	27.5	--
22	New York, N.Y.	1 (C)	47.8	--	--	52.2	--
23	(Westbound)	2(E-L)	43.2	--	50.3	42.6	49.7
24		3(P-L)	49.6	--	53.5	42.6	46.5
25		4(P-N)	49.6	--	--	41.5	--
26		5(E-N)	43.2	--	46.4	41.5	44.7
27		7 (S)	58.0	71.9	--	28.1	--
28		8 (L)	41.3	72.5	--	27.5	--

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GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

28		8 (L)	41.3	72.5	--	27.5	--

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Fort Worth, Tex. And	Column 2 Route See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&P	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&P
1	Fort Wayne, Ind.	1 (C)	24.0	--	--	76.0	--
2		2 (E-L)	20.3	--	30.1	60.1	69.9
3		3 (P-L)	30.3	--	35.1	60.1	64.9
4		4 (P-N)	30.3	--	--	58.7	--
5		5 (E-N)	20.3	--	25.3	58.7	63.7
6		6 (D)	32.4	59.8	--	40.2	--
7		7 (S)	38.0	64.0	--	41.5	--
8	Logansport, Ind.	1 (C)	17.5	--	--	82.5	--
9		2 (E-L)	10.5	--	23.65	63.2	76.35
10		3 (P-L)	26.2	--	31.5	63.2	68.5
11		4 (P-N)	26.2	--	--	61.7	--
12		5 (E-N)	10.5	--	18.35	61.7	69.55
13		6 (D)	26.3	57.1	--	42.9	--
14		7 (S)	36.0	57.1	--	42.9	--
15		8 (L)	--	57.1	--	42.9	--
16	Columbus, Ohio	1 (C)	31.0	--	--	69.0	--
17		2 (E-L)	24.1	--	34.05	56.0	65.95
18		3 (P-L)	34.4		39.2	56.0	60.8
19		4 (P-N)	34.4	--	--	54.6	--
20		5 (E-N)	24.1	--	29.25	54.6	59.75
21		6 (D)	34.8	62.5	--	37.5	--
22		7 (S)	42.0	61.1	--	38.9	--
23		8 (L)	18.9	62.5	--	37.5	--
24	Cincinnati, Ohio	1 (C)	30.7	--	--	69.3	--
25		2 (E-L)	22.5	--	32.75	57.0	67.25
26		3 (P-L)	33.6	--	38.3	57.0	61.7
27		4 (P-N)	33.6	--	--	55.6	--
28		5 (E-N)	22.5	--	28.05	55.6	61.15
29		6 (D)	32.4	59.8	--	40.2	--
30		7 (S)	38.0	58.5	--	41.5	--
31		8 (L)	15.2	59.8	--	40.2	--

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Galveston, Tex. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Grand Rapids, Mich.	1 (C)	22.1	--	--	77.9	--
2		2 (E-L)	19.5	--	28.1	63.3	71.9
3		3 (P-L)	27.9	--	32.3	63.3	67.7
4		4 (P-N)	27.9	--	--	62.0	--
5		5 (E-N)	19.5	--	23.7	62.0	66.2
6		6 (D)	29.2	54.6	--	45.4	--
7		7 (S)	38.0	56.0	--	44.0	--
8		8-A(F)	9.7	54.6	--	45.4	--
9	Detroit, Mich.	1 (C)	24.0	--	--	76.0	--
10		2 (E-L)	22.7	--	30.9	60.9	69.1
11		3 (P-L)	30.3	--	34.7	60.9	65.3
12		4 (P-N)	30.3	--	--	59.7	--
13		5 (E-N)	22.7	--	26.5	59.7	63.5
14		6 (D)	32.4	77.4	--	42.6	--
15		7 (S)	40.0	77.4	--	42.6	--
16	Cleveland, Ohio	1 (C)	25.3	--	--	74.7	--
17		2 (E-L)	25.0	--	32.55	59.9	67.45
18		3 (P-L)	31.2	--	35.65	59.9	64.35
19		4 (P-N)	31.2	--	--	58.6	--
20		5 (E-N)	25.0	--	28.1	58.6	61.7
21		6 (D)	32.4	58.1	--	41.9	--
22		7 (S)	42.0	58.8	--	41.2	--
23		8-A(F)	18.9	58.1	--	41.9	--
24	Pittsburgh, Pa.	1 (C)	30.2	--	--	69.8	--
25		2 (E-L)	26.9	--	34.65	57.6	65.35
26		3 (P-L)	33.6	--	38.0	57.6	62.0
27		4 (P-N)	33.6	--	--	56.3	--
28		5 (E-N)	26.9	--	30.25	56.3	59.65
29		6 (D)	34.8	60.2	--	39.8	--
30		7 (S)	45.0	61.0	--	39.0	--
31		8 (L)	23.3	66.5	--	39.8	--

30 31		7 (S) 8 (L)	45.0 23.3	61.0 66.5	— —	39.0 39.8	— —

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GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Galveston, Texas And	Column 2 Route (See Page 42)	Column 3 FRR	Column 4 FRR Plus Wabash	Column 5 FRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Philadelphia, Pa. (Eastbound)	1 (C)	40.8	--	--	59.2	--
2		2(E-L)	36.4	--	43.35	49.7	56.65
3		3(P-L)	42.3	--	46.3	49.7	53.7
4		4(P-N)	42.3	--	--	48.5	--
5		5(E-N)	36.4	--	39.35	48.5	51.45
6		7 (S)	53.0	66.6	--	33.4	--
7		8 (L)	34.8	65.9	--	34.1	--
8	Philadelphia, Pa. (Westbound)	1 (C)	41.9	--	--	58.1	--
9		2(E-L)	37.4	--	44.25	48.9	55.75
10		3(P-L)	43.5	--	47.3	48.9	52.7
11		4(P-N)	43.5	--	--	47.8	--
12		5(E-N)	37.4	--	40.45	47.8	50.85
13		7 (S)	53.0	66.6	--	33.4	--
14		8 (L)	34.8	65.9	--	34.1	--
15	New York, N.Y. (Eastbound)	1 (C)	41.6	--	--	58.4	--
16		2(E-L)	37.6	--	44.35	48.9	55.65
17		3(P-L)	43.2	--	47.15	48.9	52.85
18		4(P-N)	43.2	--	--	47.7	--
19		5(E-N)	37.6	--	40.4	47.7	50.5
20		7 (S)	54.0	67.3	--	32.7	--
21		8 (L)	37.1	66.6	--	33.4	--
22	New York, N.Y. (Westbound)	1 (C)	42.9	--	--	57.1	--
23		2(E-L)	38.7	--	45.35	48.0	54.65
24		3(P-L)	44.5	--	48.25	48.0	51.75
25		4(P-N)	44.5	--	--	46.9	--
26		5(E-N)	38.7	--	41.6	46.9	49.8
27		7 (S)	54.0	67.3	--	32.7	--
28		8 (L)	37.1	66.6	--	33.4	--

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GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between Galveston, Texas And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Fort Wayne, Ind.	1 (C)	20.8	—	--	79.2	—
2		2(E-L)	17.6	—	26.35	64.9	73.65
3		3(P-L)	26.2	—	30.65	64.9	69.35
4		4(P-N)	26.2	—	—	63.6	—
5		5(E-N)	17.6	—	21.9	63.6	67.9
6		6 (D)	28.3	53.9	--	46.1	--
7		7 (S)	35.0	53.9	—	46.1	--
8	Logansport, Ind.	1 (C)	15.0	—	—	85.0	—
9		2(E-L)	8.0	--	20.6	67.8	79.4
10		3(P-L)	22.5	--	27.35	67.8	72.65
11		4(P-N)	22.5	—	--	66.4	--
12		5(E-N)	9.0	—	15.75	66.4	73.15
13		6 (D)	22.6	51.0	--	49.0	--
14		7 (S)	33.0	52.4	—	47.6	--
15		8 (L)	--	51.0	—	49.0	--
16	Columbus, Ohio	1 (C)	26.6	—	--	73.4	—
17		2(E-L)	20.7	—	29.65	61.4	70.35
18		3(P-L)	29.6	--	34.1	61.4	65.9
19		4(P-N)	29.6	—	--	60.1	—
20		5(E-N)	20.7	—	25.15	60.1	64.55
21		6 (D)	30.0	56.0	—	44.0	--
22		7 (S)	38.0	56.0	—	44.0	--
23		8 (L)	16.3	56.0	--	44.0	—
24	Cincinnati, Ohio	1 (C)	26.2	—	—	73.8	—
25		2(E-L)	19.2	--	28.35	62.5	71.65
26		3(P-L)	28.7	--	33.1	62.5	66.9
27		4(P-N)	28.7	—	—	61.2	--
28		5(E-N)	19.2	—	23.95	61.2	65.95
29		6 (D)	28.3	53.9	--	46.1	--
30		7 (S)	35.0	53.9	—	46.1	—
31		8 (L)	13.3	53.9	—	46.1	—

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

31		8 (L)	13.3	55.9	—	46.1	—

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between El Paso, Texas And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 TRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Grand Rapids, Mich.	1 (C)	19.5	--	--	80.5	--
2		2 (E-L)	17.2	--	24.8	67.6	75.2
3		3 (P-L)	24.6	--	28.5	67.6	71.5
4		4 (P-N)	24.6	--	--	66.5	--
5		5 (E-N)	17.2	--	20.9	66.5	70.2
6		6 (D)	26.7	49.1	--	50.9	--
7		7 (S)	32.0	48.3	--	51.7	--
8		8-A(F)	8.9	49.1	--	50.9	--
9	Detroit, Mich.	1 (C)	22.1	--	--	77.9	--
10		2 (E-L)	20.9	--	28.25	64.4	71.75
11		3 (P-L)	27.9	--	31.75	64.4	68.25
12		4 (P-N)	27.9	--	--	63.3	--
13		5 (E-N)	20.9	--	24.4	63.3	66.8
14		6 (D)	29.2	51.4	--	48.6	--
15		7 (S)	34.0	49.8	--	50.2	--
16	Cleveland, Ohio	1 (C)	22.7	--	--	77.3	--
17		2 (E-L)	22.4	--	29.15	64.1	70.85
18		3 (P-L)	28.0	--	31.95	64.1	68.05
19		4 (P-N)	28.0	--	--	63.0	--
20		5 (E-N)	22.4	--	25.2	63.0	65.8
21		6 (D)	30.0	52.9	--	47.1	--
22		7 (S)	35.0	51.6	--	49.4	--
23		8-A(F)	17.5	52.9	--	47.1	--
24	Pittsburgh, Pa.	1 (C)	27.4	--	--	72.6	--
25		2 (E-L)	24.3	--	31.3	61.7	68.7
26		3 (P-L)	30.4	--	34.35	61.7	65.65
27		4 (P-N)	30.4	--	--	61.7	--
28		5 (E-N)	24.3	--	27.35	60.6	63.65
29		6 (D)	31.6	54.4	--	45.6	--
30		7 (S)	38.0	52.9	--	47.1	--
31		8 (L)	21.2	54.4	--	45.6	--

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GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between El Paso, Texas And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Philadelphia,Pa. (Eastbound)	1 (C)	37.6	--	--	62.4	--
2		2 (E-L)	33.5	--	39.85	53.8	60.15
3		3 (P-L)	39.0	--	42.6	53.8	57.4
4		4 (P-N)	39.0	--	--	52.7	--
5		5 (E-N)	33.5	--	36.25	52.7	55.45
6		7 (S)	46.0	59.0	--	41.0	--
7		8 (L)	32.2	60.5	--	39.5	--
8	Philadelphia,Pa. (Westbound)	1 (C)	38.6	--	--	61.4	--
9		2 (E-L)	34.4	--	40.65	53.1	59.35
10		3 (P-L)	40.0	--	43.45	53.1	56.55
11		4 (P-N)	40.0	--	--	52.1	--
12		5 (E-N)	34.4	--	37.2	52.1	54.9
13		7 (S)	46.0	59.0	--	41.0	--
14		8 (L)	32.2	60.5	--	39.5	--
15	New York, N.Y. (Eastbound)	1 (C)	38.4	--	--	61.6	--
16		2 (E-L)	34.6	--	40.8	53.0	59.2
17		3 (P-L)	39.8	--	43.4	53.0	56.6
18		4 (P-N)	39.8	--	--	51.9	--
19		5 (E-N)	34.6	--	37.2	51.9	54.5
20		7 (S)	47.0	59.7	--	40.3	--
21		8 (L)	34.3	61.2	--	38.8	--
22	New York, N.Y. (Westbound)	1 (C)	39.6	--	--	60.4	--
23		2 (E-L)	35.7	--	41.75	52.2	58.25
24		3 (P-L)	41.0	--	44.4	52.2	55.6
25		4 (P-N)	41.0	--	--	51.2	--
26		5 (E-N)	35.7	--	38.35	51.2	53.85
27		7 (S)	47.0	59.7	--	40.3	--
28		8 (L)	34.3	61.2	--	38.8	--

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GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

GENERAL PERCENTS

(FORMULA A - SEE PAGE 43)

Line	Column 1 Between El Paso, Texas And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Fort Wayne,Ind.	1 (C)	18.8	--	--	81.2	--
2		2 (E-L)	15.9	--	23.75	68.4	76.25
3		3 (P-L)	23.8	--	27.7	68.4	72.3
4		4 (P-N)	23.8	--	--	67.3	--
5		5 (E-N)	15.9	--	19.85	67.3	71.25
6		6 (D)	25.1	47.6	--	52.4	--
7		7 (S)	29.0	46.0	--	54.0	--
8	Logansport,Ind.	1 (C)	13.5	--	--	86.5	--
9		2 (E-L)	8.1	--	18.4	71.3	81.6
10		3 (P-L)	20.2	--	24.45	71.3	75.55
11		4 (P-N)	20.2	--	--	70.1	--
12		5 (E-N)	8.1	--	14.15	70.1	76.15
13		6 (D)	19.7	44.5	--	55.5	--
14		7 (S)	27.0	44.5	--	55.5	--
15		8 (L)	--	44.5	--	55.5	--
16	Columbus,Ohio	1 (C)	24.5	--	--	75.5	--
17		2 (E-L)	19.0	--	27.05	64.9	72.95
18		3 (P-L)	27.2	--	31.15	64.9	68.85
19		4 (P-N)	27.2	--	--	63.8	--
20		5 (E-N)	19.0	--	23.1	63.8	67.9
21		6 (D)	27.7	50.6	--	49.4	--
22		7 (S)	32.0	48.3	--	51.7	--
23		8 (L)	15.0	50.6	--	49.4	--
24	Cincinnati,Ohio	1 (C)	24.0	--	--	76.0	--
25		2 (E-L)	17.6	--	25.75	66.1	74.25
26		3 (P-L)	26.2	--	30.05	66.1	69.95
27		4 (P-N)	26.2	--	--	65.0	--
28		5 (E-N)	17.6	--	21.9	65.0	69.3
29		6 (D)	25.1	47.6	--	52.4	--
30		7 (S)	29.0	46.0	--	54.0	--
31		8 (L)	11.8	47.6	--	52.4	--

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GENERAL PERCENTS

(FORMULA B - SEE PAGE 44)

Line	Column 1 Between San Francisco, Calif. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Grand Rapids,	1 (C)	13.0	--	--	87.0	--
2	Mich.	2 (E-L)	11.5	--	15.75	80.0	84.25
3	(Eastbound)	3 (F-L)	16.5	--	18.25	80.0	81.75
4		4 (F-N)	16.5	--	--	79.5	--
5		5 (E-N)	11.5	--	14.0	79.5	82.0
6		6 (D)	16.5	26.6	--	73.4	--
7		7 (S)	16.5	26.6	--	73.4	--
8		8-A (F)	4.5	26.6	--	73.4	--
9	Grand Rapids,	1 (C)	13.0	--	--	87.0	--
10	Mich.	2 (E-L)	11.5	--	16.1	79.3	83.9
11	(Westbound)	3 (F-L)	16.5	--	18.6	79.3	81.4
12		4 (F-N)	16.5	--	--	78.7	--
13		5 (E-N)	11.5	--	14.0	78.7	81.2
14		6 (D)	16.5	28.4	--	71.6	--
15		7 (S)	16.5	26.6	--	73.4	--
16		8-A (F)	4.5	26.6	--	73.4	--
17	Detroit, Mich.	1 (C)	13.0	--	--	87.0	--
18	(Eastbound)	2 (E-L)	12.4	--	16.2	80.0	83.8
19		3 (F-L)	16.5	--	18.25	80.0	81.75
20		4 (F-N)	16.5	--	--	79.5	--
21		5 (E-N)	12.4	--	14.45	79.5	81.55
22		6 (D)	16.5	26.6	--	73.4	--
23		7 (S)	16.5	26.6	--	73.4	--
24	Detroit, Mich.	1 (C)	13.0	--	--	87.0	--
25	(Westbound)	2 (E-L)	12.4	--	16.55	79.3	83.45
26		3 (F-L)	16.5	--	18.6	79.3	81.4
27		4 (P-N)	16.5	--	--	78.7	--
28		5 (E-N)	12.4	--	14.45	78.7	80.75
29		6 (D)	16.5	28.4	--	71.6	--
30		7 (S)	16.5	26.6	--	73.4	--

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GENERAL PERCENTS

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GENERAL PERCENTS

(FORMULA B - SEE PAGE 44)

Line	Column 1 Between San Francisco, Calif. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Cleveland, Ohio (Eastbound)	1 (C)	16.5	--	--	83.5	--
2		2 (E-L)	16.0	--	19.7	76.6	80.3
3		3 (P-L)	20.0	--	--	76.6	78.3
4		4 (P-N)	20.0	--	--	76.1	--
5		5 (E-N)	16.0	--	18.0	76.1	78.1
6		6 (D)	20.0	29.7	--	70.3	--
7		7 (S)	20.0	29.7	--	70.3	--
8		8-A (F)	9.2	29.7	--	70.3	--
9	Cleveland, Ohio (Westbound)	1 (C)	16.5	--	--	83.5	--
10		2 (E-L)	16.0	--	20.0	76.0	80.0
11		3 (P-L)	20.0	--	22.0	76.0	78.0
12		4 (P-N)	20.0	--	--	75.4	--
13		5 (E-N)	16.0	--	18.0	75.4	77.4
14		6 (D)	20.0	31.4	--	68.6	--
15		7 (S)	20.0	29.7	--	70.3	--
16		8-A (F)	9.2	29.7	--	70.3	--
17	Pittsburgh, Pa. (Eastbound)	1 (C)	16.5	--	--	83.5	--
18		2 (E-L)	16.0	--	19.7	76.6	80.3
19		3 (P-L)	20.0	--	21.7	76.6	78.3
20		4 (P-N)	20.0	--	--	76.1	--
21		5 (E-N)	16.0	--	18.0	76.1	78.1
22		6 (D)	20.0	29.7	--	70.3	--
23		7 (S)	20.0	29.7	--	70.3	--
24		8 (L)	10.6	29.7	--	70.3	--
25	Pittsburgh, Pa. (Westbound)	1 (C)	16.5	--	--	83.5	--
26		2 (E-L)	16.0	--	20.0	76.0	80.0
27		3 (P-L)	20.0	--	22.0	76.0	78.0
28		4 (P-N)	20.0	--	--	75.4	--
29		5 (E-N)	16.0	--	18.0	75.4	77.4
30		6 (D)	20.0	31.4	--	68.6	--
31		7 (S)	20.0	29.7	--	70.3	--
32		8 (L)	10.6	29.7	--	70.3	--

GENERAL PERCENTS

(FORMULA B - SEE PAGE 44)

Line	Column 1 Between San Francisco, Calif. And	Column 2 Route (See Page 42	Column 3 IRR	Column 4 IRR Plus Wabash	Column 5 IRR Plus 1/2 T&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Philadelphia,Pa. (Eastbound)	1 (C)	27.5	--	--	72.5	--
2		2 (E-L)	26.7	--	30.3	66.1	69.7
3		3 (I-L)	31.0	--	32.45	66.1	67.55
4		4 (I-N)	31.0	--	--	65.7	--
5		5 (E-N)	26.7	--	28.85	65.7	67.85
6		6 (D)	31.0	39.3	--	60.7	--
7		7 (S)	31.5	39.8	--	60.2	--
8		8 (L)	21.1	39.8	--	60.2	--
9	Philadelphia,Pa. (Westbound)	1 (C)	27.5	--	--	72.5	--
10		2 (E-L)	26.7	--	30.6	65.5	69.4
11		3 (I-L)	31.0	--	32.75	65.5	67.25
12		4 (I-N)	31.0	--	--	65.0	--
13		5 (E-N)	26.7	--	28.85	65.0	67.15
14		6 (D)	31.0	40.9	--	59.1	--
15		7 (S)	31.5	39.8	--	60.2	--
16		8 (L)	21.1	39.8	--	60.2	--
17	New York, N.Y. (Eastbound)	1 (C)	27.5	--	--	72.5	--
18		2 (E-L)	27.0	--	30.45	66.1	69.55
19		3 (I-L)	31.0	--	32.45	66.1	67.55
20		4 (I-N)	31.0	--	--	65.7	--
21		5 (E-N)	27.0	--	29.0	65.7	67.7
22		6 (D)	31.0	39.3	--	60.7	--
23		7 (S)	31.5	39.8	--	60.2	--
24		8 (L)	22.0	39.8	--	60.2	--
25	New York, N.Y. (Westbound)	1 (C)	27.5	--	--	72.5	--
26		2 (E-L)	27.0	--	30.75	65.5	69.25
27		3 (I-L)	31.0	--	32.75	65.5	67.25
28		4 (I-N)	31.0	--	--	65.0	--
29		5 (E-N)	27.0	--	29.0	65.0	67.0
30		6 (D)	31.0	40.9	--	59.1	--
31		7 (S)	31.5	39.8	--	60.2	--
32		8 (L)	22.0	39.8	--	60.2	--

GENERAL PERCENTS

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GENERAL PERCENTS

(FORMULA B - SEE PAGE 44)

Line	Column 1 Between San Francisco, Calif, And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&H	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&H
1	Fort Wayne, Ind. (Eastbound)	1 (C)	13.0	—	--	87.0	--
2		2 (E-L)	11.1	—	15.55	80.0	84.45
3		3 (P-L)	16.5	—	18.25	80.0	81.75
4		4 (P-N)	16.5	--	—	79.5	--
5		5 (E-N)	11.1	--	13.8	79.5	82.2
6		6 (D)	16.5	28.4	--	71.6	--
7		7 (S)	16.5	26.6	--	73.4	--
8	Fort Wayne, Ind. (Westbound)	1 (C)	13.0	—	--	87.0	--
9		2 (E-L)	11.1	—	15.9	79.3	84.1
10		3 (P-L)	16.5	—	18.6	79.3	81.4
11		4 (P-N)	16.5	--	--	78.7	--
12		5 (E-N)	11.1	—	13.8	78.7	81.4
13		6 (D)	16.5	28.4	—	71.6	--
14		7 (S)	16.5	26.6	--	73.4	--
15	Logansport, Ind. (Eastbound)	1 (C)	13.0	--	—	87.0	--
16		2 (E-L)	6.6	--	13.3	80.0	86.7
17		3 (P-L)	16.5	--	18.25	80.0	81.75
18		4 (P-N)	16.5	—	--	79.5	--
19		5 (E-N)	6.6	--	11.55	79.5	84.45
20		6 (D)	16.5	26.6	—	73.4	--
21		7 (S)	16.5	26.6	--	73.4	--
22	Logansport, Ind. (Westbound)	1 (C)	13.0	--	--	87.0	--
23		2 (E-L)	6.6	--	13.65	79.3	86.35
24		3 (P-L)	16.5	—	18.6	79.3	81.4
25		4 (P-N)	16.5	--	--	78.7	--
26		5 (E-N)	6.6	—	11.55	78.7	83.65
27		6 (D)	16.5	28.4	--	71.6	--
28		7 (S)	16.5	26.6	--	73.4	--

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GENERAL PERCENTS

(FORMULA B - SEE PAGE 44)

Line	Column 1 Between San Francisco, Calif. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Columbus, Ohio	1 (C)	16.5	--	--	83.5	--
2	(Eastbound)	2 (E-L)	14.0	--	18.7	76.6	81.3
3		3 (P-L)	20.0	--	21.7	76.6	78.3
4		4 (P-N)	20.0	--	--	76.1	--
5		5 (E-N)	14.0	--	17.0	76.1	79.1
6		6 (D)	20.0	29.7	--	70.3	--
7		7 (S)	20.0	29.7	--	70.3	--
8		8 (L)	8.6	29.7	--	70.3	--
9	Columbus, Ohio	1 (C)	16.5	--	--	83.5	--
10	(Westbound)	2 (E-L)	14.0	--	19.0	76.0	81.0
11		3 (P-L)	20.0	--	22.0	76.0	78.0
12		4 (P-N)	20.0	--	--	75.4	--
13		5 (E-N)	14.0	--	17.0	75.4	78.4
14		6 (D)	20.0	29.7	--	68.6	--
15		7 (S)	20.0	29.7	--	70.3	--
16		8 (L)	8.6	29.7	--	70.3	--
17	Cincinnati, Ohio	1 (C)	13.0	--	--	87.0	--
18	(Eastbound)	2 (E-L)	11.1	--	15.55	80.0	84.55
19		3 (P-L)	16.5	--	18.25	80.0	81.75
20		4 (P-N)	16.5	--	--	79.5	--
21		5 (E-N)	11.1	--	13.8	79.5	82.2
22		6 (D)	16.5	26.6	--	73.4	--
23		7 (S)	16.5	26.6	--	73.4	--
24		8 (L)	6.3	26.6	--	73.4	--
25	Cincinnati, Ohio	1 (C)	13.0	--	--	87.0	--
26	(Westbound)	2 (E-L)	11.1	--	15.9	79.3	84.1
27		3 (P-L)	16.5	--	18.6	79.3	81.4
28		4 (P-N)	16.5	--	--	78.7	--
29		5 (E-N)	11.1	--	13.8	78.7	81.4
30		6 (D)	16.5	26.6	--	71.6	--
31		7 (S)	16.5	26.6	--	73.4	--
32		8 (L)	6.3	26.6	--	73.4	--

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GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

32		8 (L)	6.3	26.6	--	73.4	--

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GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

Line	Column 1 Between Dodge City, Kan. And	Column 2 Route (See Page 42)	Column 3. PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Grand Rapids, Mich.	1 (C)	22.0	--	--	78.0	--
2		2 (E-L)	21.0	--	31.0	59.0	69.0
3		3 (P-L)	30.0	--	35.5	59.0	64.5
4		4 (P-N)	30.0	--	--	57.4	--
5		5 (E-N)	21.0	--	25.5	57.4	61.9
6		6 (D)	32.0	64.2	--	36.0	--
7		7 (S)	40.0	65.2	--	34.8	--
8		8-A (F)	10.8	65.2	--	34.8	--
9	Detroit, Mich.	1 (C)	27.0	--	--	73.0	--
10		2 (E-L)	25.5	--	34.95	55.6	65.05
11		3 (P-L)	34.0	--	39.2	55.6	60.8
12		4 (P-N)	34.0	--	--	54.1	--
13		5 (E-N)	25.5	--	29.75	54.1	58.35
14		6 (D)	34.0	65.0	--	35.0	--
15		7 (S)	42.0	66.4	--	33.6	--
16	Cleveland, Ohio	1 (C)	30.0	--	--	70.0	--
17		2 (E-L)	28.8	--	37.45	53.9	62.55
18		3 (P-L)	36.0	--	41.05	53.9	58.95
19		4 (P-N)	36.0	--	--	52.5	--
20		5 (E-N)	28.8	--	32.4	52.5	56.1
21		6 (D)	36.0	66.1	--	33.9	--
22		7 (S)	44.0	67.5	--	32.5	--
23		8-A (F)	20.2	67.5	--	32.5	--
24	Pittsburgh, Pa.	1 (C)	36.0	--	--	64.0	--
25		2 (E-L)	33.6	--	42.35	48.9	57.65
26		3 (P-L)	42.0	--	46.55	48.9	53.45
27		4 (P-N)	42.0	--	--	47.6	--
28		5 (E-N)	33.6	--	37.8	47.6	51.8
29		6 (D)	40.0	68.2	--	31.8	--
30		7 (S)	47.0	69.3	--	30.7	--
31		8 (L)	24.9	69.3	--	30.7	--

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GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

Line	Column 1 Between	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TH&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TH&W
1	Philadelphia, Pa.	1 (C)	46.0	--	--	54.0	--
2		2 (E-L)	44.7	--	52.15	40.4	47.85
3		3 (P-L)	52.0	--	55.8	40.4	44.2
4		4 (P-N)	52.0	--	--	39.4	--
5		5 (E-N)	44.7	--	48.35	39.4	43.05
6		6 (D)	51.0	74.0	--	26.0	--
7		7 (S)	56.0	73.5	--	25.5	--
8		8 (L)	37.5	73.5	--	25.5	--
9	New York, N. Y.	1 (C)	48.0	--	--	52.0	--
10		2 (E-L)	46.1	--	53.25	39.6	46.75
11		3 (P-L)	53.0	--	56.7	39.6	43.3
12		4 (P-N)	53.0	--	--	38.6	--
13		5 (E-N)	46.1	--	49.55	38.6	42.05
14		6 (D)	53.0	75.1	--	24.9	--
15		7 (S)	57.0	75.1	--	24.9	--
16		8 (L)	39.9	75.1	--	24.9	--
17	Fort Wayne, Ind.	1 (C)	19.0	--	--	81.0	--
18		2 (E-L)	18.1	--	28.3	61.5	71.7
19		3 (P-L)	27.0	--	32.75	61.5	67.25
20		4 (P-N)	27.0	--	--	59.8	--
21		5 (E-N)	18.1	--	22.55	59.8	64.25
22		6 (D)	27.0	61.3	--	38.7	--
23		7 (S)	35.0	62.3	--	37.7	--

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GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

GENERAL REVENUES

(FORMULA C - SEE PAGE 45)

Line	Column 1 Between Dodge City, Kan. And	Column 2 Route (See Page 42)	Column 3 IRR	Column 4 IRR Plus Wabash	Column 5 IRR Plus 1/2 T&H	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&H
1	Logansport, Ind.	1 (C)	19.0	--	--	81.0	--
2		2 (E-L)	9.6	--	22.8	64.0	77.2
3		3 (P-L)	24.0	--	30.0	64.0	70.0
4		4 (P-N)	24.0	--	--	62.3	--
5		5 (E-N)	9.6	--	16.8	62.3	69.5
6		6 (D)	24.0	59.7	--	40.3	--
7		7 (S)	33.0	61.1	--	38.9	--
8	Columbus, Ohio	1 (C)	27.0	--	--	73.0	--
9		2 (E-L)	23.8	--	34.1	55.6	65.9
10		3 (P-L)	34.0	--	39.2	55.6	60.8
11		4 (P-N)	34.0	--	--	54.1	--
12		5 (E-N)	23.8	--	28.9	54.1	59.2
13		6 (D)	32.0	64.0	--	36.0	--
14		7 (S)	40.0	65.2	--	34.8	--
15		8 (L)	17.2	65.2	--	34.8	--
16	Cincinnati, Ohio	1 (C)	27.0	--	--	73.0	--
17		2 (E-L)	21.4	--	32.05	57.3	67.95
18		3 (P-L)	32.0	--	37.35	57.3	62.65
19		4 (P-N)	32.0	--	--	55.8	--
20		5 (E-N)	21.4	--	26.7	55.8	61.1
21		6 (D)	30.0	62.9	--	37.1	--
22		7 (S)	35.0	62.3	--	37.7	--
23		8 (L)	13.3	62.3	--	37.7	--

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GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

Line	Column 1 Between Denver, Colorado And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&N	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&N
1	Grand Rapids, Mich.	1 (C)	18.0	--	--	82.0	--
2		2 (E-L)	16.8	--	24.55	67.7	75.45
3		3 (P-L)	24.0	--	28.15	67.7	71.85
4		4 (P-N)	24.0	--	--	66.6	--
5		5 (E-N)	16.8	--	20.4	66.6	70.2
6		6 (D)	26.0	9.7	--	50.3	--
7		7 (S)	31.0	50.3	--	49.7	--
8		8-A (F)	8.4	50.3	--	49.7	--
9	Detroit, Mich.	1 (C)	23.0	--	--	77.0	--
10		2 (E-L)	21.0	--	28.4	64.2	71.6
11		3 (P-L)	28.0	--	31.9	64.2	68.1
12		4 (P-N)	28.0	--	--	63.1	--
13		5 (E-N)	21.0	--	24.5	63.1	66.6
14		6 (D)	28.0	51.0	--	49.0	--
15		7 (S)	33.0	51.8	--	48.2	--
16	Cleveland, Ohio	1 (C)	25.0	--	--	75.0	--
17		2 (E-L)	24.0	--	31.8	62.4	70.2
18		3 (P-L)	30.0	--	33.8	62.4	66.2
19		4 (P-N)	30.0	--	--	61.3	--
20		5 (E-N)	24.0	--	27.0	61.3	64.3
21		6 (D)	30.0	52.4	--	47.6	--
22		7 (S)	35.0	53.2	--	46.8	--
23		8-A (F)	16.1	53.2	--	46.8	--
24	Pittsburgh, Pa.	1 (C)	30.0	--	--	70.0	--
25		2 (E-L)	28.8	--	35.85	57.1	64.15
26		3 (P-L)	36.0	--	39.45	57.1	60.55
27		4 (P-N)	36.0	--	--	56.1	--
28		5 (E-N)	28.8	--	32.4	56.1	59.7
29		6 (D)	34.0	55.1	--	44.9	--
30		7 (S)	38.0	55.4	--	44.6	--
31		8 (L)	20.1	55.4	--	44.6	--

GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

Line	Column 1 Between Denver, Colorado And	Column 2 Route See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Philadelphia, Pa.	1 (C)	40.0	--	--	60.0	--
2		2 (E-L)	38.7	--	44.85	49.0	55.15
3		3 (P-L)	45.0	--	48.0	49.0	52.0
4		4 (P-N)	45.0	--	--	48.2	--
5		5 (E-N)	38.7	--	.85	48.2	51.35
6		6 (D)	44.0	61.9	--	38.1	--
7		7 (S)	47.0	61.8	--	38.2	--
8		8 (L)	31.5	61.8	--	38.2	--
9	New York, N.Y.	1 (C)	42.0	--	--	58.0	--
10		2 (E-L)	40.0	--	45.9	48.2	54.1
11		3 (P-L)	46.0	--	48.9	48.2	51.1
12		4 (P-N)	46.0	--	--	47.3	--
13		5 (E-N)	40.0	--	43.0	47.3	50.3
14		6 (D)	46.0	63.3	--	36.7	--
15		7 (S)	48.0	72.6	--	37.4	--
16		8 (L)	33.6	72.6	--	37.4	--
17	Fort Wayne, Ind.	1 (C)	16.0	--	--	84.0	--
18		2 (E-L)	14.7	--	22.6	69.5	77.4
19		3 (P-L)	22.0	--	26.25	69.5	73.75
20		4 (P-N)	22.0	--	--	68.3	--
21		5 (E-N)	14.7	--	18.35	68.3	71.95
22		6 (D)	22.0	47.0	--	53.0	--
23		7 (S)	27.0	47.4	--	52.6	--

GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

Line	Column 1 Between Denver, Colorado And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Logansport, Ind.	1 (C)	16.0	--	--	84.0	--
2		2 (E-L)	8.0	--	18.35	71.3	81.65
3		3 (P-L)	20.0	--	24.35	71.3	75.65
4		4 (P-N)	20.0	--	--	70.1	--
5		5 (E-N)	8.0	--	14.0	70.1	76.1
6		6 (D)	20.0	45.6	--	54.4	--
7		7 (S)	25.0	46.0	--	54.0	--
8	Columbus, Ohio	1 (C)	23.0	--	--	77.0	--
9		2 (E-L)	19.6	--	27.7	64.2	72.3
10		3 (P-L)	28.0	--	31.9	64.2	68.1
11		4 (P-N)	28.0	--	--	63.1	--
12		5 (E-N)	19.6	--	23.8	63.1	67.3
13		6 (D)	26.0	49.7	--	50.3	--
14		7 (S)	31.0	50.3	--	49.7	--
15		8 (L)	13.3	50.3	--	49.7	--
16	Cincinnati, Ohio	1 (C)	23.0	--	--	77.0	--
17		2 (E-L)	17.4	--	25.7	66.0	74.3
18		3 (P-L)	26.0	--	30.0	66.0	70.0
19		4 (P-N)	26.0	--	--	64.8	--
20		5 (E-N)	17.4	--	21.7	64.8	69.1
21		6 (D)	24.0	48.3	--	51.7	--
22		7 (S)	27.0	47.4	--	52.6	--
23		8 (L)	10.3	47.4	--	52.6	--

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GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

23		8 (L)	10.3	47.4	--	52.6	--

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GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

Line	Column 1 Between Kansas City, Mo. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Grand Rapids, Mich.	1 (C)	32.0	--	--	68.0	--
2		2 (E-L)	30.1	--	46.55	37.0	53.45
3		3 (P-L)	43.0	--	53.0	37.0	47.0
4		4 (P-N)	43.0	--	--	34.2	--
5		5 (E-N)	30.1	--	36.55	34.2	40.65
6		6 (D)	46.0	100.0	--	--	--
7		7 (S)	54.0	100.0	--	--	--
8		8-A(F)	14.6	100.0			
9	Detroit, Mich.	1 (C)	38.0	--	--	62.0	--
10		2 (E-L)	36.0	--	51.1	33.8	48.9
11		3 (P-L)	48.0	--	57.1	33.8	42.9
12		4 (P-N)	48.0	--	--	31.2	--
13		5 (E-N)	36.0	--	42.0	31.2	37.2
14		6 (D)	48.0	100.0	--	--	--
15		7 (S)	56.0	100.0	--	--	--
16	Cleveland, Ohio	1 (C)	41.0	--	--	59.0	--
17		2 (E-L)	40.8	--	54.45	31.9	45.55
18		3 (P-L)	51.0	--	59.55	31.9	40.45
19		4 (P-N)	51.0	--	--	29.4	--
20		5 (E-N)	40.8	--	45.9	29.4	34.5
21		6 (D)	51.0	100.0	--	--	--
22		7 (S)	58.0	100.0	--	--	--
23		8-A(F)	26.7	100.0	--	--	--
24	Pittsburgh, Pa.	1 (C)	48.0	--	--	52.0	--
25		2 (E-L)	44.8	--	58.1	28.6	41.9
26		3 (P-L)	56.0	--	63.7	28.6	36.3
27		4 (P-N)	56.0	--	--	26.4	--
28		5 (E-N)	44.8	--	50.4	26.4	32.0
29		6 (D)	55.0	100.0	--	--	--
30		7 (S)	61.0	100.0	--	--	--
31		8 (L)	32.3	100.0	--	--	--

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GENERAL PERCENTS

(FORMULA C.- SEE PAGE 45)

Line	Column 1 Between Kansas City, Mo. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Philadelphia,Pa.	1 (C)	59.0	--	--	42.0	--
2		2 (E-L)	56.8	--	67.35	22.1	32.65
3		3 (P-L)	66.0	--	71.95	22.1	28.05
4		4 (P-N)	66.0	--	--	20.4	--
5		5 (E-N)	56.8	--	61.4	20.4	25.0
6		6 (D)	65.0	100.0	--	--	--
7		7 (S)	69.0	100.0	--	31.3	--
8		8 (L)		100.0	--	29.2	--
9	New York, N.Y.	1 (C)	60.0	--	--	40.0	--
10		2 (E-L)	58.3	--	68.4	21.5	31.6
11		3 (P-L)	67.0	--	72.75	21.5	27.25
12		4 (P-N)	67.0	--	--	19.8	--
13		5 (E-N)	58.3	--	62.65	19.8	24.15
14		6 (D)	67.0	100.0	--	--	--
15		7 (S)	70.0	100.0	--	--	--
16		8 (L)		100.0	--	--	--
17	Fort Wayne, Ind.	1 (C)	28.0	--	--	72.0	--
18		2 (E-L)	26.8	--	43.9	39.0	56.1
19		3 (P-L)	40.0	--	50.5	39.0	49.5
20		4 (P-N)	40.0	--	--	36.0	--
21		5 (E-N)	26.8	--	33.4	36.0	42.6
22		6 (D)	40.0	100.0	--	--	--
23		7 (S)	49.0	100.0	--	--	--

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GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

GENERAL PERCENTS

(FORMULA C - SEE PAGE 45)

Line	Column 1 Between Kansas City, Mo. And	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Logansport, Ind.	1 (C)	28.0	--	--	72.0	--
2		2 (E-L)	14.4	--	36.4	41.6	63.6
3		3 (P-L)	36.0	--	47.2	41.6	52.8
4		4 (P-N)	36.0	--	--	38.4	--
5		5 (E-N)	14.4	--	25.2	38.4	49.2
6		6 (D)	36.0	100.0	--	--	--
7		7 (S)	46.0	100.0	--	--	--
8	Columbus, Ohio	1 (C)	38.0	--	--	62.0	--
9		2 (E-L)	33.6	--	49.9	33.8	50.1
10		3 (P-L)	48.0	--	57.1	33.8	42.9
11		4 (P-N)	48.0	--	--	31.2	--
12		5 (E-N)	33.6	--	40.8	31.2	38.4
13		6 (D)	46.0	100.0	--	--	--
14		7 (S)	54.0	100.0	--	--	--
15		8 (L)	23.2	100.0	--	--	--
16	Cincinnati, Ohio	1 (C)	38.0	--	--	62.0	--
17		2 (E-L)	30.8	--	47.85	35.1	52.15
18		3 (P-L)	46.0	--	55.45	35.1	44.55
19		4 (P-N)	46.0	--	--	32.4	--
20		5 (E-N)	30.8	--	36.4	32.4	40.0
21		6 (D)	43.0	100.0	--	--	--
22		7 (S)	49.0	100.0	--	--	--
23		8 (L)	18.6	100.0	--	--	--

LUMBER PERCENTS

(FORMULA D - SEE PAGE 46)

Line	Column 1 From San Francisco, Calif. To	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 TP&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 TP&W
1	Grand Rapids, Mich.	1 (C)	15.1	--	--	84.9	--
2		2 (E-L)	10.6	--	14.65	81.3	85.35
3		3 (P-L)	15.1	--	16.9	81.3	83.1
4		4 (P-N)	15.1	--	--	80.8	--
5		5 (E-N)	10.6	--	12.85	80.8	83.05
6		6 (D)	15.1	25.4	--	74.6	--
7		7 (S)	18.2	28.1	--	71.9	--
8		8-A (F)	4.9	28.1	--	71.9	--
9	Detroit, Mich.	1 (C)	18.8	--	--	81.2	--
10		2 (E-L)	14.1	--	18.15	77.8	81.85
11		3 (P-L)	18.8	--	20.5	77.8	79.5
12		4 (P-N)	18.8	--	--	77.3	--
13		5 (E-N)	14.1	--	16.45	77.3	79.65
14		6 (D)	18.8	28.6	--	71.4	--
15		7 (S)	21.7	31.2	--	68.8	--
16	Cleveland, Ohio	1 (C)	20.7	--	--	79.3	--
17		2 (E-L)	16.6	--	20.35	75.9	79.65
18		3 (P-L)	20.7	--	22.4	75.9	77.6
19		4 (P-N)	20.7	--	--	75.5	--
20		5 (E-N)	16.6	--	18.65	75.5	77.55
21		6 (D)	20.7	30.3	--	69.7	--
22		7 (S)	23.5	32.8	--	67.2	--
23		8-A (F)	10.8	32.8	--	67.2	--
24	Pittsburgh, Pa.	1 (C)	22.0	--	--	78.0	--
25		2 (E-L)	17.6	--	21.45	74.7	78.55
26		3 (P-L)	22.0	--	23.65	74.7	76.35
27		4 (P-N)	22.0	--	--	74.2	--
28		5 (E-N)	17.6	--	19.8	74.2	76.4
29		6 (D)	22.0	31.4	--	68.6	--
30		7 (S)	24.8	33.9	--	66.1	--
31		8 (L)	13.3	34.2	--	65.8	--

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LUMBER PERCENTS

30 31		7 (S) 8 (L)	40.0 33.3	34.2	--	65.8	--

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LUMBER PERCENTS

(FORMULA D - SEE PAGE 46)

Line	Column 1 From San Francisco, Calif. To	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Philadelphia, Pa.	1 (C)	28.2	--	--	71.8	--
2		2 (E-L)	27.3	--	31.0	65.3	69.0
3		3 (P-L)	31.8	--	33.25	65.3	66.75
4		4 (P-N)	31.8	--	--	64.9	--
5		5 (E-N)	27.3	--	29.55	64.9	67.15
6		6 (D)	31.8	40.1	--	59.9	--
7		7 (S)	32.3	40.5	--	59.5	--
8		8 (L)	21.6	40.5	--	59.5	--
9	New York, N. Y.	1 (C)	28.2	--	--	71.8	--
10		2 (E-L)	27.7	--	31.2	65.3	68.8
11		3 (P-L)	31.8	--	33.25	65.3	66.75
12		4 (P-N)	31.8	--	--	64.9	--
13		5 (E-N)	27.7	--	29.75	64.9	66.95
14		6 (D)	31.8	40.1	--	59.9	--
15		7 (S)	32.3	40.5	--	59.5	--
16		8 (L)	22.6	40.5	--	59.5	--
17	Fort Wayne, Ind.	1 (C)	17.2	--	--	82.8	--
18		2 (E-L)	11.5	--	16.1	79.3	83.9
19		3 (P-L)	17.2	--	18.95	79.3	81.05
20		4 (P-N)	17.2	--	--	78.8	--
21		5 (E-N)	11.5	--	14.35	78.8	81.65
22		6 (D)	17.2	27.2	--	72.8	--
23		7 (S)	20.1	29.8	--	70.2	--

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LUMBER PERCENTS

(FORMULA D - SEE PAGE 46)

Line	Column 1 From San Francisco, Calif. To	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Logansport, Ind.	1 (C)	15.1	--	--	84.9	--
2		2 (E-L)	6.0	--	12.35	81.3	87.65
3		3 (P-L)	15.1	--	16.9	81.3	83.1
4		4 (P-N)	15.1	--	--	80.8	--
5		5 (E-N)	6.0	--	10.35	80.8	85.35
6		6 (D)	15.1	25.4	--	74.6	--
7		7 (S)	18.2	28.1	--	71.9	--
8	Columbus, Ohio	1 (C)	20.7	--	--	79.3	--
9		2 (E-L)	14.5	--	14.3	75.9	80.7
10		3 (P-L)	20.7	--	22.4	75.9	77.6
11		4 (P-N)	20.7	--	--	75.5	--
12		5 (E-N)	14.5	--	17.6	75.5	78.6
13		6 (D)	20.7	30.3	--	69.7	--
14		7 (L)	23.5	32.8	--	67.2	--
15		8 (L)	10.1	32.8	--	67.2	--
16	Cincinnati, Ohio	1 (C)	18.8	--	--	81.2	--
17		2 (E-L)	12.6	--	17.4	77.8	82.6
18		3 (P-L)	18.8	--	20.5	77.8	79.5
19		4 (P-N)	18.8	--	--	77.3	--
20		5 (E-N)	12.6	--	15.7	77.3	80.4
21		6 (D)	18.8	28.6	--	71.4	--
22		7 (S)	18.8	28.6	--	71.4	--
23		8 (L)	7.1	28.6	--	71.4	--

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(FORMULA E - SEE PAGE 47)

Line	Column 1 From Dodge City, Kan. To	Column 2 Route (See Page 49)	Column 3 PRR	Column 4 PRR Plus	Column 5 PRR Plus	Column 6 Santa Fe	Column 7 Santa Fe

(FORMULA E - SEE PAGE 47)

Line	Column 1 From Dodge City, Kan. To	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Grand Rapids, Mich.	1 (C)	27.2	--	--	72.8	--
2		2 (E-L)	21.4	--	30.1	61.2	69.9
3		3 (F-L)	30.6	--	34.7	61.2	65.3
4		4 (F-N)	30.6	--	--	61.2	--
5		5 (E-N)	21.4	--	26.0	61.2	65.8
6		6 (D)	30.6	58.9	--	41.1	--
7		7 (S)	35.6	59.9	--	40.1	--
8		8-A (F)	11.8	58.9	--	41.1	--
9	Detroit, Mich.	1 (C)	27.2	--	--	72.8	--
10		2 (E-L)	23.8	--	30.9	61.2	69.1
11		3 (F-L)	30.6	--	34.7	61.2	65.3
12		4 (F-N)	30.6	--	--	61.2	--
13		5 (E-N)	23.8	--	26.8	61.2	65.0
14		6 (D)	30.6	58.9	--	41.1	--
15		7 (S)	37.7	58.7	--	41.3	--
16	Cleveland, Ohio	1 (C)	31.1	--	--	68.9	--
17		2 (E-L)	27.5	--	34.85	57.8	65.15
18		3 (F-L)	34.4	--	38.3	57.8	61.7
19		4 (F-N)	34.4	--	--	57.8	--
20		5 (E-N)	27.5	--	30.95	57.8	61.25
21		6 (D)	38.4	61.2	--	38.8	--
22		7 (S)	37.7	61.2	--	38.8	--
23		8-A (F)	30.8	61.2	--	38.8	--
24	Pittsburgh, Pa.	1 (C)	34.4	--	--	65.6	--
25		2 (E-L)	26.2	--	35.55	55.1	64.45
26		3 (F-L)	37.5	--	41.2	55.1	58.8
27		4 (F-N)	37.5	--	--	55.1	--
28		5 (E-N)	26.2	--	31.85	55.1	60.75
29		6 (D)	37.6	63.0	--	37.0	--
30		7 (S)	40.6	63.0	--	37.0	--
31		8 (L)	22.1	63.0	--	37.0	--

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GRAIN AND GRAIN PRODUCTS - PERCENTS

(FORMULA E - SEE PAGE 47)

Line	Column 1 From Dodge City, Kan. To	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Philadelphia,Pa.	1 (C)	41.1	--	--	58.9	--
2		2 (E-L)	35.1	--	42.8	49.5	57.2
3		3 (P-L)	43.9	--	47.2	49.5	52.8
4		4 (P-N)	43.9	--	--	49.5	--
5		5 (E-N)	35.1	--	39.5	49.5	53.9
6		6 (D)	43.9	66.8	--	33.2	--
7		7 (S)	47.0	67.0	--	33.0	--
8		8 (L)	36.4	66.8	--	33.2	--
9	New York, N.Y.	1 (C)	42.5	--	--	57.5	--
10		2 (E-L)	37.7	--	44.7	48.3	55.3
11		3 (P-L)	45.2	--	46.45	48.3	51.55
12		4 (P-N)	45.2	--	--	48.3	--
13		5 (E-N)	37.7	--	41.45	48.3	52.05
14		6 (D)	45.2	67.6	--	32.4	--
15		7 (S)	48.0	67.6	--	32.4	--
16		8 (L)	39.3	67.6	--	32.4	--
17	Fort Wayne, Ind.	1 (C)	24.6	--	--	75.4	--
18		2 (E-L)	18.9	--	27.8	63.3	72.2
19		3 (P-L)	28.2	--	32.45	63.3	67.55
20		4 (P-N)	28.2	--	--	63.3	--
21		5 (E-N)	18.9	--	23.55	63.3	67.95
22		6 (D)	28.2	57.5	--	42.5	--
23		7 (S)	32.1	57.7	--	42.3	--

GRAIN AND GRAIN PRODUCTS - PERCENTS

(FORMULA E - SEE PAGE 47)

GRAIN AND GRAIN PRODUCTS - PERCENTS

(FORMULA E - SEE PAGE 47)

Line	Column 1 From / To	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&H	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&H
1	Dodge City, Kan. / Logansport, Ind.	1 (C)	23.6	--	--	76.4	--
2		2 (E-L)	10.9	--	23.4	64.1	76.6
3		3 (P-L)	27.3	--	31.6	64.1	68.4
4		4 (P-N)	27.3	--	--	64.1	--
5		5 (E-N)	10.9	--	19.1	64.1	72.3
6		6 (D)	27.3	57.0	--	43.0	--
7		7 (S)	31.3	57.2	--	42.8	--
8	Dodge City, Kan. / Columbus, Ohio	1 (C)	28.4	--	--	71.6	--
9		2 (E-L)	22.3	--	31.1	60.1	68.9
10		3 (P-L)	31.8	--	35.85	60.1	64.15
11		4 (P-N)	31.8	--	--	60.1	--
12		5 (E-N)	22.3	--	27.05	60.1	64.85
13		6 (D)	31.8	59.6	--	40.4	--
14		7 (S)	35.6	59.9	--	40.1	--
15		8 (L)	18.8	59.6	--	40.4	--
16	Dodge City, Kan. / Cincinnati, Ohio	1 (C)	27.2	--	--	72.8	--
17		2 (E-L)	20.5	--	29.65	61.2	70.35
18		3 (P-L)	30.6	--	34.7	61.2	65.3
19		4 (P-N)	30.6	--	--	61.2	--
20		5 (E-N)	20.5	--	25.55	61.2	66.25
21		6 (D)	30.6	58.9	--	41.1	--
22		7 (S)	34.1	59.0	--	41.0	--
23		8 (L)	16.5	58.9	--	41.1	--

GRAIN AND GRAIN PRODUCTS - PERCENTS

(FORMULA E - SEE PAGE 47)

Line	Column 1 From Kansas City, Mo. To	Column 2 Route (See Page 42).	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&A	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Grand Rapids, Mich.	1 (C)	46.1	--	--	53.9	--
2		2 (E-L)	36.4	--	51.15	34.1	48.85
3		3 (F-L)	52.0	--	58.95	34.1	41.05
4		4 (F-N)	52.0	--	--	34.1	--
5		5 (E-N)	36.4	--	44.2	34.1	41.9
6		6 (D)	51.6	100.0	--	--	--
7		8-A (F)	31.0	100.0	--	--	--
8	Detroit, Mich.	1 (C)	46.1	--	--	53.9	--
9		2 (E-L)	39.0	--	52.45	34.1	47.55
10		3 (F-L)	52.0	--	58.95	34.1	41.05
11		4 (F-N)	52.0	--	--	34.1	--
12		5 (E-N)	39.0	--	45.5	34.1	40.6
13		6 (D)	51.6	100.0	--	--	--
14		7 (S)	58.2	100.0	--	--	--
15	Cleveland, Ohio	1 (C)	50.9	--	--	49.1	--
16		2 (E-L)	45.0	--	56.95	31.1	43.05
17		3 (F-L)	56.2	--	62.55	31.1	37.45
18		4 (F-N)	56.2	--	--	31.1	--
19		5 (E-N)	45.0	--	50.6	31.1	36.7
20		6 (D)	56.0	100.0	--	--	--
21		7 (S)	62.0	100.0	--	--	--
22		8-A (F)	32.5	100.0	--	--	--
23	Pittsburgh, Pa.	1 (C)	54.5	--	--	45.5	--
24		2 (E-L)	41.6	--	56.4	28.8	43.6
25		3 (F-L)	59.5	--	65.35	28.8	34.65
26		4 (F-N)	59.5	--	--	28.8	--
27		5 (E-N)	41.6	--	50.55	28.8	37.75
28		6 (D)	59.3	100.0	--	39.8	--
29		7 (S)	64.8	100.0	--	39.0	--
30		8 (L)	42.1	100.0	--	39.8	--

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GRAIN AND GRAIN PRODUCTS - PERCENTS

(FORMULA E - SEE PAGE 47)

GRAIN AND GRAIN PRODUCTS - PERCENTS

(FORMULA E - SEE PAGE 47)

Line	Column 1 From Kansas City, Mo. To	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash.	Column 5 PRR Plus 1/2 T&W	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&W
1	Philadelphia, Pa.	1 (C)	61.5	--	--	38.5	--
2		2 (E-L)	52.6	--	64.1	24.4	35.9
3		3 (P-L)	65.7	--	70.65	24.4	29.35
4		4 (P-N)	65.7	--	--	24.4	--
5		5 (E-N)	52.6	--	59.15	24.4	30.95
6		6 (D)	65.6	100.0	--	--	--
7		7 (S)	70.3	100.0	--	--	--
8		8 (L)	47.1	100.0	--	--	--
9	New York, N.Y.	1 (C)	62.8	--	--	37.2	--
10		2 (E-L)	55.8	--	66.15	23.5	33.85
11		3 (P-L)	66.9	--	71.7	23.5	28.3
12		4 (P-N)	66.9	--	--	23.5	--
13		5 (E-N)	55.8	--	61.35	23.5	29.05
14		6 (D)	66.7	100.0	--	--	--
15		7 (S)	71.2	100.0	--	--	--
16		8 (L)	49.5	100.0	--	--	--
17	Fort Wayne, Ind.	1 (C)	42.7	--	--	57.3	--
18		2 (E-L)	32.8	--	48.3	36.2	51.7
19		3 (P-L)	49.0	--	56.4	36.2	43.6
20		4 (P-N)	49.0	--	--	36.2	--
21		5 (E-N)	32.8	--	40.9	36.2	44.3
22		6 (D)	48.8	100.0	--	--	--
23		7 (S)	64.2	100.0	--	--	--

GRAIN AND GRAIN PRODUCTS - PERCENTS

(FORMULA 2 - SEE PAGE 47)

Line	Column 1 From Kansas City, Mo. To	Column 2 Route (See Page 42)	Column 3 PRR	Column 4 PRR Plus Wabash	Column 5 PRR Plus 1/2 T&A	Column 6 Santa Fe	Column 7 Santa Fe Plus 1/2 T&A
1	Logansport, Ind.	1 (C)	41.5	--	--	58.5	--
2		2 (E-L)	19.2	--	41.1	57.0	58.7
3		3 (F-L)	47.9	--	55.45	57.0	44.55
4		4 (F-N)	47.9	--	--	57.0	--
5		5 (E-N)	19.2	--	33.55	57.0	51.35
6		6 (D)	47.6	100.0	--	--	--
7		7 (S)	65.5	100.0	--	--	--
8	Columbus, Ohio	1 (C)	47.6	--	--	52.4	--
9		2 (E-L)	31.7	--	42.3	53.2	47.98
10		3 (F-L)	53.5	--	60.75	53.2	39.95
11		4 (F-N)	53.5	--	--	53.2	--
12		5 (E-N)	31.7	--	45.5	53.2	41.7
13		6 (D)	53.2	100.0	--	--	--
14		7 (S)	59.8	100.0	--	--	--
15		8 (L)	34.4	100.0	--	--	--
16	Cincinnati, Ohio	1 (C)	46.1	--	--	53.9	--
17		2 (E-L)	34.8	--	52.35	34.1	49.65
18		3 (F-L)	52.5	--	58.95	34.1	41.05
19		4 (F-N)	52.9	--	--	34.1	--
20		5 (E-N)	34.8	--	45.4	34.1	42.7
21		6 (D)	51.6	100.0	--	--	--
22		7 (S)	58.2	100.0	--	--	--
23		8 (L)	27.9	100.0	--	--	--

EXHIBIT A RATES

ROUTE

1 IRR - Chicago, Illinois - Santa Fe

2 IRR - Effner, Illinois-Indiana - TP&W - Lomax, Illinois - Santa Fe.

3 IRR - Peoria, Illinois - TP&W - Lomax, Illinois - Santa Fe.

4 IRR - Peoria, Illinois - Wabash - Nem., Illinois - Santa Fe.

5 IRR - Effner, Illinois-Indiana - TP&W - Peoria, Illinois - Wabash - Nem., Illinois - Santa Fe.

6 IRR - Decatur, Illinois - Wabash - Kansas City, Mo. - Santa Fe.

7 IRR - St. Louis, Mo. (Westbound) or E. St. Louis, Illinois (Eastbound) - Wabash - Kansas City, Mo. - Santa Fe.

8 IRR - Logansport, Ind. - Wabash - Kansas City, Mo. - Santa Fe.

9-6 IRR - Fort Wayne, Ind. - Wabash - Kansas City, Mo. - Santa Fe.

FORMULA "A"

S.W.L. D/S 200-A Initial primary break on Mississippi River (East Fort Madison, Ill., E. Hannibal, Ill. or East St. Louis, Ill.)

S.W.L. D/S 100 Subdivides proportion accruing west of Mississippi River Crossings over Kansas City.

Joint Rate Committee Percent 145 (Eastbound Traffic)
Joint Rate Committee Percent 144. (Westbound Traffic)
Joint Rate Committee Percent 20-A(Eastbound and Westbound Traffic)

Subdivide proportion East of Upper Crossings over Chicago, Peoria and Decatur (Bloomington basis)

JRC 145 and 144 covers Western Termini and East
JRC 20-A covers Western Termini and, East

AT&SF P/S 3300-I subdivides lumped proportion accruing between Kansas City and Peoria over Nemo between M&StL and AT&SF

AT&SF P/S 3101 F subdivides lumped proportion accruing between Kansas City and Peoria over Lomax in connection with T&H and AT&SF

Pennsylvania Railroad D/B 5800-A subdivides proportion accruing east of Peoria over Effner between Pennsylvania and T&H

Pennsylvania Railroad D/B 5800-A subdivides proportion accruing east of E. Hannibal over Logansport between Pennsylvania and Wabash

2133

FORMULA "B"

Trans-Continental D/C 62-B - Initial primary break at Peoria, Decatur, Chicago, East St. Louis or East Hannibal (East and Westbound)

Trans-Continental D/C 66-C subdivides proportion accruing west of Peoria, Decatur, Chicago, East St. Louis and East Hannibal over Kansas City (westbound 14.3 balance (Eastbound 3¢ cwt. 12.1¢ plus 3¢ cwt. of balance.)

ATSF P/S 3360-I subdivides proportion accruing between Kansas City and Peoria over Nemo with ATSF and MStL

ATSF P/S 3101-F subdivides proportion accruing between Kansas City and Peoria over Lomax with ATSF and TP&W

Pennsylvania Railroad D/B 5880-A subdivides proportion accruing East of Peoria over Effner between Pennsylvania and TP&W

Pennsylvania Railroad D/B 5888-A subdivides proportion accruing East of East Hannibal over Logansport between Pennsylvania and Wabash

FORMULA "C"

ATL D/S 500-A - Initial primary trunk over Chicago, Peoria, Decatur, East St. Louis and East Hannibal

ATL D/S 700 - Subdivides proportion accruing West of Chicago, Peoria, Decatur, East St. Louis and East Hannibal over Kansas City

AT&SF F/S 3360-I subdivides proportion accruing between Kansas City and Peoria over Nemo in connection with AT&SF and M&StL.

AT&SF F/S 3101-F subdivides proportion accruing between Kansas City and Peoria over Lomax with AT&SF and TP&W

Pennsylvania Railroad D/B 5880-A subdivides proportion accruing East of Peoria, Ill. over Effner between Pennsylvania Railroad and TP&W

Pennsylvania Railroad D/B 5888-A subdivides proportion accruing East of East Hannibal over Logansport between Pennsylvania Railroad and Wabash

2131

FORMULA "D"

Eastbound Lumber

TC D/C 63-M initial break over Chicago, Peoria, Decatur, and E. St. Louis to all stations except New York and Philadelphia, Pa.

TC D/C 62-B, Item 320-A initial break over Chicago, Peoria, Decatur, East Hannibal and East St. Louis to New York, N. Y. and Philadelphia, Pa.

TC D/C 66-C subdivides proportion accruing West of Peoria, Decatur, East Hannibal and East St. Louis over Kansas City.

AT&SF F/S 3360-I subdivides proportion accruing between Kansas City and Peoria over Nemo with AT&SF and MStL.

AT&SF F/S 3101-F subdivides proportion accruing between Kansas City and Peoria over Lomax with AT&SF and TP&W.

Pennsylvania Railroad D/F 5880-A subdivides proportion accruing East of Peoria over Effner between Pennsylvania and TP&W.

Pennsylvania Railroad D/F 5888-A subdivides proportion accruing East of East Hannibal over Logansport between Pennsylvania and Wabash

FORMULA "E"

Grain and Grain Products

Divisions are formulated on a prorate rate of grain rates reflecting Ex Parte 175-C increases, the proportional rates from Kansas City to Peoria and Chicago were employed

From Dodge City to Kansas City - Local grain as factor

Beyond Peoria and Chicago factors were grain rates in C.T.R. 245 and 535-Series.

2137

[fol. 2138] AN ANALYSIS

EXHIBIT H-36

OF TYPICAL CARLOAD MOVEMENTS

ICC DOCKET
ICC DOCKET
EXHIBIT H 36

EASTBOUND AND WESTBOUND

Between

Points on the Pennsylvania Railroad
And
Points on the Santa Fe System
Via Selected Routes

INDEX

Westbound Movements - Pages 1 to 20

Westbound Route - Page 21

Eastbound Movements - Pages 22 to 37

Eastbound Routes - Page 38

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[fol. 2139]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Sheet Steel
Weight	-	60,000 pounds
From	-	Pittsburgh, Pennsylvania
To	-	Dallas, Texas
Rate	-	$1.37 including Ex Parte 175-C
Authority	-	SW/E Tariff 1005 - Column 30
Freight Charges	-	$822
Divisions	-	Based upon divisions in effect December 1, 1955.

2139

[fol. 2140]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF SHEET STEEL
BETWEEN PITTSBURGH, PENNSYLVANIA AND DALLAS, TEXAS VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E.St.Louis-Kansas City	Route 7 Logansport-Kansas City	Route 8 Decatur-Kansas City
1		Pennsylvania System:								
2		Pennsylvania	$ 290	$ 258	$ 322	$ 258	$ 322	$ 403	$ 222	$ 331
3		Wabash	-	-	-	-	-	138	330	221
4		50% of T.P.& W.	-	70	38	32	-	-	-	-
5		Total	$ 290	$ 328	$ 360	$ 290	$ 322	$ 541	$ 552	$ 552
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 532	$ 423	$ 423	$ 412	$ 412	$ 281	$ 270	$ 270
8		50% of T.P.& W.	-	71	39	32	-	-	-	-
9		Total	$ 532	$ 494	$ 462	$ 444	$ 412	$ 281	$ 270	$ 270
10		M.& St.L.	-	-	-	$ 88	$ 88	-	-	-
11		Total	$ 822	$ 822	$ 822	$ 822	$ 822	$ 822	$ 822	$ 822
12		Pennsylvania System:								
13		Pennsylvania	468	450	625	450	625	616	389	545
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W.	-	103	47	56	-	-	-	-
16		Total	468	553	672	506	625	895	884	883
17	Miles	Santa Fe System:								
18		Santa Fe	1,077	858	859	886	886	625	625	625
19		50% of T.P.& W.	-	103	47	56	-	-	-	-
20		Total	1,077	961	906	942	886	625	625	625
21		M.& St.L.	-	-	-	58	58	-	-	-
22		Total	1,545	1,514	1,578	1,506	1,569	1,520	1,509	1,508
23		Pennsylvania System:								
24		Pennsylvania	62.0	57.3	51.5	57.3	51.5	65.4	57.1	60.7
25		Wabash	-	-	-	-	-	49.5	66.7	65.4
26	Average	50% of T.P.& W.	-	68.0	80.9	57.1	-	-	-	-
27	Revenue Per	Total	62.0	59.3	53.6	57.3	51.5	60.4	62.4	62.5
28	Mile									
29	(Cents)	Santa Fe System:								
30		Santa Fe	49.4	49.3	49.2	46.5	46.5	45.0	43.2	43.2
31		50% of T.P.& W.	-	68.9	83.0	57.1	-	-	-	-
32		Total	49.4	51.4	51.0	47.1	46.5	45.0	43.2	43.2
33		M.& St.L.	-	-	-	151.7	151.7	-	-	-
34		Total	53.2	54.3	52.1	54.6	52.4	54.1	54.5	54.5

2140

[fol. 2140a]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Bottles
Weight	-	30,000 pounds
From	-	Gas City, Indiana
To	-	El Paso, Texas
Rate	-	$2.06 cwt., including Ex Parte 175-C
Autnority	-	T.C.F.B. Tariff 1-D
Freight Charges	-	$618
Divisions	-	Based upon divisions in effect December 1, 1955.

2140 a

[fol. 2141]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF BOTTLES
BETWEEN GAS CITY, INDIANA AND EL PASO, TEXAS VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E.St.Louis-Kansas City	Route 7 Logansport Kansas City	Route 8 Decatur-Kansas City
1		Pennsylvania System:								
2		Pennsylvania	$ 116	$ 76	$ 147	$ 76	$ 147	$ 179	$ 36	$ 146
3		Wabash	-	-	-	-	-	106	249	139
4		50% of T.P.& W.	-	59	24	35	-	-	-	-
5		Total	$ 116	$ 135	$ 171	$ 111	$ 147	$ 285	$ 285	$ 285
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 502	$ 423	$ 423	$ 416	$ 416	$ 333	$ 333	$ 333
8		50% of T.P.& W.	-	60	24	36	-	-	-	-
9		Total	$ 502	$ 483	$ 447	$ 452	$ 416	$ 333	$ 333	$ 333
10		M.& St.L.	-	-	-	$ 55	$ 55	-	-	-
11		Total	$ 618	$ 618	$ 618	$ 618	$ 618	$ 618	$ 618	$ 618
12		Pennsylvania System:								
13		Pennsylvania	163	108	336	108	336	327	47	256
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W.	-	103	47	55	-	-	-	-
16		Total	163	211	383	163	336	606	542	594
17	Miles	Santa Fe System:								
18		Santa Fe	1,555	1,336	1,336	1,364	1,364	1,103	1,103	1,103
19		50% of T.P.& W.	-	103	48	56	-	-	-	-
20		Total	1,555	1,439	1,384	1,420	1,364	1,103	1,103	1,103
21		M.& St.L.	-	-	-	58	58	-	-	-
22		Total	1,718	1,650	1,767	1,641	1,758	1,709	1,645	1,697
23		Pennsylvania System:								
24		Pennsylvania	71.2	70.4	43.8	70.4	43.8	54.7	76.6	57.0
25		Wabash	-	-	-	-	-	38.0	50.3	41.1
26		50% of T.P.& W.	-	57.3	51.1	63.6	-	-	-	-
27	Average	Total	71.2	64.0	44.6	69.1	43.8	47.0	52.6	48.0
28	Revenue									
29	Per	Santa Fe System:								
30	Mile	Santa Fe	32.3	31.7	31.7	30.5	30.5	30.2	30.2	30.2
31	(cents)	50% of T.P.& W.	-	58.3	50.0	64.3	-	-	-	-
32		Total	32.3	33.6	32.3	31.8	30.5	30.2	30.2	30.2
33		M.& St.L.	-	-	-	94.8	94.8	-	-	-
34		Total	36.0	37.5	35.0	37.7	35.2	36.2	37.6	36.4

X141

[fol. 2141a]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Tin Plate
Weight	-	85,212 pounds
From	-	Weirton, West Virginia
To	-	Los Angeles, California
Rate	-	$1.02 cwt. including Ex Parte 175-C
Authority	-	T.C.P.B. Tariff 2-U
Freight Charges	-	$869
Divisions	-	Based upon divisions in effect December 1, 1955.

2141a

[fol. 2142]

THE MINNEAPOLIS & ST LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF TIN PLATE
BETWEEN WEIRTON, WEST VIRGINIA AND LOS ANGELES, CALIFORNIA VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E St Louis-Kansas City	Route 7 Logansport-Kansas City	Route 8 Decatur-Kansas City
1		Pennsylvania System								
2		Pennsylvania	$ 143	$ 139	$ 174	$ 139	$ 174	$ 174	$ 102	$ 174
3		Wabash	-	-	-	-	-	83	155	83
4		50% of T P & W	-	35	17	17	-	-	-	-
5		Total	$ 143	$ 174	$ 191	$ 156	$ 174	$ 257	$ 257	$ 257
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 725	$ 660	$ 660	$ 655	$ 655	$ 612	$ 612	$ 612
8		50% of T.P.& W	-	35	18	18	-	-	-	-
9		Total	$ 725	$ 695	$ 678	$ 673	$ 655	$ 612	$ 612	$ 612
10		M & St.L	-	-	-	$ 40	$ 40	-	-	-
11		Total	$ 869	$ 869	$ 869	$ 869	$ 869	$ 869	$ 869	$ 869
12		Pennsylvania System:								
13		Pennsy'vania	444	411	585	411	585	577	350	506
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T P.& W.	-	103	47	55	-	-	-	-
16		Total	444	514	632	466	585	856	845	844
17	Miles	Santa Fe System:								
18		Santa Fe	2,200	1,981	1,981	2,009	2,009	1,748	1,748	1,748
19		50% of T P & W	-	103	47	56	-	-	-	-
20		Total	2,200	2,084	2,028	2,065	2,009	1,748	1,748	1,748
21		M & St.L.	-	-	-	58	58	-	-	-
22		Total	2,644	2,598	2,660	2,589	2,652	2,604	2,593	2,592
23		Pennsylvania System:								
24		Pennsylvania	32.2	33.8	29.7	33.8	29.7	30.2	29.1	34.4
25		Wabash	-	-	-	-	-	29.8	31.3	24.6
26	Average	50% of T P & W	-	34.0	36.2	31.0	-	-	-	-
27	Revenue	Total	32.2	33.9	30.2	33.5	29.7	30.0	30.4	30.5
28	Per									
29	Mile	Santa Fe System:								
30	(cents)	Santa Fe	33.0	33.3	33.3	32.6	32.6	35.0	35.0	35.0
31		50% of T.P & W	-	34.0	38.3	32.0	-	-	-	-
32		Total	33.0	33.3	33.4	32.6	32.6	35.0	35.0	35.0
33		M & St L	-	-	-	69.0	69.0	-	-	-
34		Total	32.9	33.4	32.7	33.6	32.8	33.4	33.5	33.5

2142

[fol. 2142a]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Tile
Weight	-	73,780 pounds
From	-	Brazil, Indiana
To	-	Merced, California
Rate	-	$2.23 cwt. including Ex Parte 175-C
Authority	-	T.C.F.B. Tariff 1-D
Freight Charges	-	$1645
Divisions	-	Based upon divisions in effect December 1, 1955.

2142 a

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF TILE
BETWEEN BRAZIL, INDIANA AND MERCED, CALIFORNIA VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E.St.Louis-Kansas City
1		Pennsylvania System:						
2		Pennsylvania	$ 214	$ 190	$ 271	$ 190	$ 271	$ 271
3		Wabash	-	-	-	-	-	166
4		50% of T.P.& W.	-	75	34	40	-	-
5		Total	$ 214	$ 265	$ 305	$ 230	$ 271	$ 437
6	Revenue	Santa Fe System:						
7		Santa Fe	$1,431	$1,305	$1,305	$1,295	$1,295	$1,208
8		50% of T.P.& W.	-	75	35	41	-	-
9		Total	$1,431	$1,380	$1,340	$1,336	$1,295	$1,208
10		M & St.L.	-	-	-	$ 79	$ 79	-
11		Total	$1,645	$1,645	$1,645	$1,645	$1,645	$1,645
12		Pennsylvania System:						
13		Pennsylvania	247	192	189	192	189	180
14		Wabash	-	-	-	-	-	279
15		50% of T.P.& W.	-	103	47	55	-	-
16		Total	247	295	236	247	189	459
17	Miles	Santa Fe System:						
18		Santa Fe	2,369	2,150	2,150	2,178	2,178	1,917
19		50% of T.P.& W.	-	103	48	56	-	-
20		Total	2,369	2,253	2,198	2,234	2,178	1,917
21		M & St.L.	-	-	-	58	58	-
22		Total	2,616	2,548	2,434	2,539	2,425	2,376
23		Pennsylvania System:						
24		Pennsylvania	86.6	99.0	143.4	99.0	143.4	150.6
25		Wabash	-	-	-	-	-	59.5
26	Average	50% of T.P.& W.	-	72.8	72.3	72.7	-	-
27	Revenue Per	Total	86.6	90.0	129.7	93.1	143.4	95.2
28	Mile	Santa Fe System:						
29	(cents)	Santa Fe	60.4	60.7	60.7	59.5	59.5	63.0
30		50% of T.P.& W.	-	72.8	72.9	73.2	-	-
31		Total	60.4	61.3	61.0	59.8	59.5	63.0
32		M & St.L.	-	-	-	136.2	136.2	-
33		Total	62.9	64.6	67.6	64.9	67.8	69.2

[fol. 2143a]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Sulphuric Acid
Weight	-	46,872 pounds
From	-	Cornwell Heights, Pennsylvania
To	-	Pauline, Kansas
Rate	-	$1.86 cwt. including Ex Parte 175-C
Authority	-	C.T.R. E/W 1010
Freight Charges	-	$873
Divisions	-	Based upon divisions in effect December 1, 1955.

2143a

[fol. 2144]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF SULPHURIC ACID
BETWEEN CORNWELL HEIGHTS, PENNSYLVANIA AND PAULINE, KANSAS

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E.St.Louis-Kansas City	Route 7 Logansport-Kansas City	Route 8 Decatur-Kansas City
1		Pennsylvania System:								
2		Pennsylvania	$ 480	$ 479	$ 550	$ 479	$ 550	$ 585	$ 409	$ 524
3		Wabash	-	-	-	-	-	216	386	262
4		50% of T P & W	--	78	42	35	-	-	-	-
5		Total	$ 480	$ 557	$ 592	$ 514	$ 550	$ 801	$ 795	$ 786
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 393	$ 238	$ 238	$ 226	$ 226	$ 72	$ 78	$ 87
8		50% of T P & W	-	78	43	36	-	-	-	-
9		Total	$ 393	$ 316	$ 281	$ 262	$ 226	$ 72	$ 78	$ 87
10		M.& St.L.	-	-	-	$ 97	$ 97	-	-	-
11		Total	$ 873	$ 873	$ 873	$ 873	$ 873	$ 873	$ 873	$ 873
12		Pennsylvania System:								
13		Pennsylvania	836	818	993	818	993	984	757	913
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T P & W	-	103	47	55	-	-	-	-
16		Total	836	921	1,040	873	993	1,263	1,252	1,251
17	Miles	Santa Fe System:								
18		Santa Fe	524	305	305	333	333	72	72	72
19		50% of T P & W.	-	103	48	56	-	-	-	-
20			524	408	353	389	333	72	72	72
21		M.& St.L	-	-	-	58	58	-	-	-
22		Total	1,360	1,329	1,393	1,320	1,384	1,335	1,324	1,323
23		Pennsylvania System:								
24		Pennsylvania	57.4	58.6	55.4	58.6	55.4	59.5	54.0	57.4
25		Wabash	-	-	-	-	-	77.4	78.0	77.5
26	Average	50% of T P & W.	-	75.7	89.4	63.6	-	-	-	-
27	Revenue	Total	57.4	60.5	56.9	58.9	55.4	63.4	63.5	62.8
28	Per									
29	Mile	Santa Fe System:								
30	(cents)	Santa Fe	75.0	78.0	78.0	67.9	67.9	100.0	108.3	120.8
31		50% of T P & W	-	75.7	89.6	64.3	-	-	-	-
32		Total	75.0	77.5	79.6	67.4	67.9	100.0	108.3	120.8
33		M.& St.L	-	-	-	163.2	167.2	-	-	-
34		Total	64.2	65.7	62.7	66.1	63.1	65.4	65.9	66.0

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[fol. 2144a]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Glass Bottles
Weight	-	34,637 pounds
From	-	Gas City, Indiana
To	-	Wichita, Kansas
Rate	-	$1.43 cwt. including Ex Parte 175-C
Authority	-	C.T.R. 491-D (Class 35)
Freight Charges	-	$495
Divisions	-	Based upon divisions in effect December 1, 1955

2144a

[fol. 2145]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF GLASS BOTTLES
BETWEEN GAS CITY, INDIANA AND WICHITA, KANSAS VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E.St.Louis-Kansas City	Route 7 Logansport-Kansas City	Route 8 Decatur-Kansas City
1		Pennsylvania System:								
2		Pennsylvania	$ 129	$ 80	$ 154	$ 80	$ 154	$ 178	$ 36	$ 139
3		Wabash	-	-	-	-	-	171	291	210
4		50% of T.P.& W.	-	71	34	37	-	-	-	-
5		Total	$ 129	$ 151	$ 188	$ 117	$ 154	$ 349	$ 327	$ 349
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 366	$ 272	$ 272	$ 262	$ 262	$ 146	$ 168	$ 146
8		50% of T.P.& W.	-	72	35	37	-	-	-	-
9		Total	$ 366	$ 344	$ 307	$ 299	$ 262	$ 146	$ 168	$ 146
10		M & St.L.	-	-	-	$ 79	$ 79	-	-	-
11		Total	$ 495	$ 495	$ 495	$ 495	$ 495	$ 495	$ 495	$ 495
12		Pennsylvania System:								
13		Pennsylvania	163	108	336	108	336	327	47	256
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W.	-	103	47	55	-	-	-	-
16		Total	163	211	383	163	336	606	542	594
17	Miles	Santa Fe System:								
18		Santa Fe	664	445	445	473	473	212	212	212
19		50% of T P & W.	-	103	48	56	-	-	-	-
20		Total	664	548	493	529	473	212	212	212
21		M.& St.L	-	-	-	58	58	-	-	-
22		Total	827	759	876	750	867	818	754	806
23		Pennsylvania System:								
24		Pennsylvania	79.1	74.1	45.8	74.1	45.8	54.4	76.6	54.3
25		Wabash	-	-	-	-	-	61.3	58.8	62.1
26		50% of T P & W.	-	68.9	72.3	67.3	-	-	-	-
27	Average	Total	79.1	71.6	49.1	71.2	45.8	57.6	60.3	58.8
28	Revenue									
29	Per	Santa Fe System.								
30	Mile	Santa Fe	55.1	61.1	61.1	55.4	55.4	68.9	79.2	68.9
31	(cents)	50% of T P & W.	-	69.9	72.9	66.1	-	-	-	-
32		Total	55.1	62.8	62.3	56.5	55.4	68.9	79.2	68.9
33		M & St.L.	-	-	-	136.2	136.2	-	-	-
34		Total	59.9	65.2	56.5	66.0	57.1	60.5	65.6	61.4

2145

[fol. 2145a]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Machinery
Weight	-	24,000 pounds
From	-	Newark, New Jersey
To	-	Evadale, Texas
Rate	-	$2.12 cwt including Ex Parte 175-C
Authority	-	S.W.L. SW/E 1005
Freight Charges	-	$509
Divisions	-	Based upon divisions in effect December 1, 1955.

2145a

[fol. 2146]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF MACHINERY
BETWEEN NEWARK, NEW JERSEY AND EVADALE, TEXAS VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E.St.Louis Kansas City	Route 7 Logansport-Kansas City	Route 8 Decatur-Kansas City
1		Pennsylvania System:								
2		Pennsylvania	$ 223	$ 201	$ 231	$ 201	$ 231	$ 290	$ 196	$ 237
3		Wabash	-	-	-	-	-	63	150	110
4		50% of T P & W	-	34	19	15	-	-	-	-
5		Total	$ 223	$ 235	$ 250	$ 216	$ 231	$ 353	$ 346	$ 347
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 286	$ 240	$ 240	$ 235	$ 235	$ 156	$ 163	$ 162
8		50% of T.P.& W	-	34	19	15	-	-	-	-
9		Total	$ 286	$ 274	$ 259	$ 250	$ 235	$ 156	$ 163	$ 162
10		M.& St.L.	--	-	-	$ 43	$ 43	-	-	-
11		Total	$ 509	$ 509	$ 509	$ 509	$ 509	$ 509	$ 509	$ 509
12		Pennsylvania System:								
13		Pennsylvania	893	875	1,050	875	1,050	1,041	814	970
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W	-	103	47	55	-	-	-	-
16		Total	893	978	1,097	930	1,050	1,320	1,309	1,308
17	Miles	Santa Fe System:								
18		Santa Fe	1,358	1,139	1,139	1,167	1,167	906	906	906
19		50% of T.P.& W	-	103	48	56	-	-	-	-
20		Total	1,358	1,242	1,187	1,223	1,167	906	906	906
21		M.&.St.L.	-	-	-	58	58	-	-	-
22		Total	2,251	2,220	2,284	2,211	2,275	2,226	2,215	2,214
23		Pennsylvania System:								
24		Pennsylvania	25.0	23.0	22.0	23.0	22.0	27.9	24.1	24.4
25		Wabash	-	-	-	-	-	22.6	30.3	32.5
26		50% of T P.& W	-	33.0	40.4	27.3	-	-	-	-
27	Average	Total	25.0	24.0	22.8	23.2	22.0	26.7	26.4	26.5
28	Revenue	Santa Fe System:								
29	Per	Santa Fe	21.1	21.1	21.7	20.1	20.1	17.2	18.0	17.9
30	Mile	50% of T.P.& W	-	33.0	39.6	26.8	-	-	-	-
31	(cents)	Total	21.1	22.1	21.8	20.4	20.1	17.2	18.0	17.9
32		M & St.L.	-	-	-	74.1	74.1	-	-	-
33		Total	22.6	22.9	22.3	23.0	22.4	22.9	23.0	23.0

2146

[fol. 2147]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Wrougnt Pipe
Weight	-	62,193 pounds
From	-	Economy, Pennsylvania
To	-	Burden, Kansas
Rate	-	$1.38 cwt. including Ex Parte 175-C
Autnority	-	C.T.R. 491-D (Class 32½)
Freight Charges	-	$859
Divisions	-	Based upon divisions in effect December 1, 1955.

2147

[fol. 2148]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF WROUGHT PIPE
BETWEEN ECONOMY, PENNSYLVANIA AND BURDEN, KANSAS VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E.St.Louis-Kansas City	Route 7 Logansport-Kansas City	Route 8 Decatur-Kansas City
1		Pennsylvania System:								
2		Pennsylvania	$ 326	$ 309	$ 387	$ 309	$ 387	$ 455	$ 282	$ 387
3		Wabash	-	-	-	-	-	222	363	283
4		50% of T.P.& W.	-	87	48	38	-	-	-	-
5		Total	$ 326	$ 396	$ 435	$ 347	$ 387	$ 677	$ 645	$ 670
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 533	$ 375	$ 375	$ 361	$ 360	$ 182	$ 214	$ 189
8		50% of T.P.& W.	-	88	49	39	-	-	-	-
9		Total	$ 533	$ 463	$ 424	$ 400	$ 360	$ 182	$ 214	$ 189
10		M.& St.L.	$ -	-	-	$ 112	$ 112	-	-	-
11		Total	$ 859	$ 859	$ 859	$ 859	$ 859	$ 859	$ 859	$ 859
12		Pennsylvania System:								
13		Pennsylvania	462	450	640	450	640	631	389	561
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W	-	103	47	55	-	-	-	-
16		Total	462	553	687	505	640	910	884	899
17	Miles	Santa Fe System:								
18		Santa Fe	663	444	444	472	472	211	211	211
19		50% of T.P.& W	-	103	48	56	-	-	-	-
20		Total	663	547	492	528	472	211	211	211
21		M & St L.	-	-	-	58	58			
22		Total	1,125	1,100	1,179	1,091	1,170	1,121	1,095	1,110
23		Pennsylvania System:								
24		Pennsylvania	70 6	68 7	60 5	68 7	60 5	72 1	57 1	69.0
25		Wabash	-	-				79.6	73.3	83.7
26	Average	50% of T P.& W	-	84 5	102.1	69 1		-	-	-
27	Revenue Per	Total	70 6	71 6	63 3	68 7	60 5	74 4	73 0	74 5
28	Mile	Santa Fe System:								
29	(cents)	Santa Fe	80.4	84.5	84.5	76 5	76 3	86 3	101 4	89.6
30		50% of T.P & W.	-	85.5	102 1	70.0	-	-	-	-
31		Total	80 4	84 6	86.2	75 8	76.3	86.3	101 4	89 6
32		M & St L	-	-	-	193 1	193 1	-	-	-
33		Total	76 4	78 1	72 9	78.7	73 4	76.6	78 4	77.4

2148

[fol. 2149]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Crude Rubber
Weight	-	60,000 pounds
From	-	Newark, New Jersey
To	-	Bellemont, Arizona
Rate	-	$2.01 cwt. including X-175-C
Authority	-	T.C.F.B. Tariff 1-D
Freight Charges	-	$1206
Divisions	-	Based upon divisions in effect December 1, 1955.

2149

[fol. 2150]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF CRUDE RUBBER
BETWEEN NEWARK, NEW JERSEY AND BELLEMONT, ARIZONA VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E.St.Louis-Kansas City	Route 7 Logansport-Kansas City	Route 8 Decatur-Kansas City
1		Pennsylvania System:								
2		Pennsylvania	$ 332	$ 326	$ 374	$ 325	$ 374	$ 380	$ 266	$ 374
3		Wabash	-	-	-	-	-	100	214	101
4		50% of T P & W	-	45	21	24	-	-	-	-
5		Total	$ 332	$ 371	$ 395	$ 349	$ 374	$ 480	$ 480	$ 475
6	Revenue	Santa Fe System								
7		Santa Fe	$ 874	$ 790	$ 790	$ 784	$ 784	$ 726	$ 726	$ 731
8		50% of T P & W	-	45	21	25	-	-	-	-
9		Total	$ 874	$ 835	$ 811	$ 809	$ 784	$ 726	$ 726	$ 731
10		M & St L	-	-	-	$ 48	48	-	-	-
11		Total	$1,206	$1,206	$1,206	$1,206	$1,206	$1,206	$1,206	$1,206
12		Pennsylvania System:								
13		Pennsylvania	893	875	1,050	875	1,050	1,041	814	970
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T P & W	-	103	47	55	-	-	-	-
16		Total	893	978	1,097	930	1,050	1,320	1,309	1,308
17	Miles	Santa Fe System								
18		Santa Fe	1,675	1,456	1,456	1,484	1,484	1,223	1,223	1,223
19		50% of T P & W	-	103	48	56	-	-	-	-
20		Total	1,675	1,559	1,504	1,540	1,484	1,223	1,223	1,223
21		M & St L	-	-	-	58	58	-	-	-
22		Total	2,568	2,537	2,601	2,528	2,592	2,543	2,532	2,531
23		Pennsylvania System:								
24		Pennsylvania	37.2	37.3	35.3	37.1	35.6	36.5	32.7	36.6
25		Wabash	-	-	-	-	-	35.8	43.2	29.3
26	Average	50% of T P & W	-	43.7	44.7	43.6	-	-	-	-
27	Revenue	Total	37.2	37.9	36.0	37.5	35.6	36.4	36.7	36.3
28	Per									
29	Mile	Santa Fe System:								
30	(Cents)	Santa Fe	52.2	54.3	54.3	52.8	52.8	59.4	59.4	59.8
31		50% of T P & W	-	43.7	43.8	44.6	-	-	-	-
32		Total	52.2	53.6	53.9	52.5	52.8	59.4	59.4	59.8
33		M & St L	-	-	-	82.8	82.8	-	-	-
34		Total	47.0	47.5	46.4	47.7	48.5	47.4	47.6	47.6

[fol. 2151]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR A WESTBOUND MOVEMENT

Commodity	-	Conduit Pipe
Weight	-	57,444 pounds
From	-	Struthers, Ohio
To	-	Amarillo, Texas
Rate	-	$1.40 cwt. including Ex Parte 175-C
Authority	-	S.W.L. Tariff 252-C
Freight Charges	-	$806
Divisions	-	Based upon divisions in effect December 1, 1955.

2N1

[fol. 2152]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF A WESTBOUND MOVEMENT OF CONDUIT PIPE
BETWEEN STRUTHERS, OHIO AND AMARILLO, TEXAS VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Effner-Lomax	Route 3 Peoria-Lomax	Route 4 Effner-Peoria-Nemo	Route 5 Peoria-Nemo	Route 6 E.St.Louis-Kansas City	Route 7 Logansport-Kansas City	Route 8 Decatur-Kansas City
1		Pennsylvania System:								
2		Pennsylvania	$ 267	$ 237	$ 297	$ 237	$ 297	$ 363	$ 174	$ 299
3		Wabash	-	-	-	-	-	142	341	216
4		50% of T P & W	-	67	37	30	-	-	-	-
5		Total	$ 267	$ 304	$ 334	$ 267	$ 297	$ 505	$ 515	$ 515
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 539	$ 435	$ 435	$ 424	$ 424	$ 301	$ 291	$ 291
8		50% of T P & W	-	67	37	30	-	-	-	-
9		Total	$ 539	$ 502	$ 472	$ 454	$ 424	$ 301	$ 291	$ 291
10		M & St.L	-	-	-	$ 85	$ 85	-	-	-
11		Total	$ 806	$ 806	$ 806	$ 806	$ 806	$ 806	$ 806	$ 806
12										
13		Pennsylvania System:								
14		Pennsylvania	428	416	619	416	619	610	280	538
15		Wabash	-	-	-	-	-	279	568	338
16		50% of T P & W	-	103	47	55	-	-	-	-
17	Miles	Total	428	519	666	471	619	889	848	876
18		Santa Fe System:								
19		Santa Fe	989	770	770	798	798	537	537	537
20		50% of T P & W	-	103	48	56	-	-	-	-
21		Total	989	873	818	854	798	537	537	537
22		M.& St.L	-	-	-	58	58	-	-	-
23		Total	1,417	1,392	1,484	1,383	1,475	1,426	1,385	1,413
24										
25		Pennsylvania System:								
26		Pennsylvania	62.4	57.0	48.0	57.0	48.0	59.5	62.1	55.6
27		Wabash	-	-	-	-	-	50.9	60.0	63.9
28	Average	50% of T P & W	-	65.0	78.7	54.5	-	-	-	-
29	Revenue	Total	62.4	58.6	50.2	56.7	48.0	56.8	60.7	58.8
30	Per									
31	Mile	Santa Fe System:								
32	(Cents)	Santa Fe	54.5	56.5	56.5	53.1	53.1	56.1	54.2	54.2
33		50% of T P & W	-	65.0	77.1	53.6	-	-	-	-
34		Total	54.5	57.5	57.7	53.2	53.1	56.1	54.2	54.2
35		M & St.L	-	-	-	146.6	146.6	-	-	-
36		Total	56.9	57.9	54.3	58.3	54.6	56.5	58.2	57.0

2152

[fol. 2153]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF SELECTED TRAFFIC MOVEMENTS
SCHEDULE OF ALTERNATIVE ROUTES
FOR A WESTBOUND MOVEMENT
FROM PENNSYLVANIA R.R. ORIGINS TO SANTA FE SYSTEM DESTINATIONS

Route 1
Pennsylvania to Chicago
Santa Fe from Chicago to destination

Route 2
Pennsylvania to Effner
T.P.& W. from Effner to Lomax
Santa Fe from Lomax to destination

Route 3
Pennsylvania to Peoria
T.P.& W. from Peoria to Lomax
Santa Fe from Lomax to destination

Route 4
Pennsylvania to Effner
T.P.& W. from Effner to Peoria
M.& St.L. from Peoria to Nemo
Santa Fe from Nemo to destination

Route 5
Pennsylvania to Peoria
M.& St.L. from Peoria to Nemo
Santa Fe from Nemo to destination

Route 6
Pennsylvania to East St. Louis
Wabash from East St. Louis to Kansas City
Santa Fe from Kansas City to destination

Route 7
Pennsylvania to Logansport
Wabash from Logansport to Kansas City
Santa Fe from Kansas City to destination

Route 8
Pennsylvania to Decatur
Wabash from Decatur to Kansas City
Santa Fe from Kansas City to destination

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[fol. 2153a]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR AN EASTBOUND MOVEMENT

Commodity	-	Refined Petroleum
Weight	-	78,000 pounds
From	-	Dallas, Texas
To	-	Pittsburgh, Pennsylvania
Rate	-	$1.09 cwt. including Ex Parte 175-C
Authority	-	S.W.L. Tariff 133-H
Freight Charges	-	$850
Divisions	-	Based upon divisions in effect December 1, 1955.

2153a

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF AN EASTBOUND MOVEMENT OF REFINED PETROLEUM
BETWEEN DALLAS, TEXAS AND PITTSBURGH, PENNSYLVANIA VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Lomax-Effner	Route 3 Lomax-Peoria	Route 4 Nemo-Peoria Effner	Route 5 Nemo-Peoria	Route 6 Kansas City-St. Louis	Route 7 Kansas City-Logansport	Route 8 Kansas City-Decatur
1		Pennsylvania System:								
2		Pennsylvania	$ 300	$ 266	$ 333	$ 267	$ 333	$ 417	$ 230	$ 343
3		Wabash	-	-	-	-	-	143	341	228
4		50% of T.P.& W.	-	73	39	33	-	-	-	-
5		Total	$ 300	$ 339	$ 372	$ 300	$ 333	$ 560	$ 571	$ 571
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 550	$ 438	$ 438	$ 426	$ 426	$ 290	$ 279	$ 279
8		50% of T.P.& W.	-	73	40	33	-	-	-	-
9		Total	$ 550	$ 511	$ 478	$ 459	$ 426	$ 290	$ 279	$ 279
10		M.& St.L.	-	-	-	$ 91	$ 91	-	-	-
11		Total	$ 850	$ 850	$ 850	$ 850	$ 850	$ 850	$ 850	$ 850
12		Pennsylvania System:								
13		Pennsylvania	468	450	625	450	625	616	389	545
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W.	-	103	47	56	-	-	-	-
16		Total	468	553	672	506	625	895	884	883
17	Miles	Santa Fe System:								
18		Santa Fe	1,077	858	858	886	886	625	625	625
19		50% of T.P.& W.	-	103	48	56	-	-	-	-
20		Total	1,077	961	906	942	886	625	625	625
21		M.& St.L.	-	-	-	58	58	-	-	-
22		Total	1,545	1,514	1,578	1,506	1,569	1,520	1,509	1,508
23		Pennsylvania System:								
24		Pennsylvania	64.1	59.1	53.3	59.3	53.3	67.7	59.1	62.9
25		Wabash	-	-	-	-	-	51.3	68.9	67.5
26		50% of T.P.& W.	-	70.9	83.0	58.9	-	-	-	-
27	Average	Total	64.1	61.3	55.4	59.3	53.3	62.6	64.6	64.7
28	Revenue									
29	Per									
30	Mile	Santa Fe System:								
31	(cents)	Santa Fe	51.1	51.0	51.0	48.1	48.1	46.4	44.6	44.6
32		50% of T.P.& W.	-	70.9	83.3	58.9	-	-	-	-
33		Total	51.1	53.2	52.8	48.7	48.1	46.4	44.6	44.6
34		M.& St.L.	-	-	-	156.9	156.9	-	-	-
35		Total	55.0	56.1	53.9	56.4	54.2	55.9	56.3	56.4

[fol. 2155]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR AN EASTBOUND MOVEMENT

Commodity	-	Canned Goods
Weight	-	60,519 pounds
From	-	Empire, California
To	-	East Liberty, Pennsylvania
Rate	-	$1.54 cwt. including Ex Parte 175-C
Authority	-	T.C.F.B. Tariff 2-U
Freight Charges	-	$932
Divisions	-	Based upon divisions in effect December 1, 1955.

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[fol. 2156]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF AN EASTBOUND MOVEMENT OF CANNED GOODS
BETWEEN EAST LIBERTY, PENNSYLVANIA AND EMPIRE, CALIFORNIA VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Lomax-Effner	Route 3 Lomax-Peoria	Route 4 Nemo-Peoria-Effner	Route 5 Nemo-Peoria	Route 6 Kansas City-St. Louis	Route 7 Kansas City-Logansport	Route 8 Kansas City-Decatur
1		Pennsylvania System:								
2		Pennsylvania	$ 154	$ 149	$ 186	$ 149	$ 186	$ 186	$ 99	$ 186
3		Wabash	-	-	-	-	-	91	178	91
4		50% of T.P.& W.	-	34	16	18	-	-	-	-
5		Total	$ 154	$ 183	$ 202	$ 167	$ 186	$ 277	$ 277	$ 277
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 778	$ 714	$ 714	$ 710	$ 710	$ 655	$ 655	$ 655
8		50% of T.P.& W.	-	35	16	19	-	-	-	-
9		Total	$ 778	$ 749	$ 730	$ 729	$ 710	$ 655	$ 655	$ 655
10		M.& St.L.	-	-	-	$ 36	$ 36	-	-	-
11		Total	$ 932	$ 932	$ 932	$ 932	$ 932	$ 932	$ 932	$ 932
12		Pennsylvania System:								
13		Pennsylvania	474	456	631	456	631	622	395	551
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W.	-	103	47	55	-	-	-	-
16		Total	474	559	678	511	631	901	890	889
17	Miles	Santa Fe System:								
18		Santa Fe	2,402	2,183	2,183	2,211	2,211	1,950	1,950	1,950
19		50% of T.P.& W.	-	103	47	56	-	-	-	-
20		Total	2,402	2,286	2,230	2,267	2,211	1,950	1,950	1,950
21		M.& St.L.	-	-	-	58	58	-	-	-
22		Total	2,876	2,845	2,908	2,836	2,900	2,851	2,840	2,839
23		Pennsylvania System:								
24		Pennsylvania	32.5	32.7	29.5	32.7	29.5	29.9	25.1	33.8
25		Wabash	-	-	-	-	-	32.6	36.0	26.9
26		50% of T.P.& W.	-	33.0	34.0	32.7	-	-	-	-
27	Average	Total	32.5	32.7	29.8	32.7	29.5	30.7	31.1	31.2
28	Revenue									
29	Per	Santa Fe System:								
30	Mile	Santa Fe	32.4	32.7	32.7	32.1	32.1	33.6	33.6	33.6
31	(cents)	50% of T.P.& W.	-	34.0	34.0	33.9	-	-	-	-
32		Total	32.4	32.8	32.8	32.2	32.1	33.6	33.6	33.6
33		M.& St.L.	-	-	-	62.1	62.1	-	-	-
34		Total	32.4	32.8	32.0	32.9	32.1	32.7	32.8	32.9

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[fol. 2157]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR AN EASTBOUND MOVEMENT

Commodity	-	Liquefied Petroleum Gas
Weight	-	49,341 pounds
From	-	Seagraves, Texas
To	-	Marion, Indiana
Rate	-	81¢ cwt. including Ex Parte 175-C
Authority	-	S.W.L. SW/E 133-H
Freight Charges	-	$400
Divisions	-	Based upon divisions in effect December 1, 1955.

2157

[fol. 2158]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF AN EASTBOUND MOVEMENT OF LIQUEFIED PETROLEUM GAS
BETWEEN SEAGRAVES, TEXAS AND MARION, INDIANA VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Lomax-Effner	Route 3 Lomax-Peoria	Route 4 Nemo-Peoria-Effner	Route 5 Nemo-Peoria	Route 6 Kansas City-St. Louis	Route 7 Kansas City-Logansport	Route 8 Kansas City-Decatur
1		Pennsylvania System:								
2		Pennsylvania	$ 99	$ 56	$ 108	$ 56	$ 108	$ 120	$ 26	$ 107
3		Wabash	-	-	-	-	-	78	181	100
4		50% of T.P.& W.	-	43	17	26	-	-	-	-
5		Total	$ 99	$ 99	$ 125	$ 82	$ 108	$ 198	$ 207	$ 207
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 301	$ 257	$ 257	$ 252	$ 252	$ 202	$ 193	$ 193
8		50% of T.P.& W.	-	44	18	26	-	-	-	-
9		Total	$ 301	$ 301	$ 275	$ 278	$ 252	$ 202	$ 193	$ 193
10		M & St.L.	-	-	-	$ 40	$ 40	-	-	-
11		Total	$ 400	$ 400	$ 400	$ 400	$ 400	$ 400	$ 400	$ 400
12		Pennsylvania System:								
13		Pennsylvania	157	102	330	102	330	321	41	250
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W.	-	103	47	55	-	-	-	-
16		Total	157	205	377	157	330	600	536	588
17	Miles	Santa Fe System:								
18		Santa Fe	1,173	954	954	982	982	721	721	721
19		50% of T.P.& W.	-	103	48	56	-	-	-	-
20		Total	1,173	1,057	1,002	1,038	982	721	721	721
21		M & St.L.	-	-	-	58	58	-	-	-
22		Total	1,330	1,262	1,379	1,253	1,370	1,321	1,257	1,309
23		Pennsylvania System:								
24		Pennsylvania	63.1	54.9	32.7	54.9	32.7	37.4	63.4	42.8
25		Wabash	-	-	-	-	-	28.0	36.6	29.6
26	Average	50% of T.P.& W.	-	41.7	36.2	47.3	-	-	-	-
27	Revenue	Total	63.1	48.3	33.2	52.2	32.7	33.0	38.6	35.2
28	Per									
29	Mile	Santa Fe System:								
30	(cents)	Santa Fe	25.7	26.7	26.9	25.7	25.7	28.0	26.8	26.8
31		50% of T.P.& W.	-	42.7	37.5	46.4	-	-	-	-
32		Total	25.7	28.5	27.4	26.8	25.7	28.0	26.8	26.8
33		M.& St.L.	-	-		69.0	69.0	-	-	-
34		Total	30.1	31.7	29.0	31.9	29.2	30.3	31.8	30.6

2158

[fol. 2159]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR AN EASTBOUND MOVEMENT

Commodity	-	Carbon Black
Weight	-	66,219 pounds
From	-	Coltexo, Texas
To	-	Mansfield, Ohio
Rate	-	$1.50 cwt. including Ex Parte 175-C
Authority	-	S.W.L. Tariff 111-J
Freight Charges	-	$993
Divisions	-	Based upon divisions in effect December 1, 1955

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THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF AN EASTBOUND MOVEMENT OF CARBON BLACK
BETWEEN COLTEXO, TEXAS AND MANSFIELD, OHIO VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Lomax-Effner	Route 3 Lomax-Peoria	Route 4 Nemo-Peoria-Effner	Route 5 Nemo-Peoria	Route 6 Kansas City-St. Louis	Route 7-A Kansas City-Port Wayne	Route 8 Kansas City-Decatur
1		Pennsylvania System:								
2		Pennsylvania	$ 307	$ 246	$ 342	$ 246	$ 342	$ 427	$ 122	$ 345
3		Wabash	-	-	-	-	-	187	498	275
4		50% of T P & W	-	95	47	48	-	-	-	-
5		Total	$ 307	$ 341	$ 389	$ 294	$ 342	$ 614	$ 620	$ 620
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 686	$ 556	$ 556	$ 542	$ 542	$ 379	$ 373	$ 373
8		50% of T P & W	-	96	48	48	-	-	-	-
9		Total	$ 686	$ 652	$ 604	$ 590	$ 542	$ 379	$ 373	$ 373
10		M & St L	-	-	-	$ 109	$ 109	-	-	-
11		Total	$ 993	$ 993	$ 993	$ 993	$ 993	$ 993	$ 993	$ 993
12		Pennsylvania System:								
13		Pennsylvania	294	282	510	282	510	501	146	430
14		Wabash	-	-	-	-	-	279	568	338
15		50% of T P & W	-	103	47	55	-	-	-	-
16		Total	294	385	557	337	510	780	714	768
17	Miles	Santa Fe System:								
18		Santa Fe	950	731	731	759	759	498	498	498
19		50% of T P & W	-	103	48	56	-	-	-	-
20		Total	950	834	779	815	759	498	498	498
21		M & St L	-	-	-	58	58	-	-	-
22		Total	1,244	1,219	1,336	1,210	1,327	1,278	1,212	1,266
23		Pennsylvania System:								
24		Pennsylvania	104.4	87.2	67.1	87.2	67.1	85.2	83.6	80.2
25		Wabash	-	-	-	-	-	67.0	87.7	81.4
26	Average	50% of T P & W	-	99.2	100.0	87.3	-	-	-	-
27	Revenue	Total	104.4	88.6	69.8	87.2	67.1	78.7	86.8	80.7
28	Per									
29	Mile	Santa Fe System								
30	(cents)	Santa Fe	72.2	76.1	76.1	71.4	71.4	76.1	74.9	74.9
31		50% of T P & W	-	93.2	100.0	85.7	-	-	-	-
32		Total	72.2	78.2	77.5	72.4	71.4	76.2	74.9	74.9
33		M & St L	-	-	-	187.9	187.9	-	-	-
34		Total	79.8	81.5	74.3	82.1	74.8	77.7	81.9	78.4

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR AN EASTBOUND MOVEMENT

Commodity	-	Cotton
Weight	-	51,741 pounds
From	-	Galveston, Texas
To	-	New Brunswick, New Jersey
Rate	-	$1.37 cwt. including Ex Parte 175-C
Authority	-	S.W.L. Tariff 208-J
Freight Charges	-	$709
Divisions	-	Based upon divisions in effect December 1, 1955.

2161

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF AN EASTBOUND MOVEMENT OF COTTON
BETWEEN GALVESTON, TEXAS AND NEW BRUNSWICK, NEW JERSEY VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Lomax-Effner	Route 3 Lomax-Peoria	Route 4 Nemo-Peoria Effner	Route 5 Nemo-Peoria	Route 6 Kansas City-St. Louis	Route 7 Kansas City-Logansport	Route 8 Kansas City-Decatur
1		Pennsylvania System:	$ 289	$ 261	$ 300	$ 261	$ 300	$ 383	$ 263	$ 308
2		Pennsylvania	-	-	-	-	-	95	209	164
3		Wabash	-	48	28	19	-	-	-	-
4		50% of T P & W	$ 289	$ 309	$ 328	$ 280	$ 300	$ 478	$ 472	$ 472
5		Total								
6	Revenue	Santa Fe System	$ 420	$ 352	$ 352	$ 344	$ 344	$ 231	$ 237	$ 237
7		Santa Fe	-	48	29	20	-	-	-	-
8		50% of T.P.& W	$ 420	$ 400	$ 381	$ 364	$ 344	$ 231	$ 237	$ 237
9		Total								
10		M.& St.L	-	-	-	$ 65	$ 65	-	-	-
11		Total	$ 709	$ 709	$ 709	$ 709	$ 709	$ 709	$ 709	$ 709
12		Pennsylvania System:	870	852	1,027	852	1,027	1,018	791	94
13		Pennsylvania	-	-	-	-	-	279	495	338
14		Wabash	-	103	47	55	-	-	-	-
15		50% of T P & W	870	955	1,074	907	1,027	1,297	1,286	1,285
16		Total								
17	Miles	Santa Fe System:	1,341	1,122	1,122	1,150	1,150	889	889	889
18		Santa Fe	-	103	48	56	-	-	-	-
19		50% of T P & W	1,341	1,225	1,170	1,206	1,150	889	889	889
20		Total								
21		M.& St.L	-	-	-	58	58	-	-	-
22		Total	2,211	2,180	2,244	2,171	2,235	2,186	2,175	2,174
23		Pennsylvania System:	33.2	30.6	29.2	30.6	29.2	37.6	33.2	32.5
24		Pennsylvania	-	-	-	-	-	34.1	42.2	48.5
25		Wabash	-	46.6	59.6	34.5	-	-	-	-
26	Average	50% of T P & W	33.2	32.4	30.5	30.9	29.2	36.9	36.7	36.7
27	Revenue	Total								
28	Per					29.9	29.9	26.0	26.7	26.7
29	Mile	Santa Fe System:	31.3	31.4	31.4	35.7	-	-	-	-
30	(cents)	Santa Fe	-	46.6	60.4	30.2	29.9	26.0	26.7	26.7
31		50% of T P & W	31.3	32.7	32.6					
32		Total				112.1	112.1	-	-	-
33		M & St.L	-	-	-					32.6
34		Total	32.1	32.5	31.6	32.7	31.7	32.4	32.6	

2162

[fol. 2163]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR AN EASTBOUND MOVEMENT

Commodity	-	Flour
Weight	-	60,510 pounds
From	-	Kingman, Kansas
To	-	Uhrichsville, Ohio
Rate	-	87¢ cwt. Including Ex Parte 175-C
Authority	-	A.T.& S.F. Tariff 14715-G; W.T.L. Tariff 332-E; C.T.R. Tariff 535-C
Freight Charges	-	$526
Divisions	-	Based upon divisions in effect December 1, 1955.

2163

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF AN EASTBOUND MOVEMENT OF FLOUR
BETWEEN KINGMAN, KANSAS AND UHRICHSVILLE, OHIO VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Lomax-Effner	Route 3 Lomax-Peoria	Route 4 Nemo-Peoria-Effner	Route 5 Nemo-Peoria	Route 6 Kansas City-St. Louis	Route 7 Kansas City-Logansport	Route 8 Kansas City-Decatur
1		Pennsylvania System:								
2		Pennsylvania	$ 181	$ 159	$ 199	$ 159	$ 199	$ 218	$ 107	$ 199
3		Wabash	-	-	-	-	-	130	241	149
4		50% of T.P.& W.	-	41	21	20	-	-	-	-
5		Total	$ 181	$ 200	$ 220	$ 179	$ 199	$ 348	$ 348	$ 348
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 345	$ 284	$ 284	$ 284	$ 284	$ 178	$ 178	$ 178
8		50% of T.P.& W.	-	42	22	20	-	-	-	-
9		Total	$ 345	$ 326	$ 306	$ 304	$ 284	$ 178	$ 178	$ 178
10		M.& St.L.	-	-	-	$ 43	$ 43	-	-	-
11		Total	$ 526	$ 526	$ 526	$ 526	$ 526	$ 526	$ 526	$ 526
12		Pennsylvania System:								
13		Pennsylvania	431	358	533	358	533	524	297	454
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W.	-	103	47	55	-	-	-	-
16		Total	431	461	580	413	533	803	792	792
17	Miles	Santa Fe System:								
18		Santa Fe	702	483	484	511	511	250	250	250
19		50% of T.P.& W.	-	103	48	56	-	-	-	-
20		Total	702	586	532	567	511	250	250	250
21		M.& St.L.	-	-	-	58	58	-	-	-
22		Total	1,133	1,047	1,112	1,038	1,102	1,053	1,042	1,042
23		Pennsylvania System:								
24		Pennsylvania	42.0	44.4	37.3	44.4	37.3	41.6	36.0	43.8
25		Wabash	-	-	-	-	-	46.6	48.7	44.1
26	Average	50% of T.P.& W.	-	39.8	44.7	36.4	-	-	-	-
27	Revenue	Total	42.0	43.4	37.9	43.3	37.3	43.3	43.9	43.9
28	Per									
29	Mile	Santa Fe System:								
30	(cents)	Santa Fe	49.1	58.6	58.7	55.6	55.6	71.2	71.2	71.2
31		50% of T.P.& W.	-	40.8	45.8	35.7	-	-	-	-
32		Total	49.1	55.6	57.5	53.6	55.6	71.2	71.2	71.2
33		M.& St.L.	-	-	-	74.1	74.1	-	-	-
34		Total	46.4	50.2	47.3	50.7	47.7	50.0	50.5	50.5

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[fol. 2165]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR AN EASTBOUND MOVEMENT

Commodity	-	Borax
Weight	-	80,808 pounds
From	-	Boron, California
To	-	Williamsport, Pennsylvania
Rate	-	$1.44 cwt. including Ex Parte 175-C
Authority	-	T.C.F.B. Tariff 2-U
Freight Charges	-	$1164
Divisions	-	Based upon divisions in effect December 1, 1955.

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[fol. 2166]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF AN EASTBOUND MOVEMENT OF BORAX
BETWEEN BORON, CALIFORNIA AND WILLIAMSPORT, PENNSYLVANIA VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Lomax-Effner	Route 3 Lomax-Peoria	Route 4 Nemo-Peoria-Effner	Route 5 Nemo-Peoria	Route 6 Kansas City-St. Louis	Route 7 Kansas City-Logansport	Route 8 Kansas City-Decatur
1		Pennsylvania System:								
2		Pennsylvania	$ 298	$ 288	$ 339	$ 288	$ 339	$ 346	$ 249	$ 339
3		Wabash	-	-	-	-	-	99	196	100
4		50% of T P & W	-	43	17	25	-	-	-	-
5		Total	$ 298	$ 331	$ 356	$ 313	$ 339	$ 445	$ 445	$ 439
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 866	$ 790	$ 790	$ 785	$ 785	$ 719	$ 719	$ 725
8		50% of T P & W	-	43	18	26	-	-	-	-
9		Total	$ 866	$ 833	$ 808	$ 811	$ 785	$ 719	$ 719	$ 725
10		M & St L	-	-	-	$ 40	$ 40	-	-	-
11		Total	$1,164	$1,164	$1,164	$1,164	$1,164	$1,164	$1,164	$1,164
12		Pennsylvania System:								
13		Pennsylvania	684	666	841	666	841	832	605	761
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T P & W	-	103	47	55	-	-	-	-
16		Total	684	769	888	721	841	1,111	1,100	1,099
17	Miles	Santa Fe System:								
18		Santa Fe	2,097	1,878	1,878	1,906	1,906	1,645	1,645	1,645
19		50% of T P & W	-	103	48	56	-	-	-	-
20		Total	2,097	1,981	1,926	1,962	1,906	1,645	1,645	1,645
21		M & St L	-	-	-	58	58	-	-	-
22		Total	2,781	2,750	2,814	2,741	2,806	2,756	2,745	2,744
23		Pennsylvania System:								
24		Pennsylvania	43.6	43.2	40.3	43.2	40.3	41.6	41.2	44.1
25		Wabash	-	-	-	-	-	35.5	39.6	39.6
26	Average	50% of T P & W	-	41.7	36.2	45.5	-	-	-	-
27	Revenue	Total	43.6	43.0	40.1	43.4	40.3	40.1	40.5	39.9
28	Per									
29	Mile	Santa Fe System:								
30	(cents)	Santa Fe	41.3	42.1	42.1	41.2	41.2	43.7	43.7	44.1
31		50% of T P & W	-	41.7	37.5	46.4	-	-	-	-
32		Total	41.3	42.0	42.0	41.3	41.2	43.7	43.7	44.1
33		M & St L	-	-	-	69.0	69.0	-	-	-
34		Total	41.9	42.3	41.4	42.5	41.5	42.2	42.4	42.4

[fol. 2167]

THE MINNEAPOLIS & ST LOUIS RAILWAY COMPANY

ANALYSIS OF SELECTED TRAFFIC MOVEMENTS

BASIS FOR DATA

FOR AN EASTBOUND MOVEMENT

Commodity	-	Lumber
Weight	-	56,430 pounds
From	-	Los Angeles, California
To	-	New Brunswick, New Jersey
Rate	-	$1.30 cwt. including Ex Parte 175-C
Authority	-	T.C.F.B. Tariff 27-W
Freight Charges	-	$734
Divisions	-	Based upon divisions in effect December 1, 1955.

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THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF AN EASTBOUND MOVEMENT OF LUMBER
BETWEEN LOS ANGELES, CALIFORNIA AND NEW BRUNSWICK, NEW JERSEY VIA PRINCIPAL ROUTES

Line			Route 1 Chicago	Route 2 Lomax-Effner	Route 3 Lomax-Peoria	Route 4 Nemo-Peoria Effner	Route 5 Nemo-Peoria	Route 6 Kansas City-St. Louis	Route 7 Kansas City-Logansport	Route 8 Kansas City-Decatur
1		Pennsylvania System:								
2		Pennsylvania	$ 207	$ 203	$ 233	$ 203	$ 233	$ 237	$ 166	$ 233
3		Wabash	-	-	-	-	-	60	131	61
4		50% of T.P.& W.	-	26	11	15	-	-	-	-
5		Total	$ 207	$ 229	$ 244	$ 218	$ 233	$ 307	$ 297	$ 294
6	Revenue	Santa Fe System:								
7		Santa Fe	$ 527	$ 479	$ 479	$ 476	$ 476	$ 437	$ 437	$ 440
8		50% of T.P.& W.	-	26	11	15	-	-	-	-
9		Total	$ 527	$ 505	$ 490	$ 491	$ 476	$ 437	$ 437	$ 440
10		M.& St.L.	-	-	-	$ 25	$ 25	-	-	-
11		Total	$ 734	$ 734	$ 734	$ 734	$ 734	$ 734	$ 734	$ 734
12		Pennsylvania System:								
13		Pennsylvania	870	852	1,027	852	1,027	1,018	791	947
14		Wabash	-	-	-	-	-	279	495	338
15		50% of T.P.& W.	-	103	47	55	-	-	-	-
16		Total	870	955	1,074	907	1,027	1,297	1,286	1,285
17	Miles	Santa Fe System:								
18		Santa Fe	2,200	1,981	1,981	2,009	2,009	1,748	1,748	1,748
19		50% of T.P.& W.	-	103	48	56	-	-	-	-
20		Total	2,200	2,084	2,029	2,065	2,009	1,748	1,748	1,748
21		M.& St.L.	-	-	-	58	58	-	-	-
22		Total	3,070	3,039	3,103	3,030	3,094	3,045	3,034	3,033
23		Pennsylvania System:								
24		Pennsylvania	23.8	23.8	22.7	23.8	22.7	23.3	21.0	24.6
25		Wabash	-	-	-	-	-	21.5	26.5	18.0
26		50% of T.P.& W.	-	25.2	23.4	27.3	-	-	-	-
27	Average	Total	23.8	24.0	22.7	24.0	22.7	23.7	23.1	22.9
28	Revenue									
29	Per	Santa Fe System:								
30	Mile	Santa Fe	24.0	24.2	24.2	23.7	23.7	25.0	25.0	25.2
31	(cents)	50% of T.P.& W.	-	25.2	22.9	26.8	-	-	-	-
32		Total	24.0	24.2	24.1	23.8	23.7	25.0	25.0	25.2
33		M.& St.L.	-	-	-	43.1	43.1	-	-	-
34		Total	23.9	24.2	23.7	24.2	23.7	24.1	24.2	24.2

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[fol. 2169]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
ANALYSIS OF SELECTED TRAFFIC MOVEMENTS
SCHEDULE OF ALTERNATIVE ROUTES
FOR AN EASTBOUND MOVEMENT
FROM SANTA FE SYSTEM ORIGINS TO PENNSYLVANIA R.R. DESTINATIONS

Route 1
Santa Fe to Chicago
Pennsylvania from Chicago to destination

Route 2
Santa Fe to Lomax
T.P & W. from Lomax to Effner
Pennsylvania from Effner to destination

Route 3
Santa Fe to Lomax
T.P.& W. from Lomax to Peoria
Pennsylvania from Peoria to destination

Route 4
Santa Fe to Nemo
M.& St.L. from Nemo to Peoria
T.P.& W. from Peoria to Effner
Pennsylvania from Effner to destination

Route 5
Santa Fe to Nemo
M.& St.L. from Nemo to Peoria
Pennsylvania from Peoria to destination

Route 6
Santa Fe to Kansas City
Wabash from Kansas City to St. Louis
Pennsylvania from St. Louis to destination

Route 7
Santa Fe to Kansas City
Wabash from Kansas City to Logansport
Pennsylvania from Logansport to destination

Route 7-A
Santa Fe to Kansas City
Wabash from Kansas City to Fort Wayne
Pennsylvania from Fort Wayne to destination

Route 8
Santa Fe to Kansas City
Wabash from Kansas City to Decatur
Pennsylvania from Decatur to destination

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[fol. 2170]

EXHIBIT H-37

Exhibit No. #37
Witness Carr

BEFORE THE INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 19086

APPLICATION OF THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY FOR AUTHORITY UNDER SECTION 5(2) OF THE INTERSTATE COMMERCE ACT TO ACQUIRE CONTROL OF THE TOLEDO, PEORIA & WESTERN RAILROAD COMPANY THROUGH OWNERSHIP OF ITS CAPITAL STOCK.

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1	Map showing the location of the M. & St. L. Railway in South Dakota.
2	Production and value of agricultural products produced in the counties traversed by the M. & St. L. Railway in South Dakota in 1954.
3 & 4	Number of cars and tons of freight originating and terminating in South Dakota on the M. & St. L. Railway from 1928 to 1954, inclusive.
5 – 10	Statements showing number of cars, weight and revenue on actual shipments of various commodities moving to and from South Dakota for the eleven months ending November 30, 1955.

EXHIBIT OFFERED ON BEHALF OF THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Hearing at Peoria, Illinois
February 1, 1956.

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[fol. 2171]

SKETCH OF M. & ST. L. RY.
IN SOUTH DAKOTA. 153.97 Miles



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[fol. 2172]

THE 1954 PRODUCTION AND FARM VALUE OF AGRICULTURAL COMMODITIES PRODUCED IN THE COUNTIES TRAVERSED BY THE M. & ST. L. RY. IN SOUTH DAKOTA

	BROWN		CLARK		CODINGTON		GRANT		McPHERSON		SPINK	
	Production	Farm Value	Production	Farm Value	Production	Farm Value	Production	Farm Value	Production	Farm Value	Production	Farm Value
Corn	2,702,700	3,648,600	1,407,000	1,899,400	899,200	1,213,900	1,821,600	2,459,200	567,000	765,400	2,285,700	3,085,700
Wheat	1,986,350	4,495,200	566,300	1,336,500	223,340	527,100	110,290	260,300	766,630	1,734,900	2,728,500	6,174,700
Oats	4,755,000	2,853,000	2,841,000	1,818,200	2,241,300	1,434,400	2,118,100	1,355,600	1,707,500	1,024,500	3,501,400	2,100,800
Barley	754,800	702,000	717,200	751,800	386,400	405,000	202,000	211,700	159,000	147,900	598,500	556,600
Rye	177,600	182,900	58,500	62,000	78,000	82,700	49,400	52,400	24,700	25,500	300,800	309,800
Flax	381,000	1,162,100	199,200	621,000	511,000	1,593,100	433,300	1,350,800	178,400	544,100	81,000	247,000
Potatoes	11,700	17,000	555,000	514,400	445,500	412,900	14,400	13,400	17,000	24,600	17,000	24,600
Hay	153,800	2,259,700	91,360	1,333,800	66,100	965,100	74,090	1,081,700	111,800	1,642,700	113,300	1,664,700
Cattle	65,400	6,016,800	43,000	3,956,000	33,200	3,054,400	40,100	3,689,200	48,700	4,480,400	55,900	5,142,800
Hogs	41,900	2,058,900	16,900	861,900	10,800	550,800	20,000	1,020,000	6,000	294,800	21,900	1,076,200
Sheep	26,200	372,000	21,900	317,500	19,700	285,600	9,600	139,200	5,900	83,800	21,100	299,600
Chickens	216,000	248,400	186,800	233,500	163,300	204,100	163,300	204,100	102,500	117,900	194,000	223,100
		24,016,600		13,706,000		10,729,100		11,837,600		10,886,500		20,905,600

TOTAL COUNTIES: 92,081,400

LAND AREA:

Brown	1,677	Square Miles
Clark	976	Square Miles
Codington	691	Square Miles
Grant	684	Square Miles
McPherson	1,151	Square Miles
Spink	1,506	Square Miles
Total	6,685	Square Miles

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Production Figures taken from the U. S. Dept. of Agriculture 1954 South Dakota Annual Report.
Grain per bushel.
Potatoes per bushel.
Hay per ton.
Livestock per head.

[fol. 2172a]

NUMBER OF CARS AND TONS OF FREIGHT, ORIGINATING AND TERMINATING IN SOUTH DAKOTA ON THE M. AND ST. L. RY. SINCE 1928

Year		PRODUCTS OF AGRICULTURE		ANIMALS AND PRODUCTS		PRODUCTS OF MINES		PRODUCTS OF FORESTS		MANUFACTURING AND MISCELLANEOUS		TOTAL	
		Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons
1928	Orig.	3,930	141,467	1,594	15,852	627	29,348	6	144	479	9,952	6,636	196,763
	Term.	293	8,832	579	5,257	1,961	76,446	286	6,875	1,833	37,886	4,952	135,296
1929	Orig.	2,315	82,855	1,294	12,726	644	29,915	4	62	454	9,342	4,711	140,900
	Term.	224	4,990	448	3,946	1,868	70,216	325	8,129	1,733	36,842	4,598	124,123
1930	Orig.	2,448	98,832	1,027	10,739	585	34,161	2	51	385	7,739	4,547	151,522
	Term.	185	4,187	173	1,580	1,807	69,744	171	4,367	1,459	30,866	3,795	110,744
1931	Orig.	1,475	59,114	1,111	12,239	588	28,992	2	39	363	10,030	3,539	110,414
	Term.	134	3,692	373	3,460	1,269	47,783	93	2,321	1,267	31,064	3,196	88,320
1932	Orig.	2,355	96,973	707	7,292	111	5,105	1	15	119	4,167	3,293	113,552
	Term.	340	8,484	310	3,222	1,391	47,031	69	1,572	798	20,190	2,908	80,499
1933	Orig.	1,371	54,532	805	8,275	104	4,879	1	29	69	1,491	2,350	69,206
	Term.	200	5,116	100	1,276	1,257	43,370	76	1,845	676	15,825	2,309	67,432
1934	Orig.	357	9,530	1,464	16,091	334	15,492	5	162	98	2,366	2,258	43,641
	Term.	1,684	34,965	269	3,294	1,407	49,894	85	2,095	809	18,742	4,254	108,990
1935	Orig.	968	36,208	108	1,156	129	5,351	—	—	36	1,027	1,241	44,242
	Term.	429	11,118	141	1,619	1,335	44,117	75	1,752	1,110	23,133	3,090	81,739
1936	Orig.	576	19,247	344	3,654	238	12,230	--	—	204	8,042	1,362	43,173
	Term.	248	5,277	133	1,420	1,564	52,554	82	1,935	1,083	24,178	3,110	85,364
1937	Orig.	472	15,807	150	1,596	351	19,777	—	—	222	6,379	1,195	43,559
	Term.	340	6,606	34	395	1,534	54,693	109	2,527	1,170	26,285	3,187	90,806
1938	Orig.	1,022	40,822	104	1,114	142	7,435	1	27	54	1,508	1,323	50,906
	Term.	174	4,162	11	116	1,249	42,600	95	2,277	1,139	26,594	2,668	75,749
1939	Orig.	1,340	51,369	89	910	145	8,198	—	—	54	1,554	1,628	62,031
	Term.	124	2,441	32	374	1,263	42,744	114	2,826	1,225	28,011	2,758	76,396
1940	Orig.	1,559	61,015	151	1,456	230	13,253	—	—	182	5,461	2,122	81,175
	Term.	60	1,208	40	394	1,489	51,230	112	2,776	1,272	28,704	2,973	84,312
1941	Orig.	1,784	71,397	115	1,279	183	10,835	—	—	84	1,500	2,151	85,092
	Term.	69	1,135	18	196	1,210	43,628	114	2,933	1,141	25,418	2,548	73,310
1942	Orig.	3,287	137,400	151	1,597	92	5,391	1	17	80	2,035	3,611	146,440
	Term.	55	1,023	100	1,143	1,29[illegible]	43,033	124	3,341	924	22,169	2,353	70,709

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[fol. 2173]

Year		PRODUCTS OF AGRICULTURE		ANIMALS AND PRODUCTS		PRODUCTS OF MINES		PRODUCTS OF FORESTS		MANUFACTURING AND MISCELLANEOUS		TOTAL	
		Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons
1943	Orig.	5,002	206,415	177	1,821	177	10,147	1	37	79	1,481	5,436	219,901
	Term.	65	1,572	4	842	1,152	46,603	121	3,970	742	18,872	2,134	71,659
1944	Orig.	4,288	174,564	226	2,086	280	16,052	—	—	54	831	4,848	193,533
	Term.	71	2,323	86	996	1,138	48,393	125	3,638	1,058	25,143	2,478	81,493
1945	Orig.	4,451	202,568	160	1,668	322	18,349	—	—	63	1,151	4,996	223,736
	Term.	45	962	90	939	1,193	53,525	86	2,506	1,219	30,350	2,633	88,282
1946	Orig.	4,044	186,313	86	887	625	36,731	—	—	125	2,572	4,880	226,503
	Term.	36	839	44	498	1,630	80,570	103	3,153	1,462	37,672	3,275	122,732
1947	Orig.	3,985	189,707	81	851	562	33,445	—	—	593	14,373	5,221	238,376
	Term.	27	654	79	913	1,538	74,895	119	3,660	1,658	39,147	3,421	119,269
1948	Orig.	3,094	151,321	37	374	682	40,700	—	—	517	12,942	4,330	205,337
	Term.	20	495	55	633	1,413	70,816	140	4,296	1,722	41,167	3,350	117,407
1949	Orig.	2,422	117,070	22	311	644	40,496	1	34	576	13,445	3,665	171,356
	Term.	48	1,219	35	498	1,436	70,965	134	4,101	1,624	39,662	3,277	116,445
1950	Orig.	2,150	105,645	6	143	480	28,503	—	—	563	13,988	3,199	148,279
	Term.	32	695	25	550	1,237	58,073	130	3,734	1,715	41,670	3,139	104,722
1951	Orig.	3,348	170,852	5	52	403	24,037	—	—	779	19,115	4,535	214,056
	Term.	58	1,391	25	480	1,035	47,458	85	2,538	1,521	36,020	2,728	87,887
1952	Orig.	2,731	138,174	6	41	434	26,052	—	—	819	20,581	3,990	184,848
	Term.	79	1,862	1	11	961	45,950	93	2,782	1,446	36,209	2,580	86,814
1953	Orig.	2,114	92,474	3	24	396	23,839	—	—	815	20,702	3,328	137,039
	Term.	61	1,350	5	51	808	38,499	74	2,263	1,283	31,687	2,231	73,850
1954	Orig.	2,502	104,604	4	47	323	19,859	—	—	687	17,520	3,516	142,110
	Term.	38	809	—	—	830	39,124	59	1,734	1,174	27,793	2,101	69,460
										TOTAL ORIG.		93,911	3,687,690
										AVERAGE		3,478	136,581
										TOTAL TERM.		82,046	2,493,809
										AVERAGE		3,039	92,363

AUTHORITY: Annual Reports of the M. & St.L. Ry. Co. to the South Dakota Public Utilities Commission.

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[fol. 2174]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY INTERLINE TRAFFIC ORIGINATING IN SOUTH DAKOTA FOR THE ELEVEN MONTHS ENDED NOVEMBER 30, 1955

Destination Station	Commodity	Number of Cars	Payload (Cwt.)	M.&ST.L. Revenue
Fort Dodge	Scrap metal	1	614	157
St. Paul	Wheat	1	1141	$ 251
"	Waste material	1	437	105
Minneapolis	Potatoes	6	2360	667
"	Feed	1	618	197
"	Wheat	96	103529	26,621
"	Hay	6	1388	453
"	Scrap metal	55	50935	9,248
"	Barley and rye	1	869	234
"	Mill products	1	741	163
"	Flaxseed	2	1780	433
"	Seeds	1	1024	389
"	Waste material	1	300	107
Albert Lea	Potatoes	8	3119	988
"	Scrap metal	8	7167	1,374
Nemo	Wheat	11	12031	4,532
"	Oats	2	1944	710
"	Hay	24	6143	940
"	Seeds	3	3045	1,153
Peoria	Machinery	2	526	592
"	Hay	14	5039	1,450
"	Potatoes	1	400	215
"	Cheese	1	799	562
"	Hides	1	559	395
"	Agri. Impl.	1	200	214
"	Tires	1	300	256
Altia	Wheat	17	16881	6,946
"	Scrap metal	2	2355	634
"	Oats	1	892	320
"	Hay	98	28357	5,479
"	Potatoes	3	1170	423
Rolfe	Soybeans	1	1094	247
Fort Dodge	Wheat	5	5517	1,604
"	Oats	96	78278	20,870
"	Corn	3	3048	784
Fort Dodge	Mill products	5	3506	996
Fort Dodge	Barley	1	1008	$ 412
"	Potatoes	1	400	255
Tara	Wheat	41	42270	11,833
"	Oats	34	30170	7,359
"	Mill products	8	6516	1,987
"	Soybeans	1	978	255
"	Corn	8	8855	2,128
"	Hay	23	5935	1,021
"	Potatoes	1	400	86
Des Moines	Wheat	20	21197	8,301
"	Barley and rye	8	7171	2,930
"	Mill products	22	16393	4,303
"	Soybeans	1	964	354
"	Oats	3	2135	810
"	Hay	23	5610	874
"	Potatoes	9	3360	1,169
Aberdeen	Mill products	1	735	73
"	Sand and Gravel	32	37866	2,030
"	Gasoline	64	31482	5,077
"	Fuel oil	12	5859	947
"	Potatoes	1	360	59
Grand Junction	Wheat	2	1483	459
"	Hay	6	1482	326
Estherville	Potatoes	2	785	247
Ackley	Hay	1	369	49
Marshalltown	Potatoes	3	1260	471
Pickering	Potatoes	1	360	136
Maxor	Hay	5	1384	192
"	Potatoes	4	1440	611
Monmouth	Potatoes	1	400	100
Watertown	Hay	19	5657	601
	Total	839	592390	$146,164

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[fol. 2175]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY LOCAL TRAFFIC ORIGINATING IN SOUTH DAKOTA
FOR THE ELEVEN MONTHS ENDED NOVEMBER 30, 1955

Destination Station	Commodity	Number of Cars	Payload (Cwt.)	M.&ST.L. Revenue	Destination Station	Commodity	Number of Cars	Payload (Cwt.)	M&ST.L. Revenue
St. Paul	Wheat	12	10875	$ 3,244	Boyd	Gasoline	7	3420	$ 413
"	Oats	2	1860	390	New Ulm	Oats	4	3160	1,062
"	Barley and rye	9	9132	2,470	"	Barley and rye	25	24314	7,354
Minneapolis	Wheat	763	798643	204,702	Dawson	Gasoline	12	5568	631
"	Corn	37	37456	9,300	"	Fuel oil	7	3628	417
"	Oats	348	295103	84,681	Madison	Gasoline	26	13592	1,329
"	Barley and rye	354	339434	95,703	"	Fuel oil	16	8941	874
"	Mill products	44	33341	10,208	Marietta	Gasoline	16	7823	763
"	Soybeans	11	10756	2,951	"	Fuel oil	2	961	84
"	Vegetable oil	1	842	269	Des Moines	Potatoes	3	1120	572
"	Flaxseed	239	237048	77,756	Mason City	Potatoes	1	360	170
"	Wool	5	746	1,024	Conde	Gasoline	2	960	100
"	Seeds	2	2215	707	"	Sand and Gravel	2	2297	126
"	Feed	15	7984	2,558	Aberdeen	Sand and Gravel	212	263432	14,498
"	Scrap metal	4	2484	726	"	Gasoline	246	128563	17,731
Minn. Trf.	Wheat	14	13885	4,137	"	Fuel oil	106	55230	7,621
"	Oats	1	695	150	Wetonka	Sand and Gravel	2	2034	165
"	Mill products	4	2754	865	Leola	Sand and Gravel	3	3858	307
"	Flaxseed	5	5286	1,681	"	Gasoline	3	1388	231
Hopkins	Farm Implements	2	385	352	"	Fuel oil	2	857	143
New Prague	Wheat	103	104408	33,330					
"	Corn	1	1033	330		Total	2673	2447921	$592,125

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[fol. 2176]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY LOCAL TRAFFIC TERMINATING IN SOUTH DAKOTA
FOR THE ELEVEN MONTHS ENDED NOVEMBER 30, 1955

Origin Station	Commodity	Number of Cars	Payload (Cwt.)	M.&ST.L. Revenue
St. Paul	Fuel	9	5497	$ 1,770.24
"	Bldg. p. & r. matr.	3	1352	481.90
"	Liquors, malt	15	5418	2,303.48
Minn. Trf.	Containers	1	200	144.90
"	Fuel	8	3411	1,043.60
"	Lubr. oil & greases	10	3743	1,136.90
"	Agri. Impl.	5	1837	1,095.95
Minneapolis	Bldg. p. & r. matr.	8	4015	1,568.66
"	Feed	31	13103	3,772.73
"	Mfg. iron & steel	2	753	269.77
"	Tanks	4	844	640.45
"	Agri. Impl.	4	1252	729.49
"	Fuel	1	267	70.64
"	Stone and rock	1	713	295.02
"	Insulating material	2	656	330.59
St.Louis Park	Tar	1	403	162.09
Hopkins	Agri. Impl.	6	1331	863.53
Hopkins	Agri. Impl. parts	2	764	537.71
New Prague	Caboose	17	7201	1,454.40
Albert Lea	Veneer and plywood	1	157	198.99
Fort Dodge	Brick	2	1661	439.39
"	Plaster	1	422	230.39
Mason City	Cement	9	7257	2,336.91
	Sewer pipe and tile	1	609	147.11
	Brick	3	2019	501.93
Oskaloosa	Brick	2	1536	441.64
Peoria	Sugar	1	408	$ 411.73
"	Vehicles	1	385	523.49
Belmond	Soybeans	1	800	183.12
"	Soybean Oil c. & m.	10	6903	1,572.64
Des Moines	Brick	2	1299	343.55
Watertown	Gasoline	250	130377	17,988.43
"	Gravel	33	42368	2,363.94
"	Fuel	108	56087	7,763.79
Kampeska	Gravel	186	229303	12,731.53
Florence	Gasoline	1	534	73.73
	Total	742	534885	$66,924.36

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[fol. 2177]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY INTERLINE RECEIVED TRAFFIC – TERMINATING IN SOUTH DAKOTA FOR THE ELEVEN MONTHS ENDED NOVEMBER 30, 1955

Junction Received	Commodity	Number of Cars	Payload (Cwt.)	M.&ST.L. Revenue
St. Paul	Fertilizers	1	808	$ 88.76
"	Chemicals	1	470	209.56
"	Agri. Impl.	2	400	279.68
"	Bituminous coal	1	653	82.70
"	Lubr. oils & greases	1	350	147.08
Minn. Trf.	Lubr. oils & greases	1	341	157.72
"	Bituminous coal	48	35992	4,554.00
"	Newsprint paper	2	1232	391.05
"	Agri. Impl.	11	2627	2,083.62
"	" " parts	1	366	289.33
"	Posts, poles	7	2840	843.61
"	Chemicals	1	383	269.43
"	Buildings and houses	1	213	156.35
"	Food products	1	378	96.96
"	Autos, passenger	5	673	1,019.68
"	Autos, freight	1	174	249.97
"	Fertilizers	2	1410	236.93
"	Salt	1	835	102.27
"	Vehicles, motor	1	282	191.48
"	Insecticides	1	437	217.69
"	Mfg. iron & steel	1	990	405.76
"	Tires and tubes	1	328	183.94
"	Brick	2	1571	214.67
"	Brick and tile	3	1922	262.65
"	Rope	2	665	412.40
"	Autos and auto trucks	1	130	188.04
Minneapolis	Anthracite Coal	2	844	94.07
"	Bituminous Coal	163	111781	14,468.84
"	Coke	12	8482	1,233.91
"	Lumber	3	1644	870.67
"	Newsprint paper	20	12030	4,426.38
"	Wallboard	1	487	154.42
"	Glass bottles	1	338	150.50
Minneapolis	Rope	2	405	$ 208.71
"	Sugar	3	1824	342.15
"	Lubr. oils & greases	1	458	159.01
"	Iron & steel nails & wire	3	1254	585.84
"	Agri. Impl.	6	1856	1,285.77
"	Tires and tubes	8	2528	1,424.53
"	Printing paper	15	9334	3,914.31
"	Food products	3	2075	577.94
"	Posts, poles	2	782	222.62
"	Feed, animal & poultry	1	365	138.50
"	Brick	1	900	122.96
"	Autos, passenger	1	129	185.60
"	Autos, freight	1	140	215.33
Waseca	Posts, poles	2	676	186.88
Albert Lea	Bituminous coal	32	42244	5,547.86
"	Box, or crates	1	527	120.31
"	Cast iron pipe & fittings	3	1369	674.79
"	Furniture	2	275	306.91
"	Mfg. iron & steel	1	609	400.64
"	Flour	1	400	200.72
"	Sand	3	2262	425.87
"	Lubr. oils & greases	1	309	127.15
"	Chemicals	2	1115	498.43
"	Bathroom fixtures	1	402	279.50
"	Food products	17	7918	3,889.91
"	Feed	2	908	318.90
"	Building paper	1	475	127.64
"	Paper	1	299	221.10
"	Agri. Impl.	1	256	214.55
Mason City	Brick	5	3436	782.21
Hampton	Lubr. oils & greases	3	1191	477.70
Ackley	Lubr. oils & greases	1	340	160.27
"	Wallboard	1	869	417.12

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[fol. 2178]

Junction Received	Commodity	Number of Cars	Payload (Cwt.)	M.&ST.L. Revenue
Marshalltown	Lubr. oils & greases	1	482	$ 223.68
"	Salt	1	800	170.74
Pickering	Agri. Impl.	2	541	483.89
Grinnell	Lubr. oils & greases	1	44[illegible]	155.90
Brighton	Glass bottles	1	300	60.40
Nemo	Feed	7	3800	662.51
"	Gasoline	12	6107	2,672.60
"	Petrolcum products	5	2461	1,135.25
"	Chemicals	9	3305	2,972.47
"	Nails and wire	4	1754	1,244.68
"	Mfg. iron & steel	18	12324	7,965.45
"	Agri. Impl.	10	2758	2,234.63
"	Food products	2	733	357.63
"	Buildings and houses	1	685	490.18
Peoria	Bituminous coal	93	98056	20,203.06
"	Posts and poles	2	1076	445.12
"	Fertilizers	3	2021	659.50
"	Cast iron pipe & fittings	2	1049	658.11
"	Iron & Steel pipe & fit.	2	977	685.84
"	Agri. Impl.	7	1759	1,926.02
"	Electric Equip. & parts	3	996	994.94
"	Bathroom fixtures	3	1178	1,137.24
"	Furniture	1	163	250.25
"	Feed	2	1000	269.43
"	Copper, brass	1	327	324.42
"	Mfg. and Misc.	7	2916	2,451.39
"	I. & S. nails & wires	3	1446	1,144.56
"	Lumber	3	1274	683.41
"	Lubr. oils & greases	2	870	665.44
"	Chemicals	3	1205	810.77
"	Mfg. iron & steel	39	22977	18,013.22
"	Machinery	3	841	874.89
"	Tires and tubes	18	5888	5,106.92
"	Wallboard	1	500	301.25
"	Glass bottles	3	1098	973.91
"	Petroleum products	4	1913	589.47
Peoria	Phosphate rock	1	608	$ 185.96
"	Rope	1	261	163.88
"	Food products	2	678	440.12
"	Paint	1	489	384.72
"	Aluminum	1	556	537.58
"	Brick	5	3660	1,460.94
Albia	Chemicals	4	1751	1,201.59
"	Cast iron pipe & fittings	2	836	362.71
"	Agri. Impl.	1	211	137.00
"	Fuel and oils	3	1647	508.56
"	Mfg. iron and steel	3	968	627.69
"	Lubr. oils & greases	1	289	76.77
"	Petroleum products	3	921	244.50
"	Fertilizers	3	1818	413.31
"	Brick	2	650	223.24
"	Lime	1	300	65.93
"	Food products	1	690	388.15
"	Food	1	806	445.84
New Ulm	Autos, passenger	10	1336	1,020.63
"	Autos, freight	4	589	407.79
Estherville	Matches	1	273	166.42
"	Lubr. oils & greases	1	430	149.52
"	Agri. Impl.	2	565	377.30
"	Brick	1	1003	133.51
Maxon	Fertilizers	1	605	107.55
Hedrick	Petroleum products	2	969	274.57
Monmouth	Rope	1	433	490.80
Abingdon	Flour	1	435	51.15
"	Lumber	1	603	138.78
"	Bituminous coal	3	1954	147.52
Fort Dodge	Brick	1	301	69.10
"	Plaster	5	2109	675.77
"	Wallboard	11	5536	2,026.25
"	Stone and rock	2	1090	157.66
"	Lubr. oils & greases	1	411	152.08
"	Sewer pipe	2	726	183.98

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[fol. 2179]

Junction Received	Commodity	Number of Cars	Payload (Cwt.)	M.&ST.L. Revenue
Fort Dodge	Fuel	2	1569	$ 379.55
"	Petroleum products	1	533	209.73
"	Building paper	1	407	104.5[illegible]
Tara	Petroleum products	1	533	185.39
Des Moines	Petroleum products	5	3460	1,028.39
"	Bituminous coal	3	2106	186.25
"	Asphalt	2	1508	480.97
"	Salt	2	1800	409.34
"	Autos, passenger	1	140	137.93
"	Brick	3	2088	494.04
"	Glass bottles	2	644	221.16
"	Food products	1	401	173.53
"	Feed, animal & poultry	2	907	186.26
"	Fuel	2	754	251.32
"	Lubri. oil & greases	2	589	168.26
"	Tanks	1	108	168.08
"	Refrigerators & parts	2	347	339.83
"	Cast iron pipe & fittings	2	997	438.65
"	Agri. Impl.	1	241	169.55
"	Fertilizers	4	2424	618.13
Watertown	Lumber	6	3832	1,116.38
"	Gasoline	45	22902	2,687.75
"	Fuel	46	24077	2,743.67
"	Petroleum products	6	2659	317.02
"	Brick	1	604	40.87
Aberdeen	Cement	41	27227	2,461.29
"	Mfg. and Misc.	69	41715	9,339.84
"	Lumber	103	71866	17,210.14
"	Potatoes	6	2370	421.15
"	Veneer, plywood	2	1406	344.23
"	Posts, poles	9	4681	1,114.95
"	Bituminous coal	12	8047	455.44
"	Wallboard	1	728	185.10
"	Feed, animal & poultry	1	340	50.91
Aberdeen	Fuel	1	449	$ 61.77
"	Fertilizers	1	605	63.27
	Total	1189	737[illegible]	$ 199.058.99

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EXHIBIT H-39

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Dockets 18991 and 19086

Acquisition of Toledo, Peoria & Western R.R.

Description of the Territory Served by
The Minneapolis & St. Louis Ry.
Toledo, Peoria & Western R.R.

Index

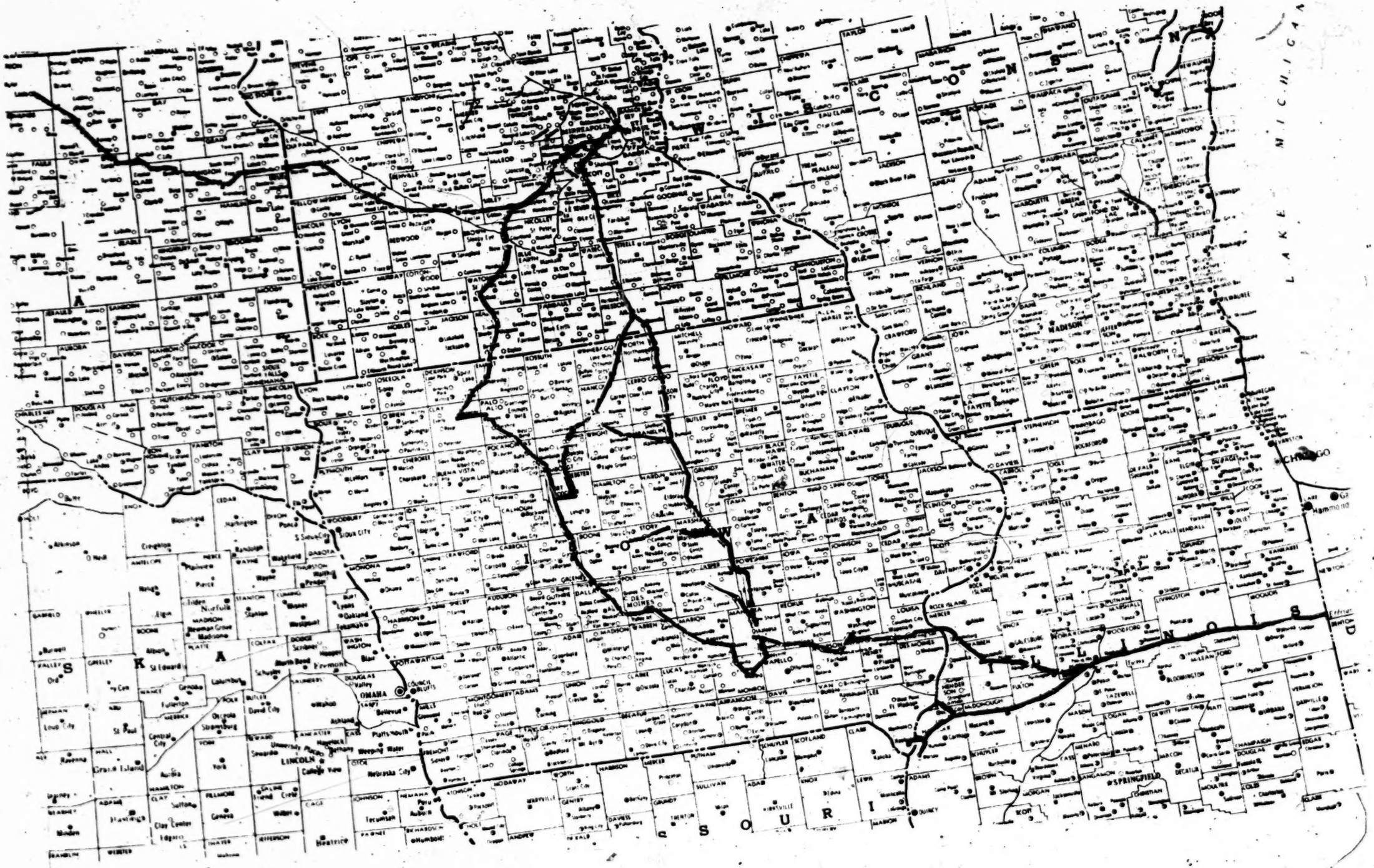
County Map Sheet 1

Population, Manufacture and Agriculture by Counties Sheets 2 - 6

2180

Prepared by:
R. W. Nelson, Vice President-Traffic
The Minneapolis & St. Louis Railway Company
Minneapolis 4, Minnesota

[fol. 2180a]


LAKE MICHIGAN
MINNEAPOLIS
ST. PAUL
DULUTH
SIOUX CITY
OMAHA
COUNCIL BLUFFS
LINCOLN
DES MOINES
CEDAR RAPIDS
MADISON
SPRINGFIELD
CHICAGO
Hammond
MINNESOTA
IOWA
NEBRASKA
ILLINOIS
MISSOURI

COUNTIES IN SOUTH DAKOTA

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

County	County Seat	Population - 1950			Agriculture - 1950				Manufactures - 1951	
					Value of Products Sold In Dollars (,000 omitted)				Number of Establishments	Average Number of Employees
		Total	Urban	Rural	Total	Crops	Livestock	Dairy		
Brown	Aberdeen	32,617	21,051	11,566	14,034	6,821	6,175	675	35	381
Clark	Clark	8,369	---	8,369	8,240	4,101	3,360	356	4	17
Codington	Watertown	18,944	12,699	6,245	7,162	3,295	2,425	652	24	762
Day	Webster	12,294	2,503	9,791	7,969	3,277	3,251	809	8	86
Grant	Milbank	10,233	2,982	7,251	7,936	3,138	3,378	870	12	213
McPherson	Leola	7,071	---	7,071	4,087	1,152	2,122	602	4	17
Spink	Redfield	12,204	2,655	9,549	11,011	5,586	4,654	290	5	22
		101,732	41,890	59,842	60,419	27,150	25,375	4,254	92	1,798

AUTHORITY: Rand McNally Commercial Atlas and Marketing Guide - 86th Edition - 1955

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COUNTIES IN MINNESOTA

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

County	County Seat	Population - 1950			Agriculture - 1950				Manufactures - 1951	
					Value of Products Sold In Dollars (,000 omitted)					
		Total	Urban	Rural	Total	Crops	Livestock	Dairy	Number of Establishments	Average Number of Employees
Carver	Chaska	18,155	---	18,155	11,390	465	5,844	5,293	26	319
Freeborn	Albert Lea	34,517	13,545	20,972	22,406	7,197	9,141	3,527	62	2,870
Hennepin	Minneapolis	676,579	612,113	64,466	14,526	4,393	2,920	5,611	1,527	75,151
Lac Qui Parle	Madison	14,545	---	14,545	14,888	7,803	6,987	723	8	62
Le Sueur	Le Center	19,088	2,713	16,375	10,860	2,290	5,080	2,023	30	829
Martin	Fairmont	25,655	8,193	17,462	23,283	7,487	11,888	1,819	33	930
Nicollet	St. Peter	20,929	12,542	8,387	11,492	2,775	5,245	1,907	25	245
Ramsey	St. Paul	355,332	335,798	19,534	3,064	1,804	689	374	683	44,091
Redwood	Redwood Falls	22,127	3,813	18,314	21,494	8,588	9,531	1,057	26	130
Renville	Olivia	23,954	---	23,954	25,209	9,424	10,827	2,132	28	117
Scott	Shakopee	16,456	3,155	13,301	8,333	832	3,077	3,565	22	709
Sibley	Gaylord	15,816	---	15,816	15,637	3,287	8,807	3,341	25	262
Waseca	Waseca	14,957	4,927	10,030	10,771	2,808	4,638	1,655	22	610
Watonwan	St. James	13,881	3,861	10,020	12,161	4,070	5,748	899	23	432
Yellow Medicine	Granite Falls	16,279	1,979	14,300	16,593	8,351	5,784	837	14	124
		1,288,300	1,002,669	285,631	221,907	71,354	90,206	34,563	2,554	126,881

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COUNTIES IN IOWA

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

County	County Seat	Population - 1950			Agriculture - 1950				Manufactures - 1951	
					Value of Products Sold In Dollars (,000 omitted)					
		Total	Urban	Rural	Total	Crops	Livestock	Dairy	Number of Establishments	Average Number of Employees
Boone	Boone	28,139	12,164	15,975	18,125	5,827	9,742	1,073	19	339
Cerro Gordo	Mason City	46,053	32,957	13,096	17,097	4,056	10,047	1,307	60	3,535
Dallas	Adel	23,661	6,174	17,467	18,293	5,787	9,830	1,281	23	725
Franklin	Hampton	16,268	4,432	11,836	21,550	3,727	14,652	1,390	18	286
Greene	Jefferson	15,544	4,326	11,218	17,104	6,340	8,798	697	11	78
Hancock	Garner	15,077	---	15,077	18,202	4,861	10,281	1,201	14	78
Hardin	Eldora	22,218	8,007	14,211	19,253	3,878	12,579	1,156	29	314
Henry	Mt. Pleasant	18,708	5,843	12,865	12,028	2,472	7,482	847	12	29
Humboldt	Dakota City	13,117	3,219	9,898	14,490	4,558	8,219	703	14	1
Jasper	Newton	32,305	11,723	20,582	21,257	3,820	14,140	1,668	30	4,988
Jefferson	Fairfield	15,696	7,299	8,397	8,292	1,680	5,497	540	23	1,294
Keokuk	Sigourney	18,797	---	18,797	15,407	2,451	10,936	826	13	140
Kossuth	Algona	26,241	5,415	20,826	30,025	9,316	16,487	1,659	27	259
Louisa	Wapello	11,101	---	11,101	11,279	2,608	7,956	371	11	71
Mahaska	Oskaloosa	24,672	11,124	13,548	17,016	2,607	11,969	1,142	24	724
Marion	Knoxville	26,930	12,052	13,878	13,374	2,048	9,288	1,022	23	686
Marshall	Marshalltown	35,611	19,821	15,790	20,006	3,943	15,849	1,217	51	3,433
Monroe	Albia	11,814	4,838	6,976	5,403	658	3,977	444	9	44
Polk	Des Moines	226,010	199,934	26,076	16,829	6,344	7,506	1,943	389	20,776
Poweshiek	Montezuma	19,344	6,828	12,516	17,086	2,427	12,551	958	21	348
Story	Nevada	44,294	26,661	17,633	19,181	6,134	10,164	1,459	38	375
Washington	Washington	19,557	5,902	13,655	19,686	2,455	14,261	798	24	496
Webster	Ft. Dodge	44,241	25,115	19,126	18,459	8,072	7,707	1,225	64	4,338
Winnebago	Forest City	13,450	2,766	10,684	12,332	2,852	6,880	1,055	16	100
Worth	Northwood	11,068	---	11,068	12,022	2,889	6,964	940	11	49
Wright	Clarion	19,652	7,326	12,326	18,287	5,666	10,362	765	19	327
		796,568	423,926	372,642	432,683	107,480	262,123	27,685	993	44,292

AUTHORITY: Rand McNally Commercial Atlas and Marketing Guide - 86th Edition - 1955

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COUNTIES IN ILLINOIS

THE MINNEAPOLIS & ST LOUIS RAILWAY COMPANY

County	County Seat	Population - 1950			Agriculture - 1950				Manufactures 1951	
					Value of Products Sold In Dollars (,000 omitted)					
		Total	Urban	Rural	Total	Crops	Livestock	Dairy	Number of Establishments	Average Number of Employees
Fulton	Lewistown	43,716	17,208	26,508	19,498	8,090	11,306	786	37	2,920
Henderson	Oquawka	8,416	---	8,416	9,989	2,961	6,939	278	4	22
Knox	Galesburg	54,566	34,725	19,841	20,426	5,213	14,749	806	82	4,540
Mercer	Aledo	17,574	2,919	14,655	16,862	2,483	13,464	481	19	249
Peoria	Peoria	174,347	137,864	36,483	14,154	5,124	7,158	1,127	240	17,138
Warren	Monmouth	21,981	10,193	11,788	22,032	4,470	16,861	503	28	645
		320,200	202,909	117,291	102,955	26,321	69,445	3,959	360	25,514

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COUNTIES IN ILLINOIS AND IOWA

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

County	County Seat	Population - 1950			Agriculture, - 1950				Manufactures - 1951	
					Value of Products Sold in Dollars					
		Total	Urban	Rural	Total	Crops	Livestock	Dairy	Number of Establishments	Average Number of Employees
					ILLINOIS					
Ford	Paxton	15,901	6,824	9,077	14,573,534	9,031,508	4,246,641	532,474	17	511
Fulton	Lewistown	43,716	17,208	26,508	19,498,028	6,090,785	11,906,123	765,681	37	2,922
Hancock	Carthage	28,790	5,214	22,576	19,527,153	7,117,409	10,595,489	1,010,085	27	932
Henderson	Oquawka.	8,416	---	8,416	9,983,141	2,941,243	6,553,400	271,738	4	71
Iroquois	Watseka	32,348	4,235	28,113	31,341,994	20,938,741	7,403,903	1,559,676	20	771
Livingston	Pontiac	37,809	11,885	25,924	31,521,688	20,274,236	7,084,508	1,805,057	38	1,499
McDonough	Macomb	28,199	13,909	14,290	16,887,321	6,286,162	9,401,725	717,277	32	1,534
McLean	Bloomington	76,577	43,935	32,642	40,317,199	22,155,684	14,794,761	2,101,764	94	5,349
Peoria	Peoria	174,347	137,864	36,483	14,154,365	5,123,959	7,137,566	1,126,512	240	17,138
Tazewell	Pekin	76,165	49,278	26,887	19,511,479	10,245,266	5,928,136	1,556,957	71	29,916
Woodford	Eureka	21,335	---	21,335	16,112,915	8,180,631	6,042,742	1,101,918	22	444
		540,603	288,352	252,251	232,428,823	117,943,224	91,074,994	12,549,079	602	58,630
					IOWA					
Lee	(Keokuk) (Ft.Madison)	45,102	31,098	12,004	9,049,838	1,859,183	5,672,079	910,804	59	6,521

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[1]

[fol. 2186]

EXHIBIT H-40

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Dockets 18991 and 19086

Acquisition of Toledo, Peoria & Western Railroad

Trends of Population, Manufacture and Agriculture of the States Served by
The Minneapolis & St. Louis Railway Company
Toledo, Peoria & Western Railroad
Santa Fe System
The Pennsylvania Railroad Company

Index

Population Trend Sheets 1 - 3

Manufacture Trend Sheets 4 - 9

Agriculture Trend Sheets 10 - 19

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Prepared by:

R. W. Nelson, Vice President-Traffic
The Minneapolis & St. Louis Railway Company
Minneapolis 4, Minnesota

1973

TREND OF POPULATION

In States Served by The Minneapolis & St. Louis Railway Company

	1950	1940	Increase	Percent
Illinois	8,712,176	7,897,241	814,935	
Iowa	2,621,073	2,538,268	82,805	
Minnesota	2,982,483	2,792,300	190,183	
South Dakota	652,740	642,961	9,779	
	14,968,472	13,870,770	1,097,702	7.9

AUTHORITY:

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[fol. 2188]

TREND OF POPULATION

IN STATES SERVED BY THE PENNSYLVANIA RAILROAD

	1950	1940	Increase	Percent
Delaware	318,085	286,505	31,580	
District of Columbia	802,178	663,091	139,087	
Illinois	8,712,176	7,897,241	814,935	
Indiana	3,934,224	3,427,796	506,428	
Kentucky	2,944,806	2,845,627	99,179	
Maryland	2,343,001	1,821,244	521,757	
Michigan	6,371,766	5,256,106	1,115,660	
Missouri	3,954,653	3,784,664	169,989	
New Jersey	4,835,329	4,160,165	675,164	
New York	14,830,192	13,479,142	1,351,050	
Ohio	7,946,627	6,907,612	1,039,015	
Pennsylvania	10,498,012	9,900,180	597,832	
Virginia	3,318,680	2,677,773	640,907	
West Virginia	2,005,552	1,901,974	103,578	
	72,815,281	64,989,120	7,826,161	12.0

AUTHORITY:

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TREND OF POPULATION

In States Served by the Santa Fe System

	1950	1940	Increase	Percent
Arizona	749,587	499,261	250,326	
California	10,586,223	6,907,387	3,678,836	
Colorado	1,325,089	1,123,796	201,793	
Illinois	8,712,176	7,897,241	814,935	
Iowa	2,621,073	2,538,268	82,805	
Kansas	1,905,299	1,801,288	104,011	
Louisiana	2,683,516	2,363,880	319,636	
Missouri	3,954,653	3,784,664	169,989	
Nebraska	1,325,510	1,315,834	9,676	
New Mexico	681,187	531,818	149,369	
Oklahoma	2,233,351	2,336,434	103,083 ✗	
Texas	7,711,194	6,414,824	1,296,370	
	44,488,858	37,514,195	6,974,663	18.6

✗ Denotes decrease

AUTHORITY:

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[fol. 2190]

MANUFACTURING TREND 1947 AS COMPARED WITH 1953

In States Served by The Minneapolis & St. Louis Railway Company

VALUE ADDED BY MANUFACTURE*

	Total In Dollars (,000 omitted) 1953	Total In Dollars (,000 omitted) 1947	Gain In Dollars (,000 omitted)	Percent Gain 1947 to 1953
Illinois	10,111,624	6,880,137	3,431,487	
Iowa	1,179,513	671,100	508,413	
Minnesota	1,554,405	1,022,586	531,819	
South Dakota	80,703	51,398	29,305	
	12,926,245	8,425,221	4,501,024	53.4

AUTHORITY:

1953 Annual Survey of Manufactures, prepared by the Bureau of the Census, U. S. Department of Commerce.

* This measures the approximate value created in the Process of Manufacture.

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MANUFACTURING TREND 1947 AS COMPARED WITH 195[illegible]

In States Served by the Pennsylvania Railroad

	VALUE ADDED BY MANUFACTURE*			
	Total In Dollars (,000 omitted)		Gain In Dollars (,000 omitted)	Percent Gain 1947 to 1953
	1953	1947		
Delaware	378,975	182,088	196,887	
District of Columbia	150,687	99,067	51,620	
Illinois	10,111,674	6,680,187	3,431,487	
Indiana	5,205,348	2,977,508	2,227,840	
Kentucky	1,213,002	740,772	472,230	
Maryland	1,854,582	1,138,407	716,175	
Michigan	9,781,647	5,196,338	4,585,309	
Missouri	2,786,829	1,623,145	1,163,684	
New Jersey	6,451,055	4,177,080	2,273,975	
New York	14,410,234	9,666,588	4,743,646	
Ohio	11,192,103	6,359,006	4,833,097	
Pennsylvania	10,793,641	6,946,958	3,846,683	
Virginia	1,629,938	1,051,629	578,309	
West Virginia	1,105,374	663,903	441,471	
	77,065,039	47,502,628	29,562,413	62.2

AUTHORITY:

1953 Annual Survey of Manufactures, prepared by the Bureau of the Census, U. S. Department of Commerce

* This measures the approximate value created in the Process of Manufacture

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[illegible]

25 * This measures the approximate value created in the Process of Manufacture

[fol. 2192]

MANUFACTURING TREND 1947 AS COMPARED WITH 1953

In States Served by the Santa Fe System

VALUE ADDED BY MANUFACTURE*

	Total In Dollars (,000 omitted)		Gain In Dollars (,000 omitted)	Percent Gain 1947 to 1953
	1953	1947		
Arizona	231,128	103,956	127,170	
California	8,153,142	3,994,981	4,158,161	
Colorado	438,466	286,774	151,692	
Illinois	10,111,624	6,680,137	3,431,487	
Iowa	1,179,513	671,100	508,413	
Kansas	1,000,724	461,061	539,663	
Louisiana	1,179,569	694,074	485,495	
Missouri	2,786,829	1,623,145	1,163,684	
Nebraska	401,398	260,658	140,740	
New Mexico	129,248	55,486	73,762	
Oklahoma	553,816	341,027	212,789	
Texas	3,486,240	1,727,464	1,758,776	
	29,651,697	16,899,865	12,751,832	75.5

AUTHORITY:

1953 Annual Survey of Manufactures, prepared by the Bureau of the Census, U. S. Department of Commerce

* This measures the approximate value created in the Process of Manufacture.

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MANUFACTURING TREND 1947 AS COMPARED WITH 1953

In States Served by The Minneapolis & St. Louis Railway Company

	MANUFACTURING EMPLOYMENT (Average Number of Employees)			
	1953	1947	Gain	Percent Gain 1947 to 1953
Illinois	1,318,089	1,184,820	131,269	
Iowa	166,274	140,425	25,849	
Minnesota	214,494	179,986	34,508	
South Dakota	10,430	10,265	165	
	1,707,287	1,515,496	191,791	12.6

AUTHORITY:

1953 Annual Survey of Manufactures, prepared by the Bureau of the Census, U. S. Department of Commerce

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[fol. 2194]

MANUFACTURING TREND 1947 AS COMPARED WITH 1953

In States Served by the Pennsylvania Railroad

MANUFACTURING EMPLOYMENT
(Average Number of Employees)

	1953	1947	Gain	Percent Gain 1947 to 1953
Delaware	58,550	34,465	24,085	
District of Columbia	19,499	17,815	1,684	
Illinois	1,316,089	1,184,820	131,269	
Indiana	686,646	548,346	138,300	
Kentucky	150,319	129,504	20,815	
Maryland	261,948	228,533	33,395	
Michigan	1,231,334	973,675	257,659	
Missouri	405,061	327,515	77,546	
New Jersey	853,101	738,229	114,872	
New York	2,053,428	1,775,975	277,453	
Ohio	1,420,095	1,194,603	225,492	
Pennsylvania	1,591,505	1,439,534	151,971	
Virginia	256,057	216,637	38,420	
West Virginia	133,923	127,353	6,570	
	10,437,555	8,937,024	1,500,531	16.8

AUTHORITY:

1953 Annual Survey of Manufactures, prepared by the Bureau of the Census, U. S. Department of Commerce

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1881

1882

[fol. 2195]

MANUFACTURING TREND 1947 AS COMPARED WITH 1953

In States Served by the Santa Fe System

MANUFACTURING EMPLOYMENT
(Average Number of Employees)

	1953	1947	Gain	Percent Gain 1947 to 1953
Arizona	24,066	14,188	9,878	
California	1,058,796	663,872	394,924	
Colorado	60,220	54,071	6,149	
Illinois	1,316,089	1,184,820	131,269	
Iowa	166,274	140,425	25,849	
Kansas	137,572	74,624	62,948	
Louisiana	152,549	132,464	20,085	
Missouri	405,061	327,515	77,546	
Nebraska	57,558	47,031	10,527	
New Mexico	12,753	7,590	5,163	
Oklahoma	86,256	55,403	30,853	
Texas	420,468	297,043	123,425	
	3,897,662	2,999,056	898,606	30.0

AUTHORITY:

1953 Annual Survey of Manufactures, prepared by the Bureau of the Census, U. S. Department of Commerce

2195

[fol. 2196]

TREND OF AGRICULTURE

In the States Served by The Minneapolis & St. Louis Railway Company

	Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
ILLINOIS			
1950	1,049,896	682,032	1,731,928
1951	1,262,829	742,728	2,005,557
1952	1,206,476	834,347	2,040,823
1953	1,171,818	788,390	1,960,208
1954	1,129,086	784,958	1,914,044
IOWA			
1950	1,726,345	393,921	2,120,266
1951	2,077,213	270,574	2,347,787
1952	1,864,686	366,716	2,231,402
1953	1,888,077	450,404	2,338,481
1954	1,844,090	452,242	2,296,332
MINNESOTA			
1950	849,056	338,704	1,187,760
1951	986,471	289,149	1,275,620
1952	939,390	339,555	1,278,945
1953	915,455	365,407	1,280,862
1954	879,119	377,378	1,256,497
SOUTH DAKOTA			
1950	353,200	151,691	504,893
1951	404,042	192,891	596,933
1952	400,300	161,681	561,981
1953	356,178	168,681	524,899
1954	362,872	201,631	564,503

AUTHORITY

"The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture

1883

[fol. 2197]

TREND OF AGRICULTURE

In the States Served by the Pennsylvania Railroad

	Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
DELAWARE			
1950	82,855	16,211	99,066
1951	92,292	22,458	114,750
1952	80,300	26,011	106,311
1953	81,202	23,757	104,959
1954	73,705	24,916	98,621
ILLINOIS			
1950	1,049,896	682,032	1,731,928
1951	1,262,829	742,728	2,005,557
1952	1,206,476	834,347	2,040,823
1953	1,171,818	788,390	1,960,208
1954	1,129,086	784,958	1,914,044
INDIANA			
1950	701,215	270,827	972,042
1951	822,059	300,171	1,122,230
1952	768,495	362,032	1,130,527
1953	791,177	361,694	1,152,871
1954	767,220	385,092	1,152,312
KENTUCKY			
1950	275,529	235,155	510,684
1951	331,757	288,661	620,418
1952	297,888	266,718	564,606
1953	267,686	276,742	544,428
1954	255,495	303,496	558,991

AUTHORITY:
"The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture

2197

[fol. 2198]

TREND OF AGRICULTURE

In the States Served by the Pennsylvania Railroad

	Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
MARYLAND			
1950	154,133	74,571	228,704
1951	184,195	78,859	263,054
1952	197,397	83,383	262,780
1953	182,575	85,530	267,805
1954	164,563	84,001	248,564
MICHIGAN			
1950	386,867	249,353	636,220
1951	479,539	252,441	731,980
1952	460,754	265,336	726,090
1953	421,355	281,956	703,311
1954	392,996	270,929	663,925
MISSOURI			
1950	741,243	257,053	998,296
1951	893,505	260,655	1,154,160
1952	768,079	304,409	1,072,488
1953	755,337	308,564	1,063,901
1954	724,698	310,937	1,035,635
NEW JERSEY			
1950	188,136	104,581	292,717
1951	237,016	120,618	357,634
1952	223,537	129,716	353,253
1953	238,084	127,253	365,337
1954	217,263	120,289	337,552

AUTHORITY: "The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture

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TREND OF AGRICULTURE
In the States Served by the Pennsylvania Railroad

	Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
NEW YORK			
1950	563,555	222,124	785,679
1951	653,888	246,178	900,065
1952	646,094	301,428	947,522
1953	611,258	250,970	862,228
1954	566,484	244,836	811,320
OHIO			
1950	599,557	278,207	877,764
1951	755,566	312,619	1,068,185
1952	748,416	360,966	1,109,382
1953	734,449	365,592	1,100,041
1954	703,339	388,001	1,091,340
PENNSYLVANIA			
1950	526,346	171,602	697,948
1951	634,927	194,354	829,281
1952	630,306	201,118	831,424
1953	618,981	176,774	795,755
1954	579,010	181,036	760,046
VIRGINIA			
1950	222,642	213,222	435,864
1951	275,412	228,101	503,513
1952	278,301	234,040	512,341
1953	276,782	190,365	467,147
1954	266,300	188,230	454,530
WEST VIRGINIA			
1950	93,117	23,897	116,614
1951	115,676	27,518	143,194
1952	106,655	27,089	133,744
1953	99,530	25,660	125,190
1954	94,030	28,793	122,813

AUTHORITY "The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture

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[fol. 2200]

TREND OF AGRICULTURE

In the States Served by the Santa Fe System

	Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
ARIZONA			
1950	94,211	184,654	278,865
1951	130,938	229,031	359,969
1952	116,932	267,912	384,844
1953	99,783	320,189	419,972
1954	92,304	278,181	370,485
CALIFORNIA			
1950	830,908	1,440,152	2,271,060
1951	1,067,012	1,662,842	2,729,854
1952	1,056,661	1,691,053	2,747,714
1953	971,250	1,662,660	2,633,910
1954	905,299	1,599,297	2,504,596
COLORADO			
1950	319,421	184,020	503,441
1951	386,660	185,097	571,757
1952	376,291	226,709	603,000
1953	277,405	201,001	478,406
1954	284,267	158,038	442,305
ILLINOIS			
1950	1,049,896	682,032	1,731,928
1951	1,262,829	742,728	2,005,557
1952	1,206,476	834,347	2,040,823
1953	1,171,818	788,390	1,960,208
1954	1,129,086	784,958	1,914,044

AUTHORITY: "The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture.

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TREND OF AGRICULTURE

In the States Served by the Santa Fe System

	Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
IOWA			
1950	1,726,545	393,901	2,120,266
1951	2,077,213	270,574	2,347,787
1952	1,864,686	366,716	2,231,402
1953	1,888,077	450,404	2,338,481
1954	1,844,090	452,242	2,296,332
KANSAS			
1950	570,390	461,654	1,032,044
1951	697,741	396,413	1,094,154
1952	675,402	558,021	1,191,923
1953	500,537	459,552	960,089
1954	447,365	430,449	942,754
LOUISIANA			
1950	[illegible]	226,967	[illegible]
1951	[illegible]	247,474	[illegible]
1952	[illegible]	339,908	496,165
1953	[illegible]	269,614	401,587
1954	[illegible]	264,133	371,760
MISSOURI			
1950	[illegible]	[illegible]	998,196
1951	[illegible]	760,655	1,154,160
1952	[illegible]	794,409	1,072,488
1953	[illegible]	708,264	1,068,901
1954	[illegible]	750,937	1,035,635

AUTHORITY: "The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture

TREND OF AGRICULTURE

In the States S[illegible]

[fol. 2202]

TREND OF AGRICULTURE

In the States Served by the Santa Fe System

	Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
NEBRASKA			
1950	664,671	327,301	991,972
1951	852,262	324,943	1,177,205
1952	798,232	366,947	1,165,179
1953	721,852	383,744	1,105,596
1954	723,222	335,981	1,059,203
NEW MEXICO			
1950	133,163	78,181	211,344
1951	169,659	71,242	240,901
1952	126,114	87,064	213,178
1953	94,317	95,596	189,913
1954	93,626	94,549	188,175
OKLAHOMA			
1950	339,774	220,594	560,368
1951	402,946	235,611	638,557
1952	377,945	310,854	688,799
1953	292,013	275,011	567,024
1954	307,458	244,816	552,274
TEXAS			
1950	873,754	1,218,128	2,091,882
1951	1,174,977	1,070,087	2,245,064
1952	1,014,493	1,162,073	2,176,566
1953	796,610	1,106,720	1,903,330
1954	765,322	1,147,756	1,913,078

AUTHORITY: "The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture.

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AGRICULTURE - 1954

In the States Served by The Minneapolis & St. Louis Railway Company

	*Number of Farms	**Value of Products Sold		
		Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
Illinois	175,545	1,129,086	784,958	1,914,044
Iowa	197,933	1,844,090	452,242	2,296,332
Minnesota	165,229	879,119	377,378	1,256,497
South Dakota	60,520	362,872	201,631	564,503
	598,221	4,215,167	1,816,209	6,031,376

AUTHORITY

*Rand and McNally Commercial Atlas and Marketing Guide - 85th Edition - 1954

**"The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture

AGRICULTURE - 1954

In the States Served by the Santa Fe System

	*Number of Farms	**Value of Products Sold		
		Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
Arizona	9,321	92,304	278,181	370,485
California	123,074	905,299	1,599,297	2,504,596
Colorado	40,749	284,267	158,038	442,305
Illinois	175,543	1,129,086	784,958	1,914,044
Iowa	192,933	1,844,090	452,242	2,296,332
Kansas	120,167	492,265	450,489	942,754
Louisiana	111,127	117,647	254,113	371,760
Missouri	201,614	724,698	310,937	1,035,635
Nebraska	100,846	723,222	335,981	1,059,203
New Mexico	21,070	93,626	94,549	188,175
Oklahoma	118,979	307,458	244,816	552,274
Texas	292,946	765,322	1,147,756	1,913,078
	1,508,369	7,479,284	6,111,357	13,590,641

AUTHORITY:

*Rand McNally Commercial Atlas and Marketing Guide - 85th Edition - 1954

**"The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture.

AGRICULTURE - 1954

In the States Served by the Pennsylvania Railroad

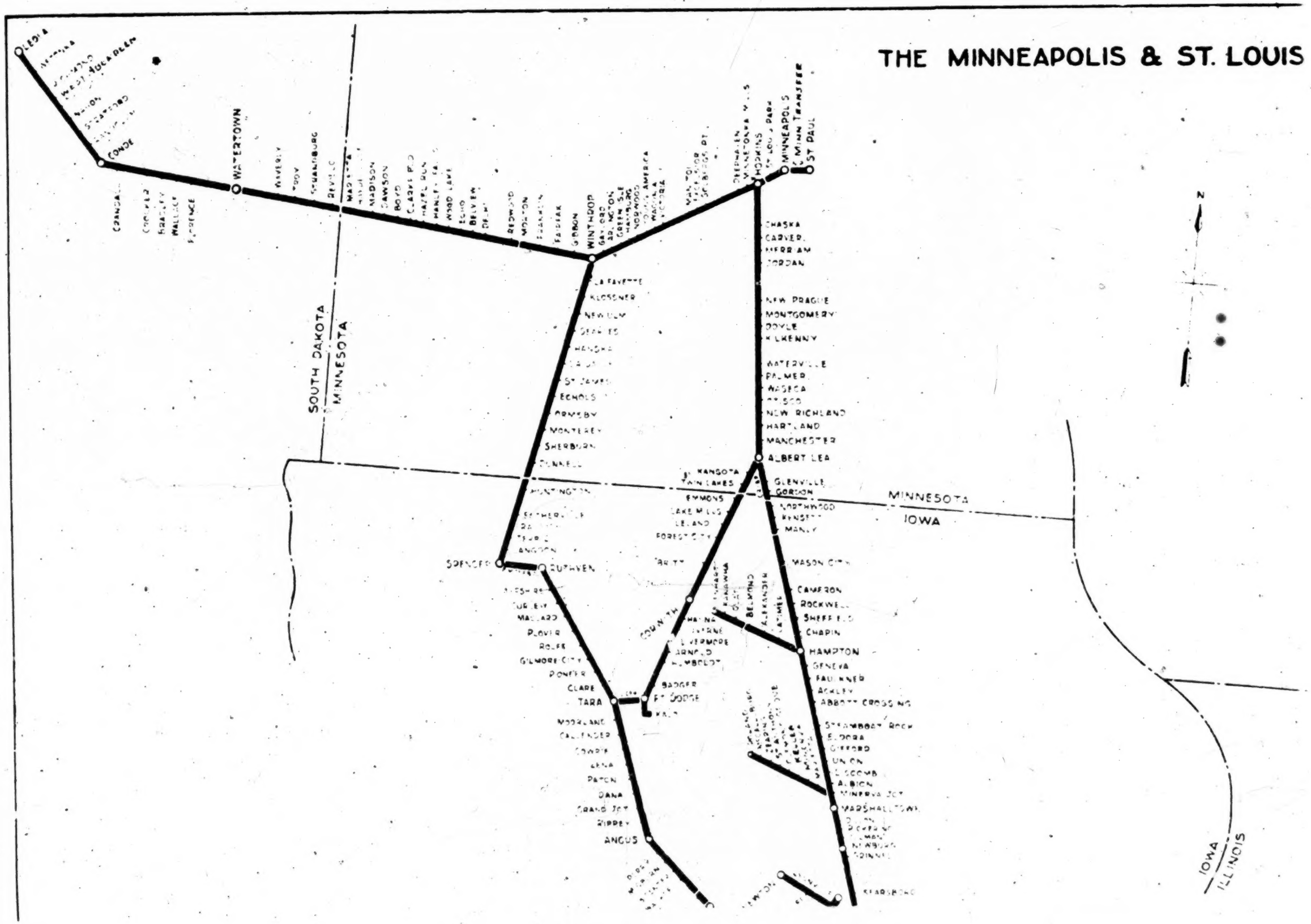
	*Number of Farms	**Value of Products Sold		
		Livestock and Products In Dollars (000)	Crops In Dollars (000)	Total In Dollars (000)
Delaware	6,297	73,705	24,916	98,621
Illinois	175,543	1,129,086	784,958	1,914,044
Indiana	153,593	767,220	385,092	1,152,312
Kentucky	193,487	255,495	303,496	558,991
Maryland	32,500	164,563	84,001	248,564
Michigan	138,922	392,996	270,929	663,925
Missouri	201,614	724,698	310,937	1,035,635
New Jersey	22,686	217,263	120,289	337,552
New York	105,714	566,484	244,836	811,320
Ohio	177,074	703,339	388,001	1,091,340
Pennsylvania	128,876	579,010	181,036	760,046
Virginia	136,416	256,300	198,230	454,530
West Virginia	68,583	94,030	28,783	122,813
	1,541,305	5,924,189	3,325,504	9,249,693

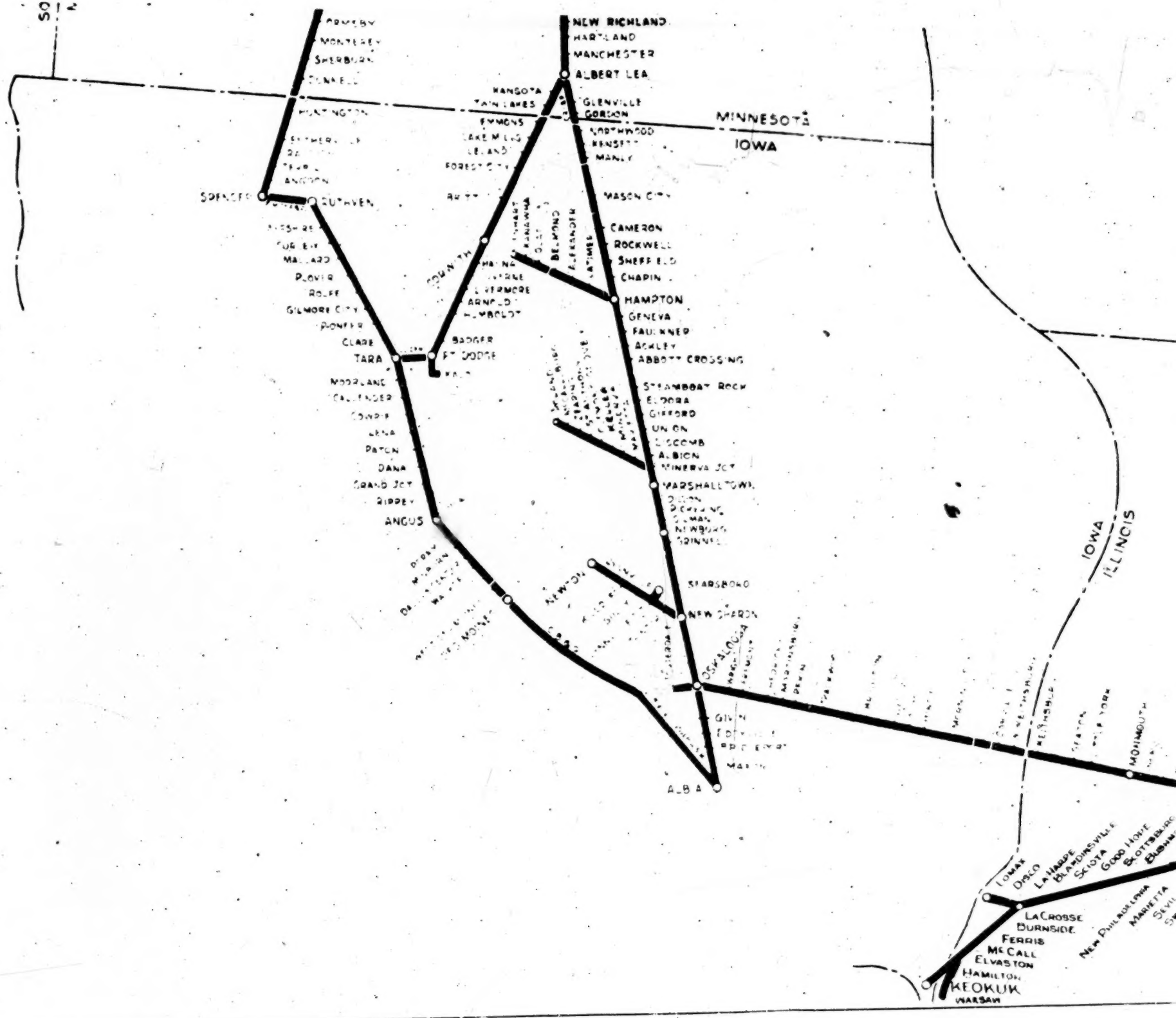
AUTHORITY:

*Rand McNally Commercial Atlas and Marketing Guide - 85th Edition - 1954

**"The Farm Income Situation", Agricultural Marketing Service Periodical published by U. S. Department of Agriculture.

THE MINNEAPOLIS & ST. LOUIS




NEW RICHLAND
HARTLAND
MANCHESTER
ALBERT LEA
GLENVILLE
GORDON
MINNESOTA
IOWA
NORTHWOOD
KENSETT
MANLY
MASON CITY
CAMERON
ROCKWELL
SHEFFIELD
CHAPIN
HAMPTON
GENEVA
FAULKNER
ACKLEY
ABBOTT CROSSING
STEAMBOAT ROCK
ELDORA
GIFFORD
UNION
LISCOMB
ALBION
MINERVA JCT
MARSHALLTOWN
SPARSBORO
NEW SHARON
OSKALOOSA
ALBIA
RUTHVEN
SPENCER
TARA
BADGER
FT DODGE
ANGUS
NEWTON
IOWA
ILLINOIS
LOMAX
DALCO
LA HARPE
BLANDINSVILLE
SCIOTA
GOOD HOPE
LaCROSSE
BURNSIDE
FERRIS
McCALL
ELVASTON
HAMILTON
KEOKUK
WARSAW

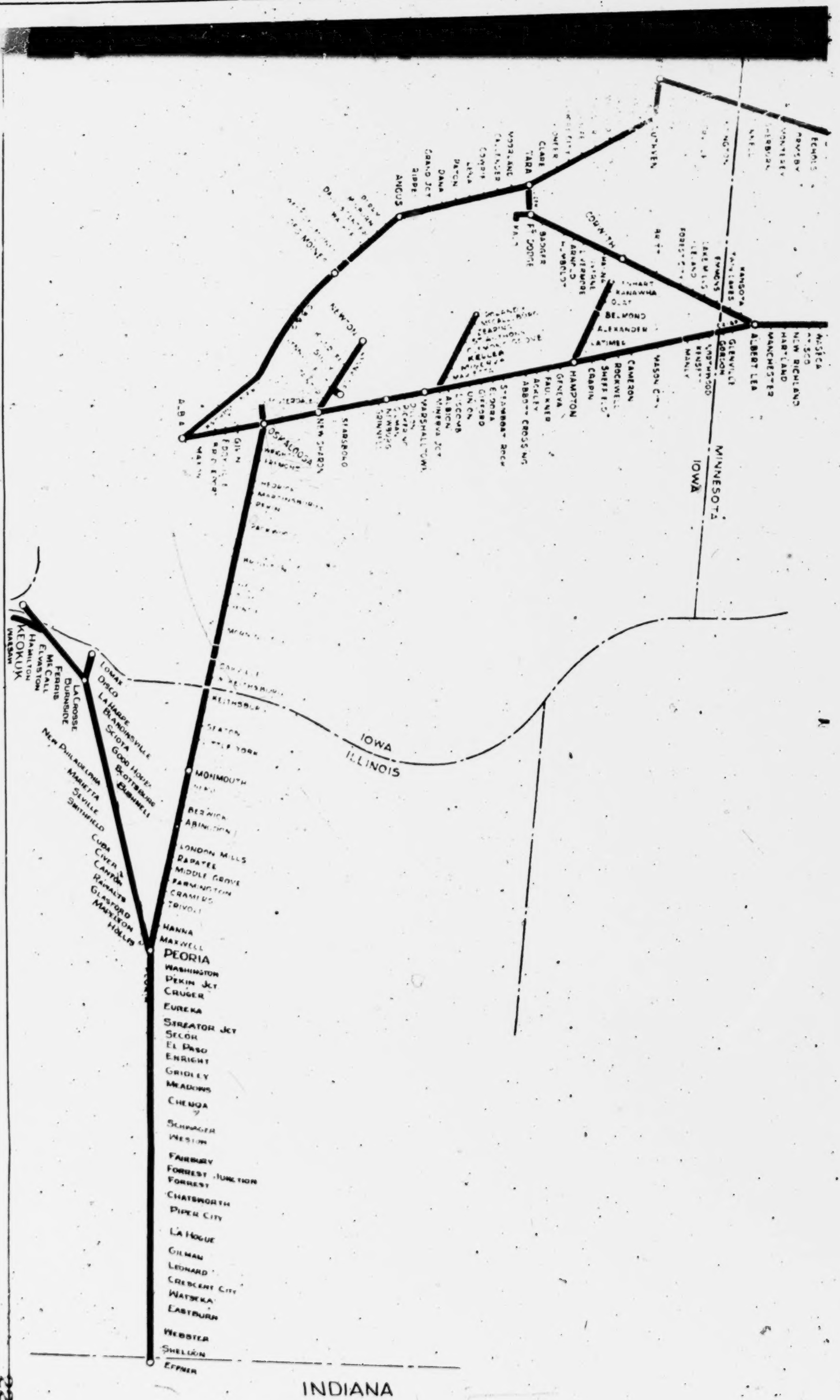
[fol. 2206]

EXHIBIT H-41

ICC DOCKET 18991
CC DOCKET 19086
EXHIBIT 41
WITNESS: A. W. SCHROEDER

THE MINNEAPOLIS & ST. LOUIS RAILWAY CO.




IOWA
MINNESOTA
IOWA
ILLINOIS
INDIANA
KEOKUK
HAMILTON
WARSAW
MONMOUTH
PEORIA
WASHINGTON
PEKIN JCT
CRUGER
EUREKA
STREATOR JCT
SECOR
EL PASO
ENRIGHT
GRIDLEY
MEADOWS
CHENOA
FAIRBURY
FORREST JUNCTION
FORREST
CHATSWORTH
PIPER CITY
LA HOGUE
GILMAN
LEONARD
CRESCENT CITY
WATSEKA
EASTBURN
WEBSTER
SHELDON
EFFNER
ALBERT LEA
MANCHESTER
HARTLAND
NEW RICHLAND
OSAGE
GLENVILLE
GORDON
CAMERON
ROCKWELL
SHEFFIELD
CRAPIN
HAMPTON
GENEVA
FAULKNER
ASHLEY
ABBOTT
CROSS KNS
STEAMBOAT ROCK
ELDORA
GIFFORD
UNION
ALBION
WINFIELD JCT
MARSHALLTOWN
STARBOARD
NEW SHARON
OSKALOOSA
ALBIA
BELMOND
ALEXANDER
LATIMER
CLARE
TARA
ANGUS
DANA
PATON
CRAIG
LEHIGH
MOSS LANE
CALHOUN
BADGER
FT DODGE
NEWTON
LOMAX
DISCO
LA HARPE
BLANDINSVILLE
SCIOTA
GOOD HOPE
BUSHNELL
MACOMB
MACOMB JCT
BARDOLPH
ABINGDON
LONDON MILLS
RAPATEE
MIDDLE GROVE
FARMINGTON
CRAMER
TRIVOLI
HANNA
MAXWELL
CUBA
CUBA JCT
CANTON
REPUBLIC
GLASFORD
MARTERON
HOOLEY
NEW PHILADELPHIA
MARIETTA
SEVILLE
SMITHFIELD
LA CROSSE
BURNSIDE
FERRIS
MC CALL
ELVASTON

[fol. 2207]

#-44

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

AND

TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

COMBINED AND PRO FORMA SCHEDULES

TO REFLECT ECONOMIES FROM UNIFIED OPERATIONS

FOR THE YEAR ENDED DECEMBER 31, 1954

2207

[redacted]

[fol. 2208]

CONTENTS

Summary:

Estimated annual value of IP&W to M&StL
Estimated annual value of IP&W to M&StL as compared to annual value to Santa Fe and Pennsylvania
Combined and pro forma statement of income for the year ended December 31, 1954

Combined and Pro Forma Operating Revenues and Expenses for the Year Ended December 31, 1954:

Operating revenues
Operating expenses
Maintenance of way and structures -
Expenses
Economies from unification
Maintenance of equipment -
Expenses
Economies from unification
Transportation
Expenses
Economies from unification
Traffic, general and miscellaneous expense
Traffic economies from unification
Total expenses
Total salaries
Traffic agency salaries
General expense economies from unification.
Total
Salary
Pro forma computation of railway tax accruals

Combined and Pro Forma Statement of Employees and Compensation for the Year Ended December 31, 1954:

Summary
Executives, officials and staff assistants and professional, clerical and general
Departmental classification of executives, officials and staff assistants and professional and clerical
Maintenance of way and structures
Maintenance of equipment and stores
Transportation (other than train and engine)
Transportation (train and engine)

January 23, 1956

1896

[fol. 2209]

Summary

[fol. 2210]

Schedule 1

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ESTIMATED ANNUAL VALUE OF TP&W TO M&STL

	Amount	Per Share of Common Stock
NET INCOME OF M&STL ASSUMING M&STL ACQUISITION:		
Net income of M&StL in 1954 (based on 800,000 shares)*	$1,647,000	$ 2.06
Pro forma increase in 1954 net income assuming acquisition of TP&W, unified operations and the issuance of $12,000,000 of bonds	1,279,000	1.60
Pro forma net income (Schedule 3)	$2,926,000	$ 3.66
NET INCOME OF M&STL ASSUMING SANTA FE-PENNSYLVANIA ACQUISITION:		
Net income of M&StL in 1954*	$1,647,000	$ 2.06
Estimated reduction in net income attributable to the estimated loss of traffic (Note 2)	453,000	.57
Pro forma net income	$1,194,000	$ 1.49
ESTIMATED ANNUAL VALUE TO M&STL (NOTE 4)	$1,732,000	$ 2.17

* Includes net income of wholly-owned subsidiary.

rr 10

[fol. 2211]

Schedule 1
(Notes)

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

NOTES TO SCHEDULE OF ESTIMATED ANNUAL VALUE OF TP&W TO M&STL

(1) The estimated annual value to M&StL of $1,732,000 represents 105.2% of 1954 net income of $1,647,000.

(2) The estimated reduction in net income attributable to the estimated loss of traffic, assuming Santa Fé and Pennsylvania acquisition of the TP&W, was calculated as follows:

Revenue decrease		$1,110,000
Estimated decrease in expenses by reason of traffic decline (15% of $1,110,000)		167,000
Loss before Federal income taxes		$ 943,000
Federal income taxes (52% of $943,000)		490,000
Net loss		$ 453,000

The revenue loss of $1,110,000 represents incremental revenue; hence, expenses applicable to this revenue are not equivalent to the overall M&StL expense ratio. It is not practicable to estimate these expenses in detail; however, it is known that most expenses are nil for incremental revenue cars and 15% has been used as an estimate of the expenses that vary almost directly with each revenue car handled.

XVII

[fol. 2212]

details

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

ESTIMATED ANNUAL VALUE OF TP&W TO M&STL AS COMPARED TO ANNUAL VALUE TO SANTA FE AND PENNSYLVANIA

PERCENT TO 1954 ACTUAL NET INCOME OF ESTIMATED ANNUAL VALUE OF TP&W TO:

M. & S. L. (Schedule 1)	105.2%
Santa Fe (See below)	.5
Pennsylvania (See below)	1.1

ANNUAL VALUE OF TP&W ACQUISITION TO SANTA FE AND PENNSYLVANIA:

	Amount	Income Available For Common Shareholders Per Share of Common Stock
Santa Fe:		
Consolidated net income for 1954 less dividends on preferred stock (Note)	$49,964,310	$12.39
Pro forma increase in net income assuming acquisition of 50% of TP&W (based on 50% of 1954 net income of TP&W)	220,584	.07
Pro forma net income	$50,284,894	$12.46
Percent increase in net income	.5%	
Pennsylvania:		
Consolidated net income for 1954 (Note)	$28,259,519	$ 2.15
Pro forma increase in net income assuming acquisition of 50% of TP&W (based on 50% of 1954 net income of TP&W)	220,584	.02
Pro forma net income	$28,480,103	$ 2.17
Percent increase	1.1%	

Note--Based on comparative consolidated data in Moody's 1955 Transportation Manual. Per share net income is based on 4,894,120 shares for the Santa Fe and 13,167,754 shares for the Pennsylvania.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY
COMBINED AND PRO FORMA STATEMENT OF INCOME
FOR THE YEAR ENDED DECEMBER 31, 1954

	M&StL	TP&W	Combined	Pro Forma To Reflect Economies From Unification and Issuance of $12,000,000 of bonds	Increase (Decrease)
RAILWAY OPERATING REVENUES (Schedule 4)	$20,243,382	$ 6,806,211	$27,349,593	$27,338,123	$(11,470)
RAILWAY OPERATING EXPENSES (Schedule 5)	16,275,294	4,466,117	20,741,411	18,970,466	(1,770,945)
Net revenue from railway operations	$ 4,268,088	$ 2,340,094	$ 6,608,182	$ 8,367,657	$ 1,759,475
RAILWAY TAX ACCRUALS (Schedule 18)	2,349,743	966,365	3,316,108	3,927,484	611,376
Railway operating income	$ 1,918,345	$ 1,373,729	$ 3,292,074	$ 4,440,173	$ 1,148,099
RENT INCOME:					
Rent from locomotives	$ 22,930	$ 1,156	$ 24,086	$ 24,086	
Rent from work equipment	891	1,288	2,179	2,179	
Joint facility rent income	209,156	38,829	247,985	247,985	
Total rent income	$ 232,977	$ 41,273	$ 274,250	$ 274,250	
RENTS PAYABLE:					
Hire of freight cars-Debit balance	$ 197,610	$ 735,638	$ 933,248	$ 933,248	
Rent for passenger-train cars	334	164	498	498	
Rent for work equipment	102	54	156	156	
Joint facility rents	165,213	19,518	184,731	184,731	
Total rents payable	$ 363,259	$ 755,374	$ 1,118,633	$ 1,118,633	
Net rents	$(130,282)	$(714,101)	$(844,383)	$(844,383)	
Net railway operating income	$ 1,788,063	$ 659,628	$ 2,447,691	$ 3,595,790	$ 1,148,099
OTHER INCOME:					
Income from lease of road and equipment	$ 43,661	$	$ 43,661	$ 43,661	
Miscellaneous rent income	56,770	23,055	79,825	79,825	
Income from non-operating property	27,231	12,619	39,850	39,850	
Interest income	4,740	21,630	26,370	26,370	
Miscellaneous income		140	140	140	
Net income of subsidiary	28,938		28,938	28,938	
Total other income	$ 161,340	$ 57,444	$ 218,784	$ 218,784	
Total income	$ 1,949,403	$ 717,072	$ 2,666,475	$ 3,814,574	$ 1,148,099
MISCELLANEOUS DEDUCTIONS FROM INCOME:					
Miscellaneous rents	$ 1,440	$ 167	$ 1,607	$ 1,607	
Miscellaneous tax accruals	26,211	1,536	27,747	27,747	
Miscellaneous income charges	728	2,455	3,183	3,183	
Total miscellaneous deductions	$ 28,379	$ 4,158	$ 32,537	$ 32,537	
Income available for fixed charges	$ 1,921,024	$ 712,914	$ 2,633,938	$ 3,782,037	$ 1,148,099
FIXED CHARGES:					
Interest on funded debt -					
Fixed interest not in default	$ 272,517	$ 70,434	$ 342,951	$ 852,951	$ 510,000
Interest on unfunded debt	1,135	493	1,628	1,628	
Amortization of discount on funded debt	834	819	1,653	1,653	
Total fixed charges	$ 274,486	$ 71,746	$ 346,232	$ 856,232	$ 510,000
Net income	$ 1,646,538	$ 641,168	$ 2,287,706	$ 2,925,805	$ 638,099

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Schedule 4

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

COMBINED OPERATING REVENUES

Description	Actual M&StL	Actual TP&W	Actual Combined	Pro Forma to Reflect Economies from Unification	Decrease Wages And Salaries	Decrease Other	Decrease Total
TRANSPORTATION--RAIL LINE:							
Freight	$19,680,665	$6,703,543	$26,384,208	$26,384,208			
Passenger	57,034	30	57,064	57,064			
Baggage	76		76	76			
Mail	362,897		362,897	362,897			
Express	92,020		92,020	92,020			
Other passenger train	249		249	249			
Switching	248,314	76,315	324,629	324,629			
Total rail-line transportation revenue	$20,441,255	$6,779,888	$27,221,143	$27,221,143			
INCIDENTAL							
Hotel and restaurant	$ 21,945	$ 11,470	$ 33,415	$ 21,945	$	$11,470	$11,470
Station, train and boat privileges	134	18	152	152			
Storage Freight	1,644	117	1,761	1,761			
Demurrage	42,665	5,613	48,278	48,278			
Communication	7,989		7,989	7,989			
Rents of buildings and other property	10,404	6,736	17,140	17,140			
Miscellaneous	12,074	2,377	14,451	14,451			
Total incidental operating revenue	$ 96,855	$ 26,331	$ 123,186	$ 111,716	$	$11,470	$11,470
JOINT FACILITY:							
Joint facility-Cr.	$ 5,326	$(8)	$ 5,318	$ 5,318			
Joint facility-Dr.	54		54	54			
Total joint facility operating revenue	$ 5,272	$(8)	$ 5,264	$ 5,264			
Total railway operating revenue	$20,543,382	$6,806,211	$27,349,593	$27,338,123	$	$11,470	$11,470

[fol. 2216]

Schedule 5

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

PRO FORMA AND COMBINED STATEMENT OF OPERATING EXPENSES AND RATIOS

FOR THE YEAR ENDED DECEMBER 31, 1954

	Schedule	M. & St. L.	T.P. & W.	Combined	Pro Forma To Reflect Economies From Unification	Decrease	Ratio Of Decrease To Combined Total
Operating Expenses:							
Maintenance of way and structures	6	$ 3,518,298	$1,079,611	$ 4,597,909	$ 4,386,410	$ 211,499	4.6%
Maintenance of equipment	8	3,203,382	689,406	3,892,788	3,460,973	431,815	11.1
Transportation	10	7,052,646	1,617,744	8,670,390	8,353,641	316,749	3.7
Traffic	12	1,258,680	561,220	1,819,900	1,365,429	454,471	25.0
General	12	1,217,129	502,827	1,719,956	1,378,854	341,102	19.8
Miscellaneous (Note)		25,159	15,309	40,468	25,159	15,309	37.8
Total		$16,275,294	$4,466,117	$20,741,411	$18,970,466	$1,770,945	8.5%
Ratios							
Maintenance of way and structures		17.1%	15.9%	16.8%	16.0%	.8%	4.8%
Maintenance of equipment		15.6	10.1	14.2	12.6	1.6	11.3
Transportation		34.3	23.8	31.7	30.6	1.1	3.5
Traffic		6.1	8.2	6.7	5.0	1.7	25.4
General		6.0	7.4	6.3	5.1	1.2	19.0
Miscellaneous		.1	.2	.1	.1	-	-
Total		79.2%	65.6%	75.8%	69.4%	6.4%	8.4%

Note--The reduction in miscellaneous expenses is attributable to elimination of cafeteria expenses of T.P. & W. general office.

v 2216

[fol. 2217]

Schedule 6

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY
COMBINED AND PRO FORMA STATEMENT OF MAINTENANCE OF WAY AND STRUCTURES EXPENSES
FOR THE YEAR ENDED DECEMBER 31, 1954

	Actual			Pro Forma To Reflect Economies From Unification	Economies from Unification (Schedule 7)		
	M&StL	TP&W	Combined		Total	Wages And Salaries	Other
Superintendence	$ 210,398	$ 73,402	$ 283,800	$ 210,395	$ 73,405	$ 65,337	$ 8,068
Roadway maintenance	377,737	136,149	513,886	506,042	7,844	7,844	
Bridges, trestles, and culverts	155,695	40,840	196,535	183,535	13,000	13,000	
Ties	699,175	95,182	794,357	794,357			
Rails	100,024	75,276	175,300	175,300			
Other track material	172,873	35,930	208,803	198,803	10,000	10,000	
Ballast	13,912	28,764	42,676	42,676			
Track laying and surfacing	943,015	289,754	1,232,769	1,161,311	71,458	71,458	
Fences, snowsheds, and signs	85,007	19,726	104,733	104,733			
Station and office buildings	73,285	21,580	94,865	87,289	7,576	7,576	
Roadway buildings	2,682	5,440	8,122	8,122			
Water stations	37	705	742	742			
Fuel stations	283	956	1,239	1,239			
Shops and enginehouses	29,310	55,270	84,580	73,715	10,865	10,865	
Communication systems	30,179	19,001	49,180	38,454	10,726	10,726	
Signals and interlockers	18,741	19,119	37,860	37,860			
Power plants		1,098	1,098	1,098			
Power-transmission systems	4,423		4,423	4,423			
Miscellaneous structures		111	111	111			
Road property- depreciation	321,042	76,762	397,804	397,804			
Retirements - road	46,462	764	47,226	40,601	6,625		6,625
Roadway machines	38,946	20,816	59,762	59,762			
Dismantling retired road property	35,925	107	36,032	36,032			
Small tools and supplies	35,080	5,119	40,199	40,199			
Removing snow, ice, and sand	37,976	21,805	59,781	59,781			
Public improvements - maintenance	54,948	10,868	65,816	65,816			
Injuries to persons	22,897	16,312	39,209	39,209			
Insurance	10,171	3,769	13,940	13,940			
Stationery and printing	2,661	1,602	4,263	4,263			
Other expenses	1,396	120	1,276	1,276			
Right-of-way expenses	445		445	445			
Maintaining joint tracks, yards, and other facilities - Dr.	110,582	21,355	131,937	131,937			
Maintaining joint tracks, yards, and other facilities - Cr.	117,009	17,851	134,860	134,860	-------	-------	-------
Total maintenance of way and structures	$3,218,238	$1,079,611	$4,297,909	$4,386,410	$ 211,439	$ 196,806	$ 14,693

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THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

ECONOMIES FROM UNIFICATION OF

MAINTENANCE OF WAY AND STRUCTURES DEPARTMENTS

Wage and Salary Economies:		
Elimination of certain supervisory personnel classified in 1954 Form A reports to I.C.C. as executives, staff officials and professional and clerical personnel		
Chief engineer	$ 7,224	
Maintenance engineer	7,224	
Valuation engineer	7,224	
Superintendent of signals	6,037	
Draftsmen	10,336	
Surveyor	5,168	
Land agent	5,168	
Total (Schedule 21)		$ 48,381
Reductions in section forces, bridge and building gangs, etc. (Schedule 22)		125,425
Decrease in wages and salaries allocable to maintenance of way and structures due to reduction in purchasing and stores personnel (Schedule 21)		23,000
Total		$196,806
Other Economies:		
Estimated expenses incident to supervisory positions to be abolished		8,068
Decrease in depreciation attributable to sale or other disposition of M P & W general office building ($250,000 @ 2.65%)		6,625
Total		$211,499

Schedule 8

THE MINNEAPOLIS & ST.LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

COMBINED AND PRO FORMA STATEMENT OF MAINTENANCE OF EQUIPMENT EXPENSES

FOR THE YEAR ENDED DECEMBER 31, 1954

	Actual			Pro Forma To Reflect Economies From Unification	Economies from Unification (Schedule 9)		
	M&StL	TP&W	Combined		Total	Wages And Salaries	Other
Superintendence	$ 125,297	$ 37,900	$ 163,197	$ 125,297	$ 37,900	$. 27,378	$ 10,522
Shop machinery	14,125	3,698	17,823	15,974	1,849		1,849
Power-plant machinery	87	3,421	3,508	1,797	1,711		1,711
Shop and power-plant machinery-Depreciation	12,395	3,522	15,917	14,156	1,761		1,761
Dismantling retired shop and power-plant machinery	2,693		2,693	2,693			
Other locomotives- repairs	971,774	248,322	1,220,096	1,013,343	206,753	194,753	12,000
Freight-train cars - repairs	942,184	217,998	1,160,182	1,037,046	123,136	123,136	
Passenger-train cars - repairs	135,503		135,503	135,503			
Work equipment repairs	26,310	27,299	53,609	26,310	27,299	20,000	7,299
Miscellaneous equipment - repairs	9,021	7,584	16,605	11,605	5,000	5,000	
Dismantling retired equipment	295		295	295			
Retirements - equipment	(7,266)		(7,266)	(7,266)			
Equipment - depreciation	906,893	131,138	1,038,031	1,012,400	25,631		25,631
Injuries to persons	10,065	1,206	11,271	11,271			
Insurance	35,294	6,054	41,348	41,348			
Stationery and printing	2,141	1,041	3,182	2,407			775
Other expenses	5,839	220	6,059	6,059			
Joint maintenance of equipment expenses - Dr.	22,216	3	22,219	22,219			
Joint maintenance of equipment expenses - Cr.	11,484		11,484	11,484			
Total maintenance of equipment	$3,203,382	$ 689,406	$3,892,788	$3,460,973	$ 431,815	$ 370,267	$ 61,548

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[fol. 2219]

THE MINNEAPOLIS & ST LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY
ECONOMIES FROM UNIFICATION OF
MAINTENANCE OF EQUIPMENT DEPARTMENTS

Schedule [illegible]

Wage and Salary Economies:		
Elimination of certain supervisory personnel classified in 1954 Form A reports to I.C.C. as executives, staff officials and professional and clerical personnel:		
Superintendent of motive power	$ 10,200.	
Mechanical department clerks	17,178	
Total (Schedule 21)		$ 27,378
Maintenance of equipment and stores employees (Schedule 21)	$343,118	
Less purchasing department personnel	(4,210)	
Maintenance of equipment portion of purchasing and stores salaries (Schedule 21)	33,981	
Total		[illegible]
Total		$ [illegible]
Other Expense Economies:		
Superintendence--Reduction of supervisory positions would reduce expenses incident to these positions		[illegible]
Expenses related to equipment repair operations would be eliminated by unification of maintenance facilities (estimated at 90%):		
Shop machinery		[illegible]
Power plant machinery		[illegible]
Shop and power plant machinery		[illegible]
Reduction in stationery and printing expenses		[illegible]
Work equipment repair material would be reduced by reason of sale or other disposition of work equipment		[illegible]
Locomotive repairs--Through unification four locomotives would be sold or otherwise disposed of and it has been assumed that the reduction in number of units would reduce material usage by $3,000 per unit		[illegible]
Equipment depreciation--This charge would be reduced by the depreciation applicable to the locomotives and the work equipment to be sold or otherwise disposed of:		

	Units	Cost	Annual Depreciation Rate	Amount
Locomotive -				
Baldwin	[illegible]	$ [illegible]	[illegible]%	$ [illegible]
Lima	[illegible]	[illegible]	[illegible]%	[illegible]
Total				$ [illegible]
Work equipment -				[illegible]
Total depreciation				[illegible]
Total maintenance of equipment economies from unification				[illegible]

Schedule 8

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

COMBINED AND PRO FORMA STATEMENT OF MAINTENANCE OF EQUIPMENT EXPENSES

FOR THE YEAR ENDED DECEMBER 31, 1954

	Actual			Pro Forma To Reflect Economies From Unification	Economies from Unification (Schedule 9)		
	M&StL	TP&W	Combined		Total	Wages And Salaries	Other
Superintendence	$ 125,297	$ 37,900	$ 163,197	$ 125,297	$ 37,900	$ 27,378	$ 10,522
Shop machinery	14,125	3,698	17,823	15,974	1,849		1,849
Power-plant machinery	87	3,421	3,508	1,797	1,711		1,711
Shop and power-plant machinery-Depreciation	12,395	3,522	15,917	14,156	1,761		1,761
Dismantling retired shop and power-plant machinery	2,693		2,693	2,693			
Other locomotives- repairs	971,774	248,322	1,220,096	1,013,343	206,753	194,753	12,000
Freight-train cars - repairs	942,184	217,998	1,160,182	1,037,046	123,136	123,136	
Passenger-train cars - repairs	135,503		135,503	135,503			
Work equipment - repairs	26,310	27,299	53,609	26,310	27,299	20,000	7,299
Miscellaneous equipment - repairs	9,021	7,584	16,605	11,605	5,000	5,000	
Dismantling retired equipment	295		295	295			
Retirements - equipment	(7,266)		(7,266)	(7,266)			
Equipment - depreciation	906,893	131,138	1,038,031	1,012,400	25,631		25,631
Injuries to persons	10,065	1,206	11,271	11,271			
Insurance	35,294	6,054	41,348	41,348			
Stationery and printing	2,141	1,041	3,182	2,407			775
Other expenses	5,839	220	6,059	6,059			
Joint maintenance of equipment expenses - Dr.	22,216	3	22,219	22,219			
Joint maintenance of equipment expenses - Cr.	11,484		11,484	11,484			
Total maintenance of equipment	$3,203,382	$ 689,406	$3,892,788	$3,460,973	$ 431,815	$ 370,267	$ 61,548

2218

[fol. 2219]

THE MINNEAPOLIS & ST LOUIS RAILWAY COMPANY — Schedule
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY
ECONOMIES FROM UNIFICATION OF
MAINTENANCE OF EQUIPMENT DEPARTMENTS

Wage and Salary Economies:
Elimination of certain supervisory personnel classified in 1954 Form A reports to I.C.C. as executives, staff officials and professional and clerical personnel:

Superintendent of motive power	$ 10,200	
Mechanical department clerks	17,178	
Total (Schedule 21)		$ 27,378
Maintenance of equipment and stores employees (Schedule 21)	$34,118	
Less purchasing department personnel	(34,240)	
Maintenance of equipment portion of purchasing and stores salaries (Schedule 21)	19,981	
Total		
Total		$

Other Expense Economies:
Superintendence--Reduction of supervisory positions would reduce expenses incident to those positions

Expenses related to equipment repair operations would be eliminated by unification of maintenance facilities (estimated at 10%):

Shop machinery
Power plant machinery
Shop and power plant machinery

Reduction of stationery and printing expenses

Work equipment repair material would be reduced by reason of sale or other disposition of work equipment

Locomotive repairs--Through unification four locomotives could be sold or otherwise disposed of and it has been assumed that the reduction in number of units would reduce material usage by $1,000 per unit

Equipment depreciation--Data charge would be reduced by the depreciation applicable to the locomotives and the work equipment to be sold or otherwise disposed of:

	Units	Cost	Annual Depreciation Rate	Amount
Locomotive -				
Switch	1	$ 74,400	.02%	$ 2,976
Diesel				
Total				$16,239
Work equipment -				
Total depreciation				
Total maintenance of equipment economies from unification				$

[fol. 2220]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

COMBINED AND PRO FORMA STATEMENT OF TRANSPORTATION EXPENSES
FOR THE YEAR ENDED DECEMBER 31, 1954

Schedule 10

	Actual			Pro Forma To Reflect Economies From Unification	Economies From Unification (Schedule 11)		
	M&StL	TP&W	Combined		Total	Wages And Salaries	Other
Superintendence	$ 255,598	$ 48,289	$ 303,887	$ 269,644	$ 38,243	$ 28,243	$ 10,000
Dispatching trains	110,424	33,052	143,476	110,424	33,052	27,648	5,404
Station employees	1,[illegible]58,749	218,309	1,577,058	1,512,538	64,520	64,520	
Weighing, inspection, and demurrage bureaus	32,442	4,752	37,194	37,194			
Station supplies and expenses	61,441	16,425	77,866	77,866			
Yardmasters and yard clerks	244,018	74,240	317,258	302,418	14,840	14,840	
Yard conductors and brakemen	664,837	106,739	770,776	681,551	89,225	89,225	
Yard switch and signal tenders	29,776	18,378	48,154	48,154			
Yard enginemen	379,[illegible]56	67,600	446,759	403,836	42,923	42,923	
Yard switching fuel	61,366	18,183	84,149	77,549	6,600		6,600
Water for yard locomotives		353	353	353			
Lubricants for yard locomotives	4,868	1,898	6,766	6,766			
Other supplies for yard locomotives	4,[illegible]43	363	2,706	2,706			
Enginehouse expenses - yard	10[illegible],745	20,108	123,853	123,853			
Yard supplies and expenses	8,767	3,665	12,432	12,432			
Train enginemen	704,321	191,237	895,558	895,558			
Train fuel	562,816	193,203	756,019	756,019			
Water for train locomotives		964	964	964			
Lubricants for train locomotives	22,387	18,190	40,577	40,577			
Other supplies for train locomotives	10,530	3,490	14,020	14,020			
Enginehouse expenses - train	17[illegible],357	41,622	220,979	220,979			
Trainmen	998,989	244,937	1,243,926	1,203,926			
Train supplies and expenses	443,645	103,910	547,555	525,347	22,208	22,208	
Operating sleeping cars	2,168		2,168	2,168			
Signal and interlocker operation	3,016	5,729	8,745	8,745			
Crossing protection	54,409	3,565	57,974	57,974			
Drawbridge operation	13,260	17,787	31,047	31,047			
Communication system operation	68,609	14,220	82,829	82,829			
Stationery and printing	38,680	10,276	48,956	43,718	5,138		5,138
Other expenses	15,608	341	15,949	15,949			
Insurance	6,586	38,905	45,491	45,491			
Clearing wrecks	19,524	4,241	23,765	23,765			
Damage to property	7,451	510	7,961	7,961			
Damage to livestock on right of way	10,225	174	10,399	10,399			
Loss and damage - freight	333,019	72,514	406,533	406,533			
Loss and damage - baggage	45		45	45			
Injuries to persons	70,707	11,217	81,924	81,924			
Operating joint yards and terminals - Dr.	170,612	17,985	188,597	188,597			
Operating joint yards and terminals - Cr.	35,740	10,263	46,003	46,003			
Operating joint tracks and facilities - Dr.	111,653	26,827	138,480	138,480			
Operating joint tracks and facilities - Cr.	101,464	25,191	126,655	126,655			
Total	$7,052,646	$1,617,744	$8,670,390	$8,353,641	$316,749	$289,607	$27,142

[fol. 2221]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

ECONOMIES FROM UNIFICATION OF
TRANSPORTATION DEPARTMENTS

Wage and Salary Economies:		
Elimination of certain supervisory personnel classified in 1934 Form A reports to I.C.C. as executives, staff officials and professional and clerical personnel		
Superintendent	$ 7,224	
Special agent	4,480	
Superintendent's clerk	2,720	
Total (Schedule 21)		$ 14,424
Elimination of Peoria station of M.& St.L. - Employees classified in 1934 Form A report to I.C.C. as professional and clerical (Schedule 21)	$21,704	
Agent, telegraphers, etc.	4,378	
Total		26,082
Elimination of Peoria yard of M.& St.L. (except for yard clerk positions)		
Yardmasters	$14,840	
Yard conductors and brakemen	84,224	
Yard engineers and firemen	46,923	
Total		145,988
Reduction of dispatching forces		29,448
Elimination of transportation inspector, train attendant, station supervisor, station foreman, etc.		42,000
Transportation expense portion of reduction in purchasing and stores personnel (Schedule 21)		24,408
Total		$ 265,350
Other Economies:		
Estimated expenses incident to force reductions -		
Superintendence		10,000
Dispatching		1,000
Reduction of fuel consumption attributable to elimination of Peoria yard-M.& St.L.		6,000
Estimated reduction of 50% in stationery and printing costs		1,000
Total		$ 283,350

Schedule 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

COMBINED AND PRO FORMA STATEMENTS OF TRAFFIC, GENERAL AND MISCELLANEOUS EXPENSES
TO REFLECT ECONOMIES FROM UNIFICATION
FOR THE YEAR ENDED DECEMBER 31, 1954

	Actual			Pro Forma To Reflect Economies From Unification	Economies from Unification		
	M&StL	TP&W	Combined		Total	Wages And Salaries	Other
TRAFFIC:							
Superintendence and outside agencies	$1,088,712	$ 496,601	$1,585,313	$1,169,761	$ 415,552	$ 258,863	$ 156,689
Advertising	94,089	38,385	132,474	104,089	28,385		28,385
Traffic associations	20,264	4,922	25,186	25,186			
Industrial and immigration bureaus	22,238		22,238	22,238			
Insurance	1,219	231	1,450	1,450			
Stationery and printing	32,123	21,068	53,191	42,657	10,534		10,534
Other expenses	35	13	48	48			
Total traffic (schedule 13)	$1,258,680	$ 561,220	$1,819,900	$1,365,429	$ 454,471	$ 258,863	$ 195,608
GENERAL:							
Salaries and expenses of general officers and clerks and attendants	$ 806,405	$ 334,643	$1,141,048	$ 890,544	$ 250,504	$ 211,519	$ 38,985
General office supplies and expenses	47,725	27,588	75,313	61,519	13,794		13,794
Law expenses	116,989	60,804	177,793	132,617	45,176		45,176
Insurance	914	638	1,552	1,552			
Pensions and gratuities	88,710	15,799	104,509	104,509			
Stationery and printing	29,456	13,615	43,071	36,264	6,807		6,807
Valuation expenses	2,752		2,752	2,752			
Other expenses	114,481	49,643	164,124	139,303	24,821		24,821
General joint facilities - Dr.	9,697	97	9,794	9,794			
Total general expenses (schedule 16)	$1,217,129	$ 502,827	$1,719,956	$1,378,854	$ 341,102	$ 211,519	$ 129,583
MISCELLANEOUS OPERATIONS:							
Hotels and restaurants	$ 25,159	$ 15,309	$ 40,468	$ 25,159	$ 15,309	$	$ 15,309
Total operating expenses	$16,272,294	$4,466,117	$20,741,411	$18,921,801	$1,819,610	$1,375,727	$ 443,883

[fol. 2223]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY
ECONOMIES FROM
UNIFICATION OF TRAFFIC DEPARTMENTS

Superintendence and Outside Agencies:

Incremental expenses to M&StL because of unification	
Salaries (Schedule 14)	$
Expenses (principally expense accounts)	
Total	$
Superintendence and outside agencies expenses of TP&W (Schedule 12)	
Decrease	$ 4

Advertising:

It has been assumed that only $10,000 of TP&W 1954 advertising expense, of $38,385 is required for the unified companies (during 1954 the TP&W paid Arbingast, Becht & Associates $29,012 for advertising services)

Stationery and Printing:

Savings of 50% from unification - estimated

Total economies to be realized by unification of traffic departments	$ 4

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

SALARY ECONOMIES FROM UNIFICATION OF TRAFFIC DEPARTMENTS

	T.P.& W.		Additional Positions on M&StL Required in Unified Traffic Department		Economies from Unification	
	Number of Employees	Estimated Compensation	Number	Estimated Compensation	Number	Estimated Compensation
Vice President	1	$ 23,337		$	1	$ 23,337
Assistant Vice President	1	7,224			1	7,224
Assistant Vice President Rates and divisions	1	7,224			1	7,224
Assistant Rate & Division Officer	1	7,224	1	7,224		
Clerks (car tracing, rates and divisions, shipper notification, freight claims, etc.)	13	48,438	5	18,630	8	29,808
Solicitors and off-line agency clerks (Schedule 15)	40	220,364	6	35,195	34	185,169
Total	57	$ 313,811	12	$ 61,049	45	$ 252,762
Personnel reductions accomplished during 1955	1	6,101	---	-------	1	6,101
Total (Schedule 21)	58	$ 319,912	12	$ 61,049	46	$ 258,863

[fol. 2225]

Schedule 15

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

SALARY ECONOMIES FROM UNIFICATION OF TRAFFIC AGENCIES

		TP&W Agency Personnel				Additional Positions on M&St.L. Required In Unified Traffic Department		Economies from Unification	
		Solicitors	Clerks	Total	Estimated Compensation	Number	Estimated Compensation	Number	Estimated Compensation
(1)	Chicago	4*	1	5	$ 29,254		$	5	$ 29,254
(2)	Cincinnati	1	1	2	10,004			2	10,004
(3)	Cleveland	1		1	5,989			1	5,989
(4)	Dallas (new agency)	1	1	2	10,004			2	10,004
(5)	Detroit	1		1	5,989	1	5,989		
(6)	Indianapolis	1	1	2	10,004			2	10,004
(7)	Kansas City	1		1	5,989			1	5,989
(8)	Keokuk	1		1	5,989	1	5,989		
(9)	Los Angeles	2	1	3	15,993			3	15,993
(10)	Minneapolis	2		2	11,978			2	11,978
(11)	New York	3	1	4	21,982			4	21,982
(12)	Omaha	1		1	5,989			1	5,989
(13)	Peoria	2		2	13,213	1	7,224	1	5,989
(14)	Philadelphia	1	1	2	10,004			2	10,004
(15)	Pittsburgh	2	1	3	15,993			3	15,993
(16)	St. Louis	1	1	2	10,004			2	10,004
(17)	San Francisco	2	1	3	15,993	1	5,989	2	10,004
(18)	Seattle	1		1	5,989			1	5,989
(19)	Tulsa	1	1	2	10,004	2	10,004	--	------
	Total	29	11	40	$ 220,364	6	$ 35,195	34	$ 185,169

* Includes a rate man.

NOTE-- The M.& St.L. traffic agencies duplicate those of the T.P.& W. in all cities except Keokuk and Tulsa.

Schedule 16

THE MINNEAPOLIS & ST.LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

ECONOMIES FROM UNIFICATION OF EXECUTIVE AND ACCOUNTING DEPARTMENTS

Salaries and Expenses of General Officers and Clerks and Attendants:		
Increase in M.& S .L. accounting department wages and salaries because of unification (Schedule 17)		$ 84,139
Total salaries and expenses of general officers and clerks and attendants of T.P.& W. (Schedule 12)		334,643
Decrease		$ 250,504
General Office Supplies and Expenses:		
I.B.M. rentals, etc. will be reduced by unification -- thus one-half of this expense has been eliminated		13,794
Law Expenses:		
Winston, Strawn, Black & Towner and Guy A. Gladson	$ 35,844.	
Hunter, Kavanagh, McLaughlin & Bond	9,332	
Total		45,176
Stationery and Printing -- Savings of 50% from unification estimated		6,807
Other Expenses -- Savings of 50% from unification estimated (this account includes directors' fees and expenses, etc.)		24,821
Total economies to be realized by unification of executive and accounting departments		$ 341,102

[fol. 2227]

Schedule 1

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

SALARY ECONOMIES FROM UNIFICATION OF EXECUTIVE AND ACCOUNTING DEPARTMENTS

	T.P.& W.		Additional Positions on M.& St.L Required in Unified Accounting and Executive Departments		Economies from Unificatio	
	Number of Employees	Estimated Compensation	Number	Estimated Compensation	Number	Estimated Compensation
Executive:						
President	1	$ 55,000		$	1	$ 55,000
Vice President & Secretary	1	5,000			1	5,000
Chairman of Board	1	5,000			1	5,000
Treasurer & Assistant to President	1	10,200			1	10,200
Secretary to President	1	6,117			1	6,117
Total	5	$ 81,317	--	$ -------	5	$ 81,317
Accounting:						
Comptroller	1	$ 10,200		$	1	$ 10,200
General Accountant	1	7,224			1	7,224
Assistant Treasurer	1	5,168			1	5,168
T.B.M. Department	3	19,810	3	11,886	2	7,924
Clerks -						
Car	2	8,880	1	4,015	1	4,865
Revenue	21	84,281	14	55,343	7	28,938
Payroll	3	12,809	1	4,015	2	8,880
General accounting	4	18,694	2	8,880	2	9,814
Personal stenographer	1	3,729	---	-------	1	3,729
Total	32	$ 170,878	21	$ 84,139	18	$ 86,739
Janitors, porter and 1955 force reductions	11	$ 43,463	---	$ -------	11	$ 43,463
Total executive and accounting (Schedule 21)	48	$ 295,658	21	$ 84,139	34	$ 211,519

1916

[fol. 2228]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

PRO FORMA COMPUTATION OF RAILWAY TAX ACCRUALS
BASED ON ECONOMIES FROM UNIFICATION
FOR THE YEAR ENDED DECEMBER 31, 19[illegible]

Railroad Retirement and Unemployment Taxes:

Federal Income Taxes:

[fol. 2229]

Employees and Compensation

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

AND

TOLEDO PEORIA & WESTERN RAILROAD COMPANY

COMBINED AND PRO FORMA STATEMENT OF NUMBER OF EMPLOYEES AND WAGES AND SALARIES
FOR THE YEAR ENDED DECEMBER 31, 1924

	Number of Employees			Compensation			Pro Forma to Reflect Economies from Unification		Economies from Unification	
	M&StL	IP&W	Combined	M&StL	IT&W	Combined	Number of Employees	Compensation	Number of Employees	Wages and Salaries
...utive, Officials, and staff ...istants	74	23	97	$ 712,147	$ 238,183	$ 950,330	77	$ 741,043	20	$ 209,287
...ional, clerical, and general	541	139	680	2,169,037	671,433	2,840,470	690	2,413,990	90	426,480
...tenance of way and structures	662	141	803	1,880,735	511,312	2,392,047	663	2,266,922	39	125,125
...tenance of equipment and stores	470	83	553	1,863,917	380,502	2,244,419	478	1,901,301	75	343,118
...portation (other than train, ...ine, and yard)	337	49	386	1,247,381	233,297	1,480,678	370	1,404,914	16	75,764
...portation (yardmasters, switch- ...ers and hostlers	37	4	41	190,182	40,138	230,320	41	221,320	2	14,840
...portation (train and engine service	543	72	615	2,810,526	638,737	3,449,263	595	3,317,135	18	132,148
Total	2,744	527	3,079	$10,873,925	$2,713,702	$13,587,627	2,814	$12,266,525	256	$1,327,062

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THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

Schedule 20

[redacted]

1919

COMBINED AND PRO FORMA STATEMENT OF EXECUTIVES, OFFICIALS AND STAFF ASSISTANTS AND PROFESSIONAL, CLERICAL AND GENERAL EMPLOYEES

FOR THE YEAR ENDED DECEMBER 31, 1954 [redacted] [fol. 2231]

	Number Of Employees			Compensation			Pro Forma To Reflect Economies From Unification		Economies From Unification	
	M&StL	TP&W	Combined	M&StL	TP&W	Combined	Number Of Employees	Compensation	Number Of Employees	Compensation
Executives, Officials and Staff Assistants										
Executives, general officers and assistants	65	21	86	$ 658,827	$220,073	$ 878,900	69	$ 687,723	17	$191,177
Division officers, assistants and staff assistants	8	3	11	53,320	18,110	71,430	8	53,320	3	18,110
Total	73	24	97	$ 712,147	$238,183	$ 950,330	77	$ 741,043	20	$209,287
Professional, Clerical and General										
Professional and subprofessional assistants	10	5	15	$ 48,353	$ 25,841	$ 74,194	10	$ 48,353	5	$ 25,841
Supervisory or chief clerks (major departments)	12	6	18	66,020	34,354	100,374	14	76,980	4	23,394
Chief clerks (minor departments) and assistant chief clerks and supervising cashiers	19	7	26	90,248	34,054	124,302	20	95,113	6	29,189
Clerks and clerical specialists (A)	16	2	18	64,877	9,814	74,691	15	60,149	3	14,542
Clerks (B and C)	275	66	341	1,033,432	265,004	1,298,436	318	1,205,665	23	92,771
Mechanical device operators (office)	32	5	37	117,504	19,810	137,314	34	125,363	3	11,951
Stenographers and secretaries (A)	8	1	9	36,293	6,117	42,410	8	36,293	1	6,117
Stenographers and typists (B)	39	20	59	143,145	74,521	217,666	47	172,953	12	44,713
Storekeepers, sales agents and buyers	5	3	8	23,697	12,820	36,517	5	23,697	3	12,820
Traveling auditors or accountants	3	1	4	15,900	4,710	20,610	3	15,900	1	4,710
Telephone switchboard operators and office assistants	6		6	19,923		19,923	6	19,923		
Messengers and office boys	5		5	14,036		14,036	5	14,036		
Elevator operators and other office attendants		1	1		3,731	3,731			1	3,731
Lieutenants and sergeants of police	11		11	50,242		50,242	11	50,242		
Patrolmen and watchmen	9		9	34,168	200	34,368	9	34,168		200
Traffic and various other agents, inspectors and investigators	62	28	90	337,667	167,698	505,365	66	361,623	24	143,742
Claim agents or investigators	3		3	14,200		14,200	3	14,200		
Freight claim agents or investigators	5		5	21,081		21,081	5	21,081		
Motor-vehicle and motor-car operators	4	1	5	14,376	3,948	18,324	4	14,376	1	3,948
Janitors and cleaners	7	3	10	23,875	8,811	32,686	7	23,875	3	8,811
Total	541	149	680	$2,169,037	$671,433	$2,840,470	590	$2,413,990	90	$426,480
Total	614	173	777	$2,881,184	$909,616	$3,790,800	667	$3,155,033	110	$635,767

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Schedule 21

THE MINNEAPOLIS & ST.LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

DEPARTMENTAL CLASSIFICATION OF ECONOMIES FROM UNIFICATION
OF EXECUTIVES, OFFICIALS, STAFF ASSISTANTS AND PROFESSIONAL,
CLERICAL AND GENERAL EMPLOYEES
FOR THE YEAR ENDED DECEMBER 31, 1954

	Number of Employees	Estimated Compensation
Operating		
Maintenance of way and structures	8	$ 48,381
Maintenance of equipment	4	27,378
Transportation	3	18,939
Purchasing and stores (Note)	9	44,473
Peoria station of M.& St.L.	6	25,708
Total	30	$ 165,389
Traffic	46	268,863
Executive, Accounting, etc.	34	211,213
Total	110	$ 645,765

Note
Purchasing and stores salary economies from unification have been allocated as follows:

	Schedule	Total	Positions Classified Above	Positions Classified Under Maintenance of Equipment and Stores
Maintenance of way and structures	7	$ 23,000	$13,041	$ 9,959
Maintenance of equipment	9	33,981	19,346	14,635
Transportation	11	22,208	12,592	9,616
Total		$79,189	$44,979	$34,210

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THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

[fol. 2233]

COMBINED AND PRO FORMA STATEMENT OF MAINTENANCE OF WAY EMPLOYEES AND COMPENSATION
FOR THE YEAR ENDED DECEMBER 31, 1954

	Number of Employees			Compensation			Pro Forma to Reflect Economies from Unification		Economies from Unification	
	M&StL	IP&W	Combined	M&StL	IP&W	Combined	Number of Employees	Compensation	Number of Employees	Compensation
Roadmasters, general foremen, and assistants	8	1	9	$ 42,260	$ 6,989	$ 49,249	8	$ 42,260	1	$ 6,989
Maintenance of way and scale inspectors	14		14	58,521		58,521	14	58,521		
Bridge and building gang foremen (skilled labor)	9			39,556	8,846	48,402	10	43,979	1	4,423
Bridge and building carpenters	94			201,149	18,942	220,091		212,515	2	7,576
Bridge and building painters		2	2		6,902	6,902		3,451	1	3,451
Masons, bricklayers, plasterers, and plumbers										
Maintenance of way and structures helpers and apprentices		4	4		14,829	14,829	2	7,415	2	7,414
Portable equipment operators		5	5		20,268	20,268	3	10,134	3	10,134
Portable equipment operator helpers	2	2	4	4,644	17,161	22,805		22,805		
	1		1	4,644		4,644		4,644		
Gang foremen (extra gang and work-train laborers)	1	1	2	4,360	4,544	8,904	1	4,360	1	4,544
Gang or section foremen	120	13	133	447,050	50,983	498,033	131	490,189	2	7,844
Extra gang men	27	19	46	79,492	61,324	140,816	27	79,492	19	61,324
Section men	301	80	381	928,040	257,606	1,185,622	381	1,185,622		
Maintenance of way laborers (other than track and roadway) and gardeners and farmers	1		1	3,254	2	3,256		3,256		
General and assistant general foremen, and inspectors (signal, telegraph, and electrical transmission)	1		1	9,316		9,316		9,316		
Gang foremen (signal and telegraph skilled trades labor)	1	1	2	2,675	4,301	6,976	2	6,976		
Signalmen and signal maintainers	2	4	6	5,330	23,076	28,406	6	28,406		
Linemen and groundmen	12		12	42,573	10,726	53,299	12	42,573	3	10,726
Assistant signalman and assistant signal maintainers		1	1		3,363	3,363	1	3,363		
Total	776	142	908	$1,880,742	$511,012	$2,391,747	881	$2,256,322	15	$ 135,425

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[fol. 2234]

Schedule 23

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

COMBINED AND PRO FORMA STATEMENT OF MAINTENANCE OF EQUIPMENT AND STORES EMPLOYEES AND COMPENSATION

FOR THE YEAR ENDED DECEMBER 31, 1954

	Number of Employees			Compensation			Pro Forma To Reflect Economies From Unification		Economies From Unification	
	M&S:I	TP&W	Combined	M&S:I	TP&W	Combined	Number Of Employees	Compensation	Number Of Employees	Compensation
General assistant general and department foremen	46	6	52	$ 228,425	$ 35,592	$ 264,017	46	$ 228,425	6	$ 35,592
General and assistant general foremen (stores)	2	1	3	8,130	4,893	13,023	2	8,130	1	4,893
Equipment, shop, electrical, material and supplies inspectors	2	1	3	8,630	6,991	15,621	2	8,630	1	6,991
Gang foremen and gang leaders	3		3	12,479		12,479	3	12,479		
Skilled labor										
Blacksmiths	9		9	36,824	22	36,846	9	36,824		
Boilermakers	8	3	11	35,083	15,323	50,406	8	35,083	3	15,323
Carmen (A and B)	31	2	33	134,384	8,573	142,957	31	134,384	2	8,573
Carmen (C and D)	84	27	111	352,855	126,166	479,021	92	390,239	19	88,782
Electrical workers (A)	18	4	22	73,563	19,930	93,493	18	73,563	4	19,930
Machinists	69	8	77	290,525	37,209	327,734	69	290,525	8	37,209
Molders	1		1	3,673		3,673	1	3,673		
Sheet metal workers	12	2	14	49,478	8,809	58,287	12	49,478	2	8,809
Skilled trades helpers (M. of E. and Stores)	90	14	104	320,698	50,637	371,335	90	320,698	14	50,637
Helper apprentices (M. of E. and Stores)	1	1	2	4,873	3,929	8,802	1	4,873	1	3,929
Regular apprentices (M. of E. and Stores)										
Coach cleaners	24		24	71,221		71,221	24	71,221		
Gang foremen (shops, enginehouses and power plants)	6		6	22,046	16	22,062	6	22,046		
Gang foremen (stores and ice, reclamation, and timber treating plants)	1	1	2	3,504	3,666	7,170	1	3,504	1	3,666
Classified laborers (shops, enginehouses and power plants)	1		1	3,385		3,385	1	3,385		
General laborers (shops, enginehouses and power plants)	7	3	10	28,256	11,755	40,011	7	28,256	3	11,755
General laborers (stores and ice, reclamation, and timber treating plants)	39	8	47	123,820	28,331	152,151	39	123,820	8	28,331
Total	16	2	18	52,065	18,660	70,725	16	52,065	2	18,660
	470	83	553	$1,863,917	$380,502	$2,244,419	478	$1,901,301	75	$343,118

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[fol. 2235]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

Schedule 4

COMBINED AND PRO FORMA STATEMENT OF TRANSPORTATION (OTHER THAN TRAIN AND ENGINE) EMPLOYEES AND COMPENSATION
FOR THE YEAR ENDED DECEMBER 31, 1954

	Number of Employees			Compensation			Pro Forma to Reflect Economies from Unification		Economies from Unification	
	M&StL	TP&W	Combined	M&StL	TP&W	Combined	Number of Employees	Compensation	Number of Employees	Compensation
rtation(other than train,engine and yard)										
train dispatchers	8	1	9	$ 50,106	$ 8,939	$ 59,045	8	$ 50,106	1	$ 8,939
dispatchers	10	3	13	57,451	18,709	76,869	10	58,160	3	18,709
on agents(supervisory-major stations- telegraphers)	12	1	13	72,699	5,798	78,497	12	67,546	2	10,951
on agents (smaller stations- telegraphers)	41	12	53	50,530	62,525	113,055	53	113,055		
on agents(telegraphers and telephoners)	128	9	137	509,057	44,477	553,534	137	553,534		
-telegraphers and clerk-telephoners	41	9	50	180,230	36,422	216,652	49	203,666	3	12,986
raphers, telephoners,and towermen	14	5	19	63,213	23,191	86,404	19	86,404		
ge, parcel room, and station attendants	2	2	4	9,441	260	9,701	4	9,441	2	260
al foremen(freight stations,warehouses, in elevators, and docks)	6		6	24,995		24,995	6	24,995		
tant general foremen(freight stations, ehouses, grain elevators, and docks)	1		1	4,098		4,098	1	4,098		
foremen(freight station, warehouse, in elevator, and dock labor		1	1		4,410	4,410			1	4,410
rs, loaders, scalers, sealers, and ishable-freight inspectors	13		13	44,961		44,961	13	44,961		
ers(station,warehouse,and platform)	22		22	75,569		75,569	20	68,336	2	7,233
ersonal and pre-load and grain visors)					94	94		94		
n laborers(station,warehouse,dock, ms, and grain elevator)				2,715	260	2,975		2,975		
rs, relay and transfer										
agers, and assistants	1		1	4,081		4,081	1	4,081		
and assistants(station, warehouse, etc.)	2		2	5,675		5,675	2	5,675		
rs, Camp	10		10	26,430		26,430	10	26,430		
perintendents and division inspectors	1	1	2	4,800	9,304	14,104	1	4,800	1	9,304
attendants	2	1	3	5,137	3,066	8,203	2	5,137	1	3,066
operators and clerks	5	3	8	12,828	14,942	27,770	8	27,770		
ing and heating plants	16		16	43,650		43,650	16	43,650		
Total	337	49	386	$1,247,381	$ 233,297	$1,480,678	370	$1,404,914	16	$ 75,764
rtation(yardmasters, switchtenders, others)										
asters	11	3	14	$ 67,210	$ 22,860	$ 90,070	12	$ 75,230	2	$ 14,840
h tenders	4		4	17,193		17,193	4	17,193		
de hostlers	4		4	24,306		24,306	4	24,306		
e hostlers	14	3	17	70,243	17,718	87,961	17	87,961		
de hostler helpers	4		4	17,130		17,130	4	17,130		
Total	37	6	43	$ 196,082	$ 40,578	$ 236,660	41	$ 221,820	2	$ 14,840

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

COMBINED AND PRO FORMA STATEMENT OF TRANSPORTATION (TRAIN AND ENGINE SERVICE) EMPLOYEES AND COMPENSATION
FOR THE YEAR ENDED DECEMBER 31, 1954

	Number of employees			Compensation			Pro Forma to Reflect Economies from Unification		Economies from Unification	
Transportation (Train and Engine Service)	M&StL	TP&W	Combined	M&StL	TP&W	Combined	Number of Employees	Compensation	Number of Employees	Compensation
Road passenger conductors	9		9	$ 57,062	$	$ 57,062	9	$ 57,062		$
Road freight conductors(through freight)	24	4	28	136,745	41,217	177,962	28	177,962		
Road freight conductors(local and way freight)	32	6	38	191,126	58,211	249,337	38	249,337		
Road passenger baggagemen	8		8	48,457		48,457	8	48,457		
Road freight brakemen and flagmen (through freight)	48	7	55	226,189	65,359	291,548	55	291,548		
Road freight brakemen and flagmen (local and way freight)	66	13	79	327,531	101,366	428,897	79	428,897		
Yard conductors and yard foremen	44	5	49	212,299	38,938	251,237	46	227,833	3	23,404
Yard brakemen and yard helpers	110	9	119	454,045	71,433	525,478	110	459,657	9	65,821
Road passenger engineers and motormen	12		12	84,996		84,996	12	84,996		
Road freight engineers and motormen (through freight)	24	3	27	157,171	40,599	197,770	27	197,770		
Road freight engineers and motormen (local and way freight)	32	6	38	216,464	63,216	279,680	38	279,680		
Yard engineers and motormen	38	4	42	206,909	37,435	244,344	39	221,702	3	22,642
Road passenger firemen and helpers	1		1	1,793		1,793	1	1,793		
Road freight firemen and helpers (through freight)	25	3	28	133,029	34,028	167,057	28	167,057		
Road freight firemen and helpers (local and way freight)	35	6	41	185,445	54,780	240,225	41	240,225		
Yard firemen and helpers	35	4	39	171,265	32,175	203,440	36	183,159	3	20,281
Total	543	70	613	2,810,526	638,757	3,449,283	595	3,317,135	18	132,148
Grand total	2,543	527	3,070	$10,879,825	$2,713,762	$13,593,587	2,803	$12,217,860	267	$1,375,727

vr36

[fol. 2237]

EXHIBIT H-60

Exhibit No. H-60
Docket No. 18752
Witness

STATEMENT OF CARS INTERCHANGED BETWEEN
TP&W AND ITS MORE IMPORTANT CONNECTIONS

YEAR		KYPKER PRR	SHELDON NYC	WEBSTER MILW	FARMDALE NKP	CRAIG	CRIRP	PEORIA IT	MASTIL	NYC	KEOKUK	CRIRP	
1938													
	Received	8,906	3,128	5,967	332	5,973	1,786	1,705	4,023	313	792		
	Delivered	22,776	7,073	3,139	3,418	1,480	2,571	1,246	3,036	191	426		
	TOTAL	31,682	10,201	9,106	3,970	7,453	4,357	2,951	7,059	504	1,218		
1939													
	Received	11,283	2,975	7,045	366	5,476	4,411	2,005	4,629	265	721		
	Delivered	27,002	6,682	4,492	4,204	1,666	2,376	1,602	3,213	47	536		
	TOTAL	38,285	9,657	11,537	4,820	7,142	6,787	3,607	7,842	312	1,257		
1940													
	Received	11,256	3,400	7,692	701	6,708	4,566	1,637	4,932	412			
	Delivered	29,144	6,176	4,239	4,707	1,468	2,388	1,509	3,521	207			
	TOTAL	40,400	9,576	11,931	5,408	8,176	6,954	3,146	8,453	619			
1948													
	Received	16,017	3,020	6,298	1,647	12,479	4,484	1,959	5,394	444			
	Delivered	26,135	4,870	4,054	7,012	1,574	1,083	1,939	4,485	433			
	TOTAL	42,152	7,880	10,352	8,659	14,053	5,567	3,898	9,879	2,124	4,098		
1949													
	Received	14,272	2,612	5,905	2,009	11,962	3,487	1,809	5,143	1,791	1,477		
	Delivered	27,925	4,595	3,302	7,839	1,239	1,533	2,176	4,704	596	2,767		
	TOTAL	43,197	7,207	9,207	9,848	13,201	5,020	3,985	9,847	2,387	4,242		
1950													
	Received	18,169	3,290	5,704	3,438	14,617	3,961	1,793	5,995	2,687	1,777	4,781	17,911
	Delivered	33,226	4,840	4,471	8,910	1,891	1,844	2,146	5,880	807	3,441	2,173	10,669
	TOTAL	51,395	8,130	10,175	12,348	16,508	5,805	3,939	11,875	3,294	5,218	7,554	28,571
1951													
	Received	24,757	3,271	6,799	4,197	15,399	5,350	2,509	7,367	2,327	1,927	4,130	19,053
	Delivered	37,168	5,494	5,484	8,469	2,454	2,497	3,045	6,887	464	3,621	3,432	12,809
	TOTAL	61,925	8,765	12,283	12,666	17,853	7,847	4,854	14,254	2,791	5,548	7,562	31,862
1952													
	Received	23,010	3,484	6,204	4,774	14,979	5,081	2,341	7,346	2,348	1,779	4,232	18,899
	Delivered	37,049	5,104	5,209	8,397	1,954	2,077	4,065	6,203	291	3,901	4,162	12,436
	TOTAL	60,059	8,588	11,413	13,171	16,933	7,138	6,406	13,749	2,639	5,680	8,394	31,351
1953													
	Received	23,048	3,534	6,775	4,685	17,565	6,104	2,674	8,359	2,577	2,392	4,155	20,422
	Delivered	39,571	6,076	4,668	9,631	2,228	2,147	4,210	5,779	363	3,859	4,217	13,982
	TOTAL	62,619	9,610	11,443	14,316	19,793	8,251	6,884	14,138	2,940	6,251	8,372	34,404
1954													
	Received	18,590	3,073	6,004	4,019	15,414	5,514	2,933	7,173	2,643	2,564	4,104	20,650
	Delivered	37,703	6,221	3,606	10,387	1,983	2,112	3,142	4,826	416	4,394	2,308	11,673
	TOTAL	56,293	9,294	9,610	14,406	17,397	7,626	6,075	11,999	3,059	6,958	6,412	32,323

SOURCE EXHIBIT H-52 IN FINANCE DOCKET 18752

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[fol. 2238]

EXHIBIT H-63

Exhibit No. H-63 (W-8)
Finance Dockets 18991 and 19086
Witness S. J. Witt

TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY
INTERCHANGE WITH OTHER RAILROADS AT PEORIA, ILL.

ROAD	METHOD OF INTERCHANGE
Atchison, Topeka and Santa Fe Ry.	Via P.&.P.U. or P.T. (Pekin)
Chicago & Illinois Midland Ry.	Via P.&.P.U.
Chicago and Northwestern Ry.	Via P.&.P.U.
Chicago, Burlington & Quincy R.R.	Direct Connection
Chicago, Rock Island and Pacific R.R.	Direct Connection
Federal Barge Lines	Via P.&.P.U. or C.R.I.&.P.
Gulf, Mobile and Ohio R.R.	Via P.&.P.U.
Illinois Central R.R.	Via P.&.P.U.
Illinois Terminal R.R.	Direct Connection
Minneapolis & St.Louis Ry.	Direct Connection
New York Central R.R.	Via P.&.P.U.
Nickel Plate Road	Via P.&.P.U. Direct Connection (Farmdale)
Pennsylvania R.R.	Via P.&.P.U.
Peoria and Pekin Union R.R.	Direct Connection
Peoria Terminal	Direct Connection

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[fol. 2239]

Exhibit H-64

H-64

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

CONDENSED STATEMENT OF REVENUE (COMMODITIES CARRIED)

FOR THE YEAR ENDED DECEMBER 31, 1954

COMMODITIES	TONS ORIGINATING ON LINE	TONS RECEIVED FROM CONNECTIONS	TOTAL TONS CARRIED	% OF TOTAL	GROSS FREIGHT REVENUE	% OF TOTAL
PRODUCTS OF AGRICULTURE						
Grain	147,908	49,092	197,000	6.04	$ 433,917	6.41
Flour and Mill Products	16,103	225,508	241,611	7.39	400,613	5.73
Fruits and Vegetables	5,109	187,732	193,841	5.92	441,757	6.32
All Other	571	12,103	12,674	.38	25,485	.37
TOTAL	190,693	456,255	645,948	19.73	1,301,772	18.83
ANIMALS AND PRODUCTS						
Livestock	5,375	11,002	16,377	.50	54,780	.78
Meats and Packing House Products	3,096	114,115	117,211	3.58	508,135	7.27
Hides and Leather	332	20,473	20,805	.64	46,842	.70
All Other	882	25,940	26,702	.82	58,514	.84
TOTAL	9,685	171,430	181,095	5.54	670,231	9.59
PRODUCTS OF MINES						
Coal	240,827	101,072	341,899	10.44	353,188	5.05
Coke		10,662	10,662	.33	19,829	.28
Clay, Gravel, Sand and Stone	37,763	152,593	190,356	5.82	166,258	2.39
Asphalt		9,378	9,378	.29	16,693	.24
Phosphate Rock		53,859	53,859	1.64	38,710	.55
All Other	37	42,269	42,306	1.29	73,437	1.05
TOTAL	278,647	369,833	648,480	19.81	668,115	9.56
PRODUCTS OF FORESTS						
Logs, Lumber, Etc	453	164,815	165,068	5.04	229,060	3.28
All Other	28	2,576	2,304	.07	2,737	.04
TOTAL	481	166,891	167,372	5.11	231,797	3.32
MANUFACTURES AND MISCELLANEOUS						
Refined Petroleum Products	2,641	130,904	133,545	4.08	284,728	4.07
Sugar, Syrup, Glucose, Etc	30,806	10,790	41,604	1.27	102,997	1.47
Iron and Steel Articles	57,269	406,772	464,041	14....	1,158,451	16.58
Cement	4,919	90,791	95,700	2.93	153,041	2.19
Agricultural Impl & Vehicles	21,443	49,233	71,116	2.17	304,360	4.39
Autos and Trucks	1,337	11,215	12,552	.38	128,408	1.84
Beverages	10,374	16,350	26,724	....	70,980	1.02
Fertilizer	144	19,420	19,564	....	28,381	.41
Paper	4,214	69,930	74,142	2.27	156,123	2.23
Chemicals and Explosives	5,442	104,201	109,643	3.35	399,229	5.70
Canned Food Products	97,312	78,911	176,223	5.37	265,209	3.79
All Other	99,263	367,927	467,190	14.27	1,094,838	15.64
TOTAL	261,964	1,355,644	1,617,608	49.41	4,066,971	58.12
FORWARDER TRAFFIC		10,265	10,265	.31	26,634	.37
TOTAL CARLOAD TRAFFIC	741,471	2,529,318	3,270,819	99.91	6,960,520	99.59
ALL LESS CARLOAD TRAFFIC	520	2,491	3,011	.09	29,831	.41
TOTAL REVENUE TRAFFIC	741,991	2,531,809	3,273,830	100.00	$6,990,351	100.00

SOURCE PAGE 11, 1954 REPORT TO STOCKHOLDERS OF THE TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

~>39

Exhibit H-66

Exhibit H-66
Plaintiff's Exhibit No. 1899,
Witness
Page ... of ... Pages

TOLEDO PEORIA & WESTERN RAILROAD COMPANY
SUMMARY OF INCOME AND FINANCIAL POSITION - 1893 - 1934
( ) Period of Control by Pennsylvania R R and Chicago, Burlington & Quincy R R

YEAR ENDING	OPERATING REVENUES	NET RAILWAY OPERATING INCOME	NET INCOME	NET LOSS	CURRENT ASSETS	CURRENT LIABILITIES	EXCESS OF CURRENT LIABILITIES OVER CURRENT ASSETS	DEFICIT IN SURPLUS
June 30 1893	$ 985,632	$ 208,649		$ 58,023	$ 150,432	$ 230,111	$ 79,679	$ 79,679
1894	914,782	147,113		66,892	67,135	213,706	146,571	146,571
1895	952,234	171,095		68,629	121,189	336,388	215,199	215,199
December 31,1896	947,204	199,393		67,018	206,051	733,509	525,458	228,267
1897	941,171	21,,809		9,885	199,034	724,377	535,383	238,132
June 30 1898	888,881	184,675		41,372				
December 31,1899	1,023,377	229,512	$ 3,516		NOT AVAILABLE			NOT AVAILABLE
1900	1,119,524	236,072	8,953		196,338	778,184	379,826	231,225
1901	1,155,502	228,374	1,882		254,285	777,067	522,782	202,557
1902	1,184,175	226,711	1,040		256,290	780,990	524,700	200,676
1903	1,279,657	218,341		9,738	237,213	771,763	534,550	199,636
1904	1,261,844	235,967		3,439	245,411	768,096	522,685	209,373
1905	1,281,209	216,546		10,119	274,605	783,974	509,369	213,813
1906	1,223,347	188,321		42,063	247,780	842,039	594,279	222,932
1907	1,287,383	244,467		27,253	263,428	864,928	601,502	264,992
1908	1,165,835	196,902		59,380	253,815	897,749	643,934	292,246
1909	1,111,050	195,053		47,449	258,275	1,014,441	756,166	351,828
1910	1,256,111	278,127		4,367	271,215	1,161,053	889,838	399,275
1911	1,269,789	261,795		18,456	306,416	1,258,965	950,549	403,642
June 30,1912	1,276,800	230,664		2,304	307,986	1,175,591	867,625	422,096
December 31,1913	1,382,630	194,064		81,484	321,233	1,210,121	888,888	382,343
1914	1,212,843	94,191		184,500	298,751	1,351,712	1,052,921	463,431
1915	1,182,907	117,162		174,959	288,586	1,483,085	1,218,519	686,429
1916	1,217,695	306,458	19,523		239,683	1,422,505	1,382,842	841,112
1917	1,289,433	266,117	93,696		340,722	1,661,715	1,320,993	969,741
1918	1,645,383	34,724		4,336	588,014	1,803,895	1,214,978	885,492
1919	1,845,768	(D)212,227		217,674	186,423	1,698,225	1,511,802	908,259
1920	2,090,667	162,209		189,040	536,954	7,390,008	6,833,054	1,179,055
1921	1,692,419	(D)310,674		507,654	453,331	7,480,499	7,072,167	1,700,872
1922	1,716,602	(D)200,29-		381,352	730,664	7,760,699	7,030,035	1,832,617
1923	1,826,217	(D)292,734		486,431	595,837	8,040,405	7,444,568	2,458,711
1924	1,908,795	(D) 71,740		359,310	541,783	8,231,281	7,689,498	2,714,282
1925	1,817,367	(D)236,960		415,652	648,503	8,502,214	8,061,711	3,147,285
1926	1,524,944	(D)127,196		310,783	517,545	8,762,594	8,235,049	3,510,784

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(D) Deficit
Manual of Railroads 1892 through 1920.
Steam Transportation Manual 1921 through 1926

[fol. 2239]

Exhibit H-64

H-64

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

CONDENSED STATEMENT OF REVENUE COMMODITIES CARRIED

FOR THE YEAR ENDED DECEMBER 31, 1934

Commodities	Tons Originating on Line	Tons Received from Connections	Total Tons Carried	% of Total	Gross Freight Revenue	% of Total
PRODUCTS OF AGRICULTURE						
Grain	47,904	89,092	136,996	4.04	$ 433,937	6.41
Flour and Mill Products	28,105	220,108	248,213	7.32	491,613	7.23
Fruits and Vegetables	49,109	29,114	78,223	2.31	44,757	0.66
All Other	371	12,103	12,474	.38	2,465	.04
TOTAL	125,489	350,417	475,906	14.05	972,772	14.34
ANIMALS AND PRODUCTS						
Livestock	5,375	11,002	16,377	.50	54,780	.81
Meats and Packing House Products	3,099	114,115	117,211	3.46	508,135	7.49
Hides and Leather	332	20,473	20,805	.61	46,842	.70
All Other	862	25,840	26,702	.82	58,514	.86
TOTAL	9,668	171,430	181,095	5.34	670,231	9.86
PRODUCTS OF MINES						
Coal	240,627	101,072	341,899	10.08	353,188	5.20
Coke		10,662	10,662	.33	19,829	.29
Clay, Gravel, Sand and Stone	37,753	152,623	190,376	5.62	166,258	2.45
Asphalt		9,378	9,378	.29	16,693	.24
Phosphate Rock		53,859	53,859	1.59	38,710	.57
All Other	37	42,269	42,306	1.25	73,437	1.08
TOTAL	278,647	369,833	648,480	19.11	668,115	9.83
PRODUCTS OF FORESTS						
Logs, Lumber, Etc	453	164,615	165,068	4.87	229,060	3.37
All Other	28	2,276	2,304	.07	2,737	.04
TOTAL	481	166,891	167,372	4.94	231,797	3.41
MANUFACTURES AND MISCELLANEOUS						
Refined Petroleum Products	2,641	130,904	133,545	3.94	284,726	4.19
Sugar, Syrup, Glucose, Etc	30,809	10,796	41,604	1.23	102,997	1.52
Iron and Steel Articles	57,269	406,772	464,041	13.72	1,158,451	17.04
Cement	4,909	90,791	95,700	2.83	133,041	1.96
Agricultural Impl & Vehicles	21,983	49,233	71,116	2.10	304,360	4.48
Autos and Trucks	14,037	17,215	31,752	.94	128,406	1.89
Beverages	10,376	11,350	21,726	.64	70,900	1.04
Fertilizer	377	19,402	19,779	.58	33,981	.50
Paper	4,212	69,930	74,142	2.19	156,113	2.30
Chemicals and Explosives	5,842	103,203	109,045	3.22	388,229	5.71
Canned Food Products	10,332	78,951	89,283	2.64	205,709	3.03
All Other	99,203	367,927	467,130	13.80	1,064,858	15.67
TOTAL	261,989	1,355,474	1,617,463	47.79	4,061,971	59.76
FORWARDER TRAFFIC		10,265	10,265	.31	26,634	.37
TOTAL CARLOAD TRAFFIC	741,471	2,529,148	3,270,619	99.91	6,960,520	99.59
ALL LESS CARLOAD TRAFFIC	520	2,491	3,011	.09	28,831	.41
TOTAL REVENUE TRAFFIC	741,991	2,531,639	3,273,630	100.00	$6,989,351	100.00

SOURCE: PAGE 11 1934 REPORT TO STOCKHOLDERS OF THE TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

H-64

[fol. 2240]

Exhibit H-66

H-66

TOLEDO PEORIA & WESTERN RAILROAD COMPANY
SUMMARY OF INCOME AND FINANCIAL POSITION 1893 - 1954
I. Period of Control by Pennsylvania R R and Chicago, Burlington & Quincy R R

YEAR ENDING	OPERATING REVENUES	NET RAILWAY OPERATING INCOME	NET INCOME	NET LOSS	CURRENT ASSETS	CURRENT LIABILITIES	EXCESS OF CURRENT LIABILITIES OVER CURRENT ASSETS	DEFICIT IN SURPLUS
June 30,1893	$ 980,832	$ 208,809		$ 58,023	$ 150,432	$ 230,111	$ 79,679	$ 79,679
1894	914,782	147,113		66,892	67,135	213,706	146,571	146,571
1895	953,236	171,095		68,629	121,189	336,388	215,199	215,199
December 31,1896	947,294	199,393		67,018	208,051	733,509	525,458	228,267
1897	941,171	211,809		9,865	199,054	734,377	535,323	236,132
June 30,1898	888,841	184,475		44,372		NOT AVAILABLE		NOT AVAILABLE
December 31,1899	1,023,377	429,512	$ 37,516		186,358	776,184	579,826	231,225
1900	1,119,524	236,072	8,953		254,285	777,067	522,782	202,557
1901	1,155,502	228,374	1,882		256,290	780,990	524,700	200,676
1902	1,184,175	226,711	1,040		237,213	771,763	534,550	199,636
1903	1,279,657	218,541		9,738	245,411	768,096	522,685	209,373
1904	1,344,844	235,987		3,439	274,605	783,974	509,369	212,813
1905	1,261,209	216,546		10,119	247,760	842,039	594,279	222,932
1906	1,225,347	186,321		42,060	263,428	864,928	601,502	264,992
1907	1,287,593	244,467		27,353	253,815	897,749	643,934	292,246
1908	1,165,835	196,902		59,580	258,275	1,014,441	756,166	351,826
1909	1,111,050	195,033		47,449	271,215	1,141,053	869,838	399,275
1910	1,256,111	278,727		4,387	308,416	1,258,965	950,549	403,662
1911	1,289,889	261,795		18,456	307,966	1,175,591	867,625	422,096
June 30,1912	1,276,600	230,684		2,304	321,235	1,210,121	888,886	382,343
December 31,1913	1,382,630	194,068		81,484	296,791	1,351,712	1,052,921	463,431
1914	1,212,843	94,191		184,500	268,586	1,483,085	1,214,519	686,428
1915	1,182,907	117,162		174,959	239,663	1,622,505	1,382,842	861,112
1916	1,217,695	306,458	16,523		340,722	1,661,715	1,320,993	969,741
1917	1,289,433	266,117	95,896		588,014	1,803,892	1,214,978	885,492
1918	1,645,593	34,724		4,398	186,423	1,698,225	1,511,802	906,259
1919	1,645,766	(D)212,227		217,674	68,856	1,887,465	1,818,609	954,481
1920	2,090,667	162,209		188,040	556,954	7,390,008	6,833,054	1,179,055
1921	1,692,419	(D)310,674		507,654	453,331	7,480,498	7,072,167	1,700,872
1922	1,716,602	(D)200,287		381,352	730,664	7,780,699	7,050,035	1,832,617
1923	1,926,217	(D)292,794		486,431	595,837	8,040,405	7,444,568	2,458,711
1924	1,908,795	(D) 74,740		359,310	541,793	8,231,281	7,689,488	2,714,282
1925	1,817,067	(D)236,940		415,652	440,503	8,502,214	8,061,711	3,147,285
1926	1,524,844	(D)127,196		310,763	517,545	8,762,594	8,235,049	3,510,784

2240

Source: Poor's Manual of Railroads 1893 through 1920.
Moody's Transportation Manual 1921 through 1926

[fol. 2241]

TOLEDO PEORIA & WESTERN RAILROAD COMPANY
SUMMARY OF INCOME AND FINANCIAL POSITION 1890 - 1954

11 - Present Company

YEAR ENDING	OPERATING REVENUES	NET RAILWAY OPERATING INCOME	NET INCOME	NET LOSS	CURRENT ASSETS	CURRENT LIABILITIES	EXCESS OF CURRENT ASSETS OVER CURRENT LIABILITIES	SURPLUS
December 31,1927	$1,766,020	$ 90,734	$ 32,498		$ 433,723	$ 413,308	$ 20,415	$ 1,[illegible]
" 1928	2,178,189	308,748	242,582		357,966	408,588	(50,622)	272,[illegible]
" 1929	2,273,631	359,695	281,293		450,322	455,728	(5,406)	269,[illegible]
" 1930	1,992,631	311,907	227,269		383,319	290,998	92,321	461,[illegible]
" 1931	1,612,973	148,372	86,218		317,851	219,742	97,909	547,[illegible]
" 1932	1,497,341	86,406	11,474		324,252	171,189	153,063	558,[illegible]
" 1933	1,880,429	185,841	120,290		411,284	218,271	193,013	678,[illegible]
" 1934	1,715,925	159,765	100,447		381,454	218,197	163,256	778,[illegible]
" 1935	1,841,547	216,981	141,173		787,305	243,758	543,547	1,205,[illegible]
" 1936	2,624,294	358,130	273,561		1,005,537	359,650	645,887	1,587,[illegible]
" 1937	2,383,236	329,896	252,556		705,538	271,078	434,358	1,731,[illegible]
" 1938	2,149,274	329,071	265,478		749,546	243,382	506,164	1,924,[illegible]
" 1939	2,281,623	442,984	383,396		870,070	267,896	602,174	2,207,[illegible]
" 1940	2,373,432	420,785	377,367		1,018,305	479,353	538,952	2,501,[illegible]
" 1941	2,775,386	657,605	604,584		1,462,231	618,223	844,008	2,711,[illegible]
" 1942	3,230,358	1,033,024	981,194		2,154,909	277,521	1,877,388	1,[illegible]
" 1943	4,819,188	2,343,144	2,292,452		4,483,934	438,929	4,047,005	3,455,[illegible]
" 1944	5,223,265	2,403,080	2,353,126		6,541,610	412,169	6,129,441	5,875,[illegible]
" 1945	3,639,612	1,367,702	1,403,103		7,810,560	402,890	7,407,670	7,279,[illegible]
" 1946	NOT AVAILABLE - NOTE				NOT AVAILABLE - NOTE			NOT AVAILABLE - NOTE
" 1947	1,783,312	(D)332,362		$3,684,181	3,892,105	534,440	3,157,665	4,799,[illegible]
" 1948	4,693,737	851,127	798,760		1,632,782	860,778	765,604	5,854,[illegible]
" 1949	4,750,398	649,659	602,724		1,659,492	839,660	819,832	3,274,[illegible]
" 1950	5,903,770	1,113,691	1,062,991		2,180,380	1,487,046	693,314	4,349,[illegible]
" 1951	6,681,281	792,214	749,652		2,535,481	1,786,881	748,580	4,491,[illegible]
" 1952	7,117,607	871,272	861,067		2,788,930	1,962,853	806,077	5,[illegible]
" 1953	7,750,827	861,645	834,763		3,088,448	2,426,839	661,607	4,44[illegible]
" 1954	6,806,211	659,828	641,188		3,024,497	1,995,254	1,029,243	2,[illegible]
11 Months 1955	6,512,735	729,624	695,791					

( ) - Denotes Excess of Current Liabilities over Current Assets

(D) - Denotes Loss

NOTE - Operation of road suspended partially due to labor disputes

SOURCE Moody's Transportation Manual - 1927 through 1954.

Standard & Poor's Railroad Weekly Outlook Section - 11 mos. 1955

[fol. 2242]

EXHIBIT H-72

ICC DOCKET 18991
ICC DOCKET 19086
#72
D A HILL

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF FIXED CHARGE COVERAGE

BEFORE ALL INCOME TAXES

OF SELECTED RAILROADS

FOR THE FIVE YEARS ENDED DECEMBER 31, 1954

2242

[fol. 2242a]

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2242a

Schedule 1

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

ANALYSIS OF FIXED CHARGE COVERAGE BEFORE ALL INCOME TAXES

OF SELECTED RAILROADS

FOR THE FIVE YEARS ENDED DECEMBER 31, 1954

Years:	M.& St.L. and T.P. & W. (Pro Forma)	Atlantic Coast Line	Chesapeake & Ohio	Chicago Great Western	Milwaukee Road	Great Northern	Illinois Central	Louisville & Nashville	Southern Pacific	Frisco
1954	5.09	2.83	4.79	5.77	3.76	5.51	5.14	3.60	3.58	3.71
1953	6.68	2.74	6.04	6.09	4.45	7.26	7.06	6.87	5.68	6.76
1952	7.32	4.76	6.66	5.87	5.71	6.82	5.74	5.99	6.19	7.21
1951	7.18	5.06	7.67	4.89	5.97	6.10	4.52	6.42	4.73	6.29
1950	9.04	5.20	6.74	6.45	8.32	6.67	5.50	7.07	5.34	7.31
Five year average	6.99	4.00	6.34	5.82	5.60	6.47	5.58	5.93	5.10	6.21
Coupon	4.25*	4.00	3.50	4.00	4.00	2.75	3.25	3.75	4.50	4.00
Maturity	1986	1980	1996	1988	1994	1982	1980	2003	1977	1997
Market - January 3,1956	$100*	$102	$100 1/8	$93 1/2	$100 1/2	$79	$97	$102	$106 1/8	$99
Yield	4.25%	3.92%	3.49%	4.28%	3.98%	3.48%	3.35%	3.68%	4.24%	4.04%
Moody rating	-	BAA	A	BAA	BAA	A	A	A	BAA	BAA
Size of issue (millions)	$12	$25	$25	$7	$55	$40	$25	$29	$61	$69

2243

* Assumed.

Schedule 2

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
AND
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

PRO FORMA CONSOLIDATED ANALYSIS OF FIXED CHARGE COVERAGE
BEFORE ALL INCOME TAXES(NOTE)

Year	Income Taxes	Balance Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	Fixed Charges	Times Fixed Charges Covered
1954	$ 1,462,000	$ 2,901,000	$ 4,363,000	$ 858,000	5.09
1953	2,363,000	3,465,000	5,828,000	872,000	6.68
1952	2,445,000	3,592,000	6,037,000	825,000	7.32
1951	2,342,000	2,936,000	5,278,000	735,000	7.18
1950	2,278,000	4,355,000	6,633,000	734,000	9.04
Total			$28,139,000	$ 4,024,000	
Five year average			$ 5,627,800	$ 804,800	6.99

NOTE: Effect has been given in consolidating the income tax and fixed charge accounts of the two companies for the years shown above to the following:

(a) Additional annual fixed charges of $510,000 representing interest at 4-1/4% on $12,000,000 principal amount of first mortgage bonds assumed to have been outstanding since January 1, 1948.

(b) A related reduction in provision for taxes on income for each of the years of $265,000 representing the tax reduction (computed at 52%) resulting from the increased interest charges.

No effect has been given to estimated economies from unified operations.

2244

Schedule 3

ATLANTIC COAST LINE RAILROAD COMPANY

ANALYSIS OF FIXED CHARGE COVERAGE
BEFORE INCOME TAXES

Year	Income Taxes	Balance Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	Fixed Charges	Times Fixed Charges Covered
1934	$ 902,258	$18,648,614	$ 19,550,872	$ 6,901,128	2.83
1933	(493,667)	18,641,229	18,147,562	6,612,235	2.74
1932	6,352,092	23,627,247	29,979,339	6,301,573	4.76
1931	8,934,374	18,608,995	27,543,369	5,438,786	5.06
1930	7,127,685	17,522,559	24,650,194	4,743,772	5.20
Total			$119,871,336	$29,997,494	-
Five year average			$ 23,974,267	$ 5,999,498	4.00

7245

[illegible] AND OHIO RAILWAY COMPANY

ANALYSIS OF TIMES CHARGES EARNED
BEFORE ALL INCOME TAXES

Income Taxes	Balance Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	Fixed Charges	Times Fixed Charges Covered
$ 9,700,000	$62,997,626	$ 62,697,626	$13,087,778	4.79
13,500,000	81,466,480	80,966,480	13,397,845	6.04
21,830,000	97,874,183	85,703,183	12,874,008	6.66
39,830,000	49,810,495	89,640,339	11,687,861	7.67
35,020,000	82,311,945	80,973,945	12,006,853	6.74
Total		$399,981,629	$63,054,345	-
Five year average		$ 79,996,326	$12,610,868	6.34

* Including Pennsylvania tax credit as follows:

1934	$2,100,000
1933	1,900,000
1932	875,000
1931	
1930	

Schedule 5

CHICAGO GREAT WESTERN RAILWAY COMPANY

ANALYSIS OF FIXED CHARGE COVERAGE
BEFORE ALL INCOME TAXES

Year	Income Taxes	Balance Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	Fixed Charges	Times Fixed Charges Covered
1934	$1,554,000	$4,173,425	$ 5,727,425	$ 992,543	5.77
1933	2,002,000	4,131,702	6,133,702	1,007,269	6.09
1932	2,066,000	3,880,049	5,946,049	1,012,606	5.87
1931	1,145,000	3,107,943	4,252,943	869,357	4.89
1930	1,384,300	2,814,766	4,199,066	805,882	5.21
Total			$27,259,185	$4,687,657	
Five year average			$ 5,451,837	$ 937,527	5.82

2247

Schedule 6

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD

ANALYSIS OF FIXED CHARGE COVERAGE
BEFORE ALL INCOME TAXES

...me Taxes	Balance Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	...xed Charges	Times Fixed Charges Covered
...133,219)	$8,396,653	$ 17,263,414	$ 4,592,848	3.76
...277,000	18,387,000	19,504,262	4,415,366	4.45
...6...,000	19,780,691	25,655,691	4,492,459	5.71
...6...,000	18,480,089	25,743,089	4,309,683	5.97
...518,000	43,543,998	35,081,998	4,218,431	8.32
		$ 23,148,...4	$22,028,787	-
		$ ...,...,...	$ 4,405,757	5.60

2248

Schedule 7

GREAT NORTHERN RAILWAY COMPANY

ANALYSIS OF FIXED CHARGE COVERAGE

BEFORE ALL INCOME TAXES

Year	Income Taxes	Balance Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	Fixed Charges	Times Fixed Charges Covered
1934	$ [illegible]	$ [illegible]	$ [illegible]	$ 8,044,401	[illegible]
1935	[illegible]	[illegible]	[illegible]	8,060,361	7.28
1936	[illegible]	[illegible]	[illegible]	7,969,702	6.82
1937	[illegible]	[illegible]	[illegible]	8,149,813	6.10
1938	[illegible]	[illegible]	[illegible]	7,934,336	6.67
			$260,[illegible]	$40,258,615	-
			$[illegible]	$[illegible]	6.47

2249

[fol. 2250]

Schedule 8

ILLINOIS CENTRAL RAILROAD COMPANY

ANALYSIS OF FIXED CHARGE COVERAGE
BEFORE ALL INCOME TAXES

Year	Income Taxes	Balance Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	Fixed Charges	Times Fixed Charges Covered
1954	$11,254,000	$30,028,126	$ 41,282,126	$ 8,013,932	5.15
1953	25,923,000	35,000,916	60,923,916	8,631,835	7.06
1952	24,618,619	33,289,267	57,907,886	10,085,751	5.74
1951	15,127,590	27,931,814	43,059,404	9,533,761	4.52
1950	16,090,000	39,530,747	55,620,747	10,118,545	5.50
Total			$258,794,079	$46,383,824	-
Five year average			$ 51,758,815	$ 9,276,765	5.58

LOUISVILLE & NASHVILLE RAILROAD COMPANY

ANALYSIS OF FIXED CHARGE COVERAGE
BEFORE ALL INCOME TAXES

Year	Income Taxes	Balance Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	Fixed Charges	Times Fixed Charges Covered
1954	$ 5,136,808	$28,173,532	$ 33,310,340	$ 9,246,888	3.60
1953	21,837,925	39,593,348	61,431,273	8,939,832	6.87
1952	18,328,454	33,806,308	52,134,762	8,707,946	5.99
1951	20,428,363	30,757,651	51,186,014	7,969,547	6.42
1950	20,861,349	31,749,165	52,610,514	7,440,904	7.07
Total			$250,672,903	$42,305,111	
Five year average			$ 50,134,580	$ 8,461,022	5.99

Schedule 10

SOUTHERN BELL TEL. & TEL. COMPANY

ANALYSIS OF FIXED CHARGE COVERAGE
BEFORE ALL INCOME TAXES

Year	Income Taxes	Gross Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	Fixed Charges	Times Fixed Charges Covered
1954	$ 3,3[illegible],130	$65,166,915	$ 74,[illegible]20,045	$ 20,812,130	3.58
1953	3[illegible],809,311	78,176,162	114,985,473	20,253,847	5.68
1952	4[illegible],814,137	82,507,162	127,321,299	20,565,275	6.19
1951	30,188,736	66,431,359	96,620,095	20,412,322	4.73
1950	29,381,381	71,647,623	111,029,004	20,808,5[illegible]	5.34
Total			$524,[illegible]75,916	$102,852,13[illegible]	-
Five year average			$104,895,183	$ 20,570,427	5.10

Schedule 1

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

ANALYSIS OF FIXED CHARGE COVERAGE
BEFORE ALL INCOME TAXES

Year	Income Taxes *	Balance Available For Fixed Charges	Balance Before Income Taxes And Fixed Charges	Fixed Charges	Times Fixed Charges Covered
1954	$2,594,391	$13,060,005	$ 15,654,396	$ 4,219,069	3.71
1953	9,619,749	17,481,036	27,100,785	4,006,181	6.76
1952	8,921,066	19,820,140	28,741,206	3,984,819	7. 1
1951	9,295,879	14,343,416	23,639,295	3,755,288	6.29
1950	9,075,590	17,307,856	26,383,446	3,611,594	7.31
Total			$121,519,128	$19,576,947	
Five Year Average			$ 24,303,825	$ 3,915,389	6.21

* Includes state income taxes as follows:

1954	$ [illegible]
1953	441,941
1952	810,[illegible]
1951	[illegible],132
1950	[illegible],[illegible]

[fol. 2254]

EXHIBIT H-73 ✓ Exh - H-73

THE PENNSYLVANIA RAILROAD COMPANY

LEGAL DEPARTMENT

February 11, 1956

REPLY TO

Edward K. Wheeler, Esq.
Messrs. Wheeler & Wheeler
Peoria, Illinois

Dear Mr. Wheeler:

Responding to your letter of February 7, 1956, there is forwarded herewith, with two exceptions, the information requested therein.

For convenience, as well as for ready identification in respect to your letter as shown at pages 1011 and 1012 of the transcript of February 8, 1956, the information in question is preceded by numbers corresponding with the numbered items set forth in your letter.

In furnishing the attached data, I wish to renew the objection appearing at page 1013 of the said transcript to the effect that with the possible exception of item 5 the information is supplied subject to the objection that the supplied material has no relevancy or any materiality in respect to any issue involved in this proceeding.

Subject to such reservation, I trust that you will find the information complies with the respective numbered requests.

Sincerely,

Edwin A. Lucas

Edwin A. Lucas
General Solicitor

vvsf

[fol. 2255]

Attachment - Letter of Mr. Lamont duPont Copeland dated February 11, 1956 - Items 1, 2, 3, 4.

1. The deposits of the Pennsylvania Railroad Company and/or affiliates or subsidiaries with the Wilmington Trust Company, as reflected by balances on the bank's books on the dates shown, were as follows:

	January 1, 1956	January 1, 1955
Pennsylvania Railroad Company	$350,000.00	$346,337.44
Scott Brothers, Inc.	796.49	663.94
Pullman Company	74,139.52	86,138.38

2. The par value of the Wabash Railroad Company stock:

a. Common stock - no par Preferred - $100 per share

b. The Pennsylvania Railroad Company's investment in both preferred and common stock of the Wabash Railroad Company, as of December 31, 1955, as will be reflected by the Form "A" Report to the Interstate Commerce Commission for the year 1955, is:

Common - $7,259,354.00 Preferred - $3,896,488.00

c. The present book value of the Pennsylvania's investment is the same as the investment reported to the Interstate Commerce Commission as of December 31, 1955.

3. a. Mr. Lammot duPont Copeland, shown in the application of the Santa Fe - Pennsylvania, is a director of the Pennsylvania Railroad Company, is also a director of the Wilmington Trust Company.

b. He has been a director of the Pennsylvania Railroad Company since December 23, 1953, and a director of the Wilmington Trust Company since January, 1943.

4. The following persons are officers or directors of the Pennsylvania Railroad Company and/or its affiliates or subsidiaries and are also officers or directors of the Wilmington Trust Company:

Mr. Lammot duPont Copeland

Director of the Pennsylvania Railroad Company
Director of the Philadelphia, Baltimore & Washington Railroad Company
Director of the Wilmington Trust Company

Mr. F. H. Donohue

Director of the Virginia Ferry Corporation
Director of the Kiptopeke Beach Land Company
Vice President and Director of the Wilmington Trust Company

[fol. 2256]

Mr. Hugh R. Young

Director of the Philadelphia, Baltimore and Washington Railroad Company
Director of the Wilmington Trust Company

Mr. Wilbur Gerdler

Director of the Philadelphia, Baltimore and Washington Railroad Company
Director of the Wilmington Trust Company

7. The Pennsylvania Railroad Company and/or its affiliates or subsidiaries did not own any bonds of the British as of either January 1, 1944, or January 1, 1945.

1946

[fol. 2257]

[fol. 2258]

948

fol. 2259]

Chesapeake Region:	Manager Freight Sales and Service, Baltimore	1
District Sales Offices:		
	Baltimore	8
	Norfolk	4
	Washington, D. C.	9
	Wilmington	3
	York	1
Northern Region:	Manager Freight Sales and Service, Buffalo	1
	Train Agent, Buffalo	1
	Supervisor Coal Sales, Buffalo	1
District Sales Offices:		
	Buffalo	6
	Erie	3
	Rochester	2
	Elmira	2
	Scranton	1
	Williamsport	1
Pittsburgh Region:	Freight Traffic Manager's Office, Pittsburgh	3
District Sales Offices:		
	Pittsburgh	14
	Altoona	2
	Uniontown	2
	Wheeling	2
Lake Region:	Manager Freight Sales and Service, Cleveland	1
	Freight Traffic Manager, Detroit	1
	Coal and Ore Manager's Office, Cleveland	2
	Supervisor of Coal Sales, Detroit	1
District Sales Offices:		
	Detroit	8
	Cleveland	8
	Youngstown	3
	Canton	3
	Akron	2
	Toledo	3
Buckeye Region:	Manager Freight Sales and Service, Cincinnati	1
	Supervisor of Coal Sales, Cincinnati	1
District Sales Offices:		
	Ironton, O.	3
	Dayton	2
	Columbus	3
	Cincinnati	3
	Louisville	2

[fol. 2260]

Northwestern Region:	Freight Traffic Manager's Office, Chicago	2
District Sales Offices:		
	Chicago	20
	Fort Wayne	3
	Grand Rapids	5
	South Bend	1
Southwestern Region:	Freight Traffic Manager, St. Louis	1
	Manager Freight Sales and Service, Indianapolis	2
District Sales Offices:		
	Peoria	2
	St. Louis	9
	Terre Haute	3
	Indianapolis	4
	Louisville	4
TOTAL OFFICES 110	TOTAL	389 EMPLOYEES

760

1950

[fol. 2261]

ttachment - Letter Mr. Lines to Mr. Wheeler
ated February 11, 1[illegible] - Item 2

2261

I.C.C. Docket No. 18991
I.C.C. Docket No. 19086
Exhibit No. H 74
Witness: William N. Leonard

[Fol. 22962]

EXHIBIT H-74

SELECTED STATISTICS - TP&W, M&StL, SFe, PFNNA. WABASH

Effect upon M&StL, SFe, Pennsylvania of
Acquiring the TP&W.

Size of Plant	TP&W	M&StL	SFe	PRR	WABASH
1. Miles of road operated	239.4	1,397	13,075	10,034	2,393
2. Investment in Road and Equipment (ICC) (000)	$10,035	$71,795	$1,642,180	$1,776,937	$285,197
3. Employees	527	2,543	56,600	100,544	10,927
Freight Volume, Density and Revenues					
4. Tons Handled (000)	3,274	7,121	56,789	169,436	22,288
5. Revenue ton-miles (000)	335,807	1,407,851	29,131,131	42,356,265	6,394,873
6. Revenue ton-miles per mile of road (000)	1,403	1,008	2,228	4,214	2,672
7. Freight revenues (000)	$6,806	$19,681	$437,978	$664,023	$96,036
Total Revenues and Earnings					
8. Gross operating revenues (000)	$6,806	$20,543	$532,292	$848,805	$109,922
9. Net revenue operating income (000)	659	1,788	63,990	48,061	12,137
10. Net income (000)	641	1,618	66,173	18,552	9,567

Source of data: I.C.C. OS Reports, 1954

1951

1952
[fol. 2263]

SELECTED STATISTICS OF TP&W IN COMBINATION
WITH [illegible], SANTA FE, AND PENNSYLVANIA (1954)

Size of Plant	M&StL Plus TP&W	Santa Fe Plus TP&W	Pennsylvania Plus TP&W
1. Miles of road operated	1,636.4	13,314.4	10,273.4
Inc. by adding TP&W	17.1%	1.8%	2.4%
2. Investment in Road and Equipment (ICC) (000)	81,830	1,652,215	1,786,972
Inc. by adding TP&W	14.9%	.6%	.6%
3. Employees	3,070	57,127	101,071
Inc. by adding TP&W	20.7%	.9%	.5%
Freight Volume, Density and Revenues			
4. Tons handled (000)	10,395	60,063	172,710
Inc. by adding TP&W	46.0%	5.8%	1.9%
5. Revenue ton-miles (000)	1,743,658	29,466,938	42,692,072
Inc. by adding TP&W	23.9%	1.2%	.8%
6. Revenue ton-miles per mile of road (000)	1066	2213	4156
Inc. by adding TP&W	5.8%	-.7%	-1.4%
7. Freight Revenues	26,487	444,784	670,829
Inc. by adding TP&W	34.6%	1.6%	1.0%
Total Revenues and Earnings			
8. Gross operating revenues (000)	27,349	539,098	855,611
Inc. by adding TP&W	33.1%	1.3%	.8%
9. Net railway operating income	2,447	64,649	48,720
Inc. by adding TP&W	36.9%	1.0%	1.4%
10. Net income	2,259	66,814	19,193
Inc. by adding TP&W	39.6%	1.0%	3.5%

Source of data: I.C.C. OS Reports, 1954

2263

[fol. 2264]

Freight Tonnage and Revenues, Total Revenues and Net Income, TP&W, M&StL, PENNA., SANTA FE and WABASH - First Nine Months 1955 and 1954

First Nine Months	Rev. Tons	Freight Revenues	Total Revenues	Net Income
Santa Fe				
1954	41,186,135	$321,280,481	$392,088,155	$41,[illegible]
1955	45,918,719	356,718,908	426,287,583	51,139,[illegible]
Percent Increase	11.5%	11.0%	8.7%	22.4%
Pennsylvania				
1954	125,178,291	474,571,766	639,239,330	11,827,2[illegible]
1955	148,953,784	531,574,009	690,654,183	32,133,8[illegible]
Percent increase	19.0%	12.0%	8.0%	171.7%
TP&W				
1954	2,402,104	5,085,925	5,166,498	531,58[illegible]
1955	2,624,380	5,173,446	5,246,295	535,5[illegible]
Percent Increase	9.3%	1.7%	1.5%	.8%
M&StL				
1954	5,227,389	14,789,527	15,425,793	1,261,[illegible]
1955	5,405,355	14,998,387	15,618,653	1,332,[illegible]
Percent Increase	3.4%	1.4%	1.3%	5.6%
Wabash				
1954	16,329,994	71,420,756	81,501,238	4,[illegible]
1955	18,065,318	76,175,204	86,690,975	7,452,[illegible]
	10.6%	6.7%	6.4%	75.[illegible]

Source: Form OS-D Report, September 1955 and Form IBS Report, September 1955 - ICC

I.C.C. Docket No. 18991
I.C.C. Docket No. 19086
Exhibit No. H-75
Witness: William N. Leonard

1954 [fol. 2265]

EXHIBIT H-75

(1954)

Distribution of Freight Tonnage and Revenues by Product Classification, Class I Roads, TP&W, M&StL, PRR and Santa Fe

	Class I Roads		TP&W			M&StL		
Product Class	Percent Originated	Percent Fgt. Rev.	Percent Originated	Percent Handled	Percent Revenues	Percent Originated	Percent Handled	Percent Revenues
Agriculture	10.8	14.0	25.7	19.8	18.6	41.2	25.9	30.4
Animals	1.1	3.6	1.3	5.5	9.6	4.2	2.3	4.0
Mines	53.1	22.4	37.5	19.8	9.6	34.9	27.2	10.5
Forest	6.2	7.7	0.1	5.1	3.3	0.3	10.5	7.5
Mfres & Misc.	27.9	46.6	35.3	49.7	58.5	18.6	33.4	43.6
LCL and Forwarder	1.0	5.6	0.1	0.1	0.4	0.8	0.7	4.0

	Santa Fe			Pennsylvania		
Product Class	Percent Originated	Percent Handled	Percent Revenues	Percent Originated	Percent Handled	Percent Revenues
Agriculture	22.6	19.1	18.4	6.5	7.1	9.5
Animals	2.2	2.1	3.6	0.8	1.0	3.6
Mines	27.2	26.8	7.4	50.0	56.3	28.2
Forest	3.0	5.8	3.8	0.5	2.3	2.8
Mfres & Misc.	44.4	45.6	64.0	41.3	32.6	51.1
LCL & Forwarder	0.6	0.6	2.8	0.9	0.7	4.8

Source: ICC FCS Reports, 1954

[fol. 2266]

Distribution of Freight Tonnage and Revenues by Class of Products, TP&W and PRR, TP&W and Santa Fe, TP&W, and M&StL (1954)

TOTAL TONNAGE	TP&W & PRR	TP&W & ATSF	TP&W & M&StL
Agriculture	12,616,633	11,489,169	2,493,691
% Increase by adding TP&W	5.4%	6.0%	35.0%
Animals	1,763,370	1,233,554	181,839
% Increase by adding TP&W	1.0%	1.5%	11.1%
Mines	96,036,164	15,857,928	2,586,028
%Increase by adding TP&W	.7%	4.3%	33.5%
Forests	4,020,141	3,422,265	916,980
% Increase by adding TP&W	4.3%	5.1%	22.3%
Manufacturing	56,851,695	27,546,901	4,003,225
% Increase by adding TP&W	2.9%	6.3%	68.5%
LCL	1,258,151	349,608	49,500
% Increase by adding TP&W	.2%	.9%	6.5%
REVENUE:			
Agriculture	64,611	86,045	7,611
% Increase by adding TP&W	2.1%	1.5%	20.6%
Animals	24,644	17,457	1,488
% Increase by adding TP&W	2.8%	4.0%	81.9%
Mines	188,286	34,094	2,849
% Increase by adding TP&W	.4%	2.0%	30.6%
Forests	18,924	16,902	1,738
% Increase by adding TP&W	1.2%	1.4%	15.4%
Manufacturing	343,136	298,826	13,141
% Increase by adding TP&W	1.2%	1.4%	45.2%
LCL	31,592	12,841	860
% Increase by adding TP&W	.1%	.2%	3.5%

[fol. 2267]

EXHIBIT H-76

May 26, 1955

Mr. Ben W. Heineman,
Chairman of the Executive Committee,
The Minneapolis & St. Louis Railway Company,
135 South LaSalle Street,
Chicago 3, Illinois.

Re: *Toledo, Peoria & Western Railroad Company*

Dear Sir:

I have been instructed by Guy A. Gladson and Wilmington Trust Company, as Trustees under the Will of George P. McNear, Jr., to advise you of their ~~decision to~~ acceptance of your offer, dated May 5, 1955 (as extended by you under date of May 13, 1955 and as again extended by you today to 5 P.M. Chicago Time this date) to purchase all of the shares of capital stock of Toledo, Peoria & Western Railroad Company at a price of $133.33 per share.

We have advised you of the exchange of letters (copies of which are attached) between the Trustees and Pennsylvania Railroad Company and Atchison, Topeka & Santa Fe Railway Company relating to the proposed purchase from the Trustees by each of said companies of 23,400 shares of Toledo, Peoria & Western stock; and the Trustees' acceptance of your offer is of necessity subject to the rights, if any, of the Pennsylvania Railroad Company and of the Atchison, Topeka & Santa Fe Railway Company under said letters. The Trustees have been advised by this firm and by Messrs. Richards, Layton & Finger of Wilmington, Delaware, that in their opinion said letters did not result in a ~~definite~~ legal and enforceable commitment between the Trustees and said two companies. The Trustees [fol. 2268] have today advised said two companies that all negotiations with them have been withdrawn and terminated; and that the Trustees have today accepted your offer. The Trusties, of necessity, can make no other representation or warranty to you as to the rights, if any, of

the Pennsylvania and the Santa Fe arising from said letters.

By the terms of your offer, upon notification of the Trustees' acceptance thereof, you are to forthwith deposit with the Trustees "the sum of $500,000.00, or some other appropriate amount, as earnest money to secure the performance" of your obligations. The Trustees feel that the earnest money deposit should be 10% of the total purchase price payable to the Trustees; and will discuss this point further with you.

Thus far no discussions have been had with respect to dividend payments to the present stockholders pending consummation of the sale to you. It is the Trustees' suggestion that the agreement with you would provide that no dividend payments prior to consummation of the sale to you would reduce the earned surplus of TP&W below the amount thereof at December 31, 1954; and will discuss this phase of the matter further with you.

Your offer also expressed your willingness to extend to all of the other stockholders of the Toledo, Peoria & Western the right to sell their stock to you at the same price and upon the same terms and conditions as are agreed upon between you and the Trustees; and it is of course the Trustees' understanding that you are still prepared to and will afford the other stockholders such an opportunity.

Representatives of the Trustees are prepared at the earliest possible moment to sit down with you and clarify and work out such other details as to procedure or otherwise as require a further understanding.

Very truly yours,

1958

[fol. 2269]

EXHIBIT H-77

I.C.C. Docket No. 18991
I.C.C. Docket No. 19086

Witness: E.A. Nightingale

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Acquisition of Toledo, Peoria & Western Railroad

STATISTICAL DATA IN CONNECTION WITH OPERATIONS

OF

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

WITHIN

THE STATE OF MINNESOTA

FOR FIVE YEARS ENDING WITH DECEMBER 31, 1954

Table of Contents

	Page	Printed Page
Operating Revenues	1	1959
Carloads and Tons of Revenue Freight Carried	1	1959
Operating Expenses by Principal Categories	2	1959
Tax Payments	3	1960
Investment in Road and Equipment Property	4	1960
Miles of Road Operated	4	1960
Employees and Compensation	5	1961

Offered on behalf of the State of Minnesota and Minnesota Railroad and Warehouse Commission.

Hearing at Peoria, Illinois, February 1, 1956.

[fol. 2270]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF RAILWAY OPERATING REVENUES AND FREIGHT STATISTICS APPLICABLE TO THE STATE OF MINNESOTA

	1950	1951	1952	1953	1954
Revenues					
Freight	$6,526,984	$6,823,552	$7,107,971	$6,831,173	$6,576,656
Other Transportation	354,622	384,490	427,239	417,100	399,015
Incidental	80,132	125,874	88,366	73,460	63,763
Total	$6,961,738	$7,333,916	$7,623,576	$7,321,733	$7,039,437
Freight Statistics					
Number of carloads	139,233	148,024	137,548	136,413	129,432
Number of tons	4,382,749	4,571,722	4,500,999	4,405,991	4,144,527

Source: Annual Report to Minnesota Railroad and Warehouse Commission.

[fol. 2271]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF RAILWAY OPERATING EXPENSES APPLICABLE TO THE STATE OF MINNESOTA

	1950	1951	1952	1953	1954
Maintenance of Way & Structures	$1,045,755	$1,166,128	$1,257,100	$1,213,387	$1,108,750
Maintenance of Equipment	1,083,920	1,086,608	1,046,799	1,052,207	1,048,467
Traffic	424,347	456,172	467,556	493,246	411,966
Transportation	2,671,774	2,970,306	2,354,178	2,294,838	2,309,758
Miscellaneous Operations	—	—	15,089	22,811	25,159
General	436,901	492,888	405,683	436,860	398,366
Total	$5,662,697	$6,172,102	$5,540,405	$5,513,349	$5,302,466

Source: Annual Report to Minnesota Railroad and Warehouse Commission.

[fol. 2272]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF TAXES APPLICABLE TO THE STATE OF MINNESOTA

	1950	1951	1952	1953	1954
U. S. Government					
Federal Income	$356,108	$349,983	$ 579,884	$ 480,201	$431,49
Payroll	209,267	223,956	200,851	193,838	200,44
Other	3,414	3,918	3,218	3,414	70
State					
Gross earnings and other	363,753	380,621	403,127	385,461	347,3
Total	$932,542	$958,478	$1,187,080	$1,062,914	$980,0

Source: Annual Report to Minnesota Railroad and Warehouse Commission.

[fol. 2273]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF INVESTMENT IN ROAD AND EQUIPMENT PROPERTY APPLICABLE TO THE STATE OF MINNESOTA AND ROAD OPERATED MILEAGE

	1950	1951	1952	1953	1954
Investments					
Road	$16,141,790	$16,925,904	$16,818,249	$17,407,248	$17,643,92
*Equipment	6,640,127	6,633,625	8,055,314	8,053,251	8,026,89
General Expenditures	961,247	963,815	920,531	918,260	912,86
Total	$23,743,074	$24,523,344	$25,794,094	$26,378,759	$26,583,68

* Allocated to each state on basis of operated mileage.

Mileage					
System	1,416	1,406	1,403	1,397	1,39
State	399	399	399	399	39

Source: Annual Report to Minnesota Railroad & Warehouse Commission.

[fol. 2274]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF NUMBER AND COMPENSATION PAID TO ALL EMPLOYEES LOCATED IN THE STATE OF MINNESOTA

Year	Number of Employees	Compensation Paid
1950	1,366	$4,816,851
1951	1,517	5,494,229
1952	1,523	5,913,311
1953	1,526	5,914,634
1954	1,459	5,676,899
Average per year	1,478	$5,563,185

Source: Annual Information Return to the State of Minnesota, Division of Taxation.

[fol. 2275]

EXHIBIT H-78

May 13, 1955

Mr. Guy A. Gladson, Trustee
Geo. P. McNear, Jr., Estate,
4875 N. Kendall Drive, Miami 43, Fla.

The Wilmington Trust Company, Trustee
Geo. P. McNear, Jr., Estate,
Wilmington, Delaware.

Gentlemen:

On behalf of the Chicago, Rock Island and Pacific Railroad Company, I should like to make the following offer which you may consider as a firm offer:

For the purchase of 23,400 shares of stock of the Toledo, Peoria & Western Railroad, which I understand is ap-

proximately 26% of the outstanding stock, at a price of $100.00 per share.

If, however, in the judgment of the Trustees it is desirable that the estate dispose of all of their remaining holdings, which I understand equals 27,000 shares, we would be willing to purchase that number.

This offer is made contingent upon the consummation of an agreement which I understand has been reached with the Pennsylvania Railroad and the Atchison, Topeka and Santa Fe Railway Co. whereby they will each acquire from the Trustees of the Estate 26% of the outstanding stock of the Toledo, Peoria & Western Railroad at a price of $100.00 per share, and with the further understanding that if either of the above companies make any adjustment in the price of the stock, the Chicago, Rock Island and Pacific Railroad will be given an opportunity to meet any adjustment offered.

If it is the desire of the Trustees of the Estate that the entir remaining stock held be disposed of, and the Santa Fe or Pennsylvan companies, or both, so desire, we would have no objection to an equal division of the total amount of stock held by the Trust estat In other words that each of the three railroads would be permitted to purchase 33⅓% of the total.

The above offer shall be effective for sixty days from May 13, 1955 unless extended in writing.

This is also contingent upon the approval satisfactory to the Rock Island Railroad of any regulatory body that might have jurisdiction over this transaction.

Yours very truly,

(Signed) J. D. Farrington

JDF-d

[fol. 2276]

EXHIBIT H-79

WINSTON, STRAWN, BLACK & TOWNER
First National Bank Building
CHICAGO 3

May 16, 1955

Mr. J. D. Farrington, President,
Chicago, Rock Island and Pacific Railroad Company,
La Salle Street Station,
Chicago, Illinois.

Dear Sir:

Mr. Guy A. Gladson, individual co-trustee of the Estate of George P. McNear, Jr., has requested me to acknowledge on his behalf receipt of your letter dated May 13, 1955 offering on behalf of the Chicago, Rock Island and Pacific Railroad Company to purchase from the Trustees of said Estate certain shares of the capital stock of the Toledo, Peoria & Western Railroad Company.

I note that your offer is contingent, among other things, "upon the consummation of an agreement which I understand has been reached with the Pennsylvania Railroad and the Atchison, Topeka and Santa Fe Railway Co. whereby they will each acquire from the Trustees of the Estate 26% of the outstanding stock of the Toledo, Peoria & Western Railroad at a price of $100.00 per share." Mr. Gladson does not concur that a binding and legal commitment has been reached between the Trustees and the Pennsylvania and Santa Fe; and so assumes that your offer should be considered to be contingent upon the concurrent acceptance by the Trustees of the Pennsylvania and Santa Fe proposals and the subsequent consummation thereof.

Very truly yours,

(Signed) Grier D. Patterson

GDP:lw

[fol. 2277]

EXHIBIT H-80

June 16, 1955

—PERSONAL—

Mr. F. G. Gurley,
President, Santa Fe Lines,
80 E. Jackson Blvd.,
Chicago 4, Ill.

Dear Fred:

Considering our previous discussion regarding the TP&W situation I was somewhat disturbed yesterday when you called me and stated that you could see no point in any further meeting or discussion of the subject until after your board meeting the latter part of this month. The more I thought about it the more disturbed I became, hence this letter.

I have felt that you have been eminently fair in your approach to the entire situation, and appreciated greatly that of your own volition you called me in Fort Worth and gave me a brief history of what had taken place in New York, and inferred at the time without making any commitment that you felt it would probably be desirable to take the Rock Island in as a partner in this new venture. You made it very clear, however, that you were making no commitment of any character at the time.

At our last discussion when we had lunch together at the club, on June 7th, you advised me that Mr. Heineman had asked to meet with you, and you stated that after the meeting you would get in touch with me again and let me know what took place. Rightly or wrongly I had the feeling that you would get in touch with me, and we would be able to clarify the situation and come to some fairly definite understanding so that your statement over the phone that there was no point in us meeting prior to the meeting of your board, quite naturally came as a surprise, and I could only assume that some proposal had been made of a character which you preferred not to discuss

with me, and which will, I assume, be presented to your board for action.

Because of your friendly and frank approach to the entire subject up to now, I had refrained from writing any letters establishing any records of any character for future use, preferring to handle it as a personal matter and along the pattern which you originally established.

As I told you, from the standpoint of our own protection we could not agree to the entrance of the Santa Fe into Peoria, either on their own or as owner in whole or in part of the TP&W; I would be willing to go along with a proposition which would in fact be a partnership of either joint or multiple ownership and would assure the TP&W continuing to function as an independent line in a neutral manner. Likewise, we would oppose vigorously the acquisition of the TP&W by Mr. Heineman of the M&StL or any partnership in which he or the M&StL, and [fol. 2278] possibly the Monon, might become involved, unless we were permitted to become a party to such a combination, with sufficient voice to assure adequate protection of the interests of the Chicago, Rock Island and Pacific Railroad Company.

It may be that I am jumping at conclusions, but I would feel much better if we could have had the discussion, laid the cards on the table and followed the course as it was originally charted by you; possibly it is still not too late.

With best regards, I remain

Sincerely,

(Signed) J. D. Farrington

JDF-d

[fol. 2279]

EXHIBIT H-81

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM

80 East Jackson Boulevard, Chicago 4, Ill.

F. G. GURLEY
President

June 20, 1955

Dear John:

I have just received this morning your letter of June 13, and hasten to write you.

The only possible difference in our respective understandings of our conversation may be in the first sentence of the third paragraph of your letter. Frankly, I don't remember just as you state it, i.e., "I would tell you what took place." I do recall clearly that I promised I would call you to explain what I thought our position warranted us doing and it is with reference to that decision that upon reconsideration and in the light of the various angles I felt I ought not to move too quickly.

I have no hesitancy in telling you what Heineman requested. His request was that I agree that Santa Fe and M&StL alone join in the acquisition of the TP&W. I told Mr. Heineman, as I thought I had said to you, Murphy, and Lynne White, that as soon as possible I would communicate with all of you again.

The same day I phoned you, I phoned all the others saying practically the same thing I said to you on the telephone.

I have tried my very best to say the same thing to everyone and I can't believe that I have failed to do that.

In the meantime, with kind regards, I am

Yours sincerely,

FRED

Mr. J. D. Farrington, President
Rock Island Lines
La Salle Street Station
Chicago 5, Illinois

[fol. 2280]

EXHIBIT H-82

June 21, 1955

Dear Fred:

Thank you for your letter of June 20th.

I appreciate the information that you have so kindly given me.

Sincerely,

(Signed) J. D. FARRINGTON

—PERSONAL —

Mr. F. G. Gurley, President
A. T. & S. F. Ry.
80 East Jackson Boulevard
Chicago 4, Illinois

JDF-d

[fol. 2281] EXHIBIT H-83.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM

Railway Exchange, 80 E. Jackson Boulevard
Chicago 4

F. G. GURLEY
President

June 28, 1955

Mr. J. D. Farrington, President
Rock Island Lines
La Salle Street Station
Chicago 5, Illinois

Mr. B. W. Heineman, Chairman Executive Committee
M. & St. L. Ry. Co.
135 South La Salle Street
Chicago 3, Illinois

Mr. H. C. Murphy, President
Burlington Lines
547 West Jackson Boulevard
Chicago 6, Illinois

Mr. L. L. White, Chairman of the Board
The New York, Chicago & St. Louis R.R. Company
Terminal Tower
Cleveland, Ohio

Gentlemen:

Each of you and the writer have had conversations about the TP&W Railroad and I promised I would have something to say after the matter had been discussed with the Santa Fe Board on June 28.

I should say first that, since I made that promise, I have been admonished that formal advice to the I.C.C. is accomplished only through the filing of an application and that any publicity prior to the filing of the application is undesirable. I hope, therefore, that you will comply with my personal request, which is that you treat this information in strict confidence until our application is filed. We are working upon that diligently but, in the light of the work incident to an application and the work of printing,

coupled up with the July 4, weekend, it is obvious that a little time will run against us.

It seems to me that we should enter into an arrangement with the Pennsylvania Railroad on a 50-50 division of the whole, just as we had contemplated at one time with 52% of the stock and, while I suppose that each of you will feel his own measure of disappointment upon receipt of this advice, I hope that you will not think the plan is unreasonable or unworkable.

[fol. 2282] Our plan is that a copy of the application will be sent to you the day it is filed but, in the meantime, it occurred to me that you might like to have now what I presume it is fair to say are the salient features in which you may have a particular interest.

(a) TP&W will continue to be operated as a separate and independent carrier with responsible management located along its lines in order to preserve to shippers and communities the present direct access to its officials.

(b) The properties of the TP&W, including line and equipment, will be maintained and improved in keeping with the requirements of a railroad of its character and importance.

(c) TP&W will continue to maintain its own solicitation forces and will be entirely free to solicit traffic in such manner as best to serve the interests of the TP&W.

(d) All existing routes and channels of trade via TP&W will be maintained and kept open without discrimination between connecting lines of railroad.

(e) The Board of Directors of TP&W shall consist of eleven members, of whom one shall be the president of the company, two shall be officers of Santa Fe, two shall be officers of Pennsylvania, and the remaining six shall be prominent citizens not connected with either Santa Fe or Pennsylvania.

In the meantime, with kind personal regards, I am

Yours sincerely,

F. G. Gurley

[fol. 2283]

EXHIBIT H-84

June 30, 1955

PERSONAL

Mr. F. G. Gurley,
President A. T. & S. F. Railway System,
80 East Jackson Boulevard
Chicago 4, Illinois

Dear Fred:

This will acknowledge receipt of your letter of June 28, which has reference to your program in connection with the acquisition of the TP&W Railroad.

I regret exceedingly that you have apparently reached the conclusion that it is inadvisable to take the Rock Island into partnership in this venture, and I am fearful that we will be forced to take action from a competitive standpoint, which for personal reasons I would much prefer not doing.

I might add in this connection that if your decision is based upon a similar request made by the M&StL interests, that I see no parallel in their interest and ours in that you are not in any way competitive with them, and therefore would not be invading their territory from the standpoint of a competitor, while in our case the situation is completely reversed.

I appreciate your having kept me fully informed on the subject.

Sincerely,

(Signed) J. D. FARRINGTON

JDF-d

[fol. 2284]

EXHIBIT (D-13) 111

WITNESS R. C. Davidson

STATEMENT SHOWING THE 1954 CARLOAD FREIGHT TRAFFIC HANDLED JOINTLY BY THE ROCK ISLAND AND TOLEDO, PEORIA & WESTERN R. R.

(Detail shown on attached lettered sheets)

"ered" Sheet	Description of Movement	Cars	R. I. Revenue $
A)	From TP&W Origins to Rock Island destinations where destinations are also reached by the Minneapolis & St. Louis Ry.	24	4456.16
B)	From TP&W Origins to destinations on Rock Island connecting lines where the destinations or junction points are also reached by the Minneapolis & St. Louis Ry., or where the junction can be served by connecting carriers of the Minneapolis & St. Louis Ry.	9	931.20
C)	From Origins on TP&W connecting lines to Rock Island destinations where the destinations are also reached by the Minneapolis & St. Louis Ry.	489	92225.23
D)	From Origins on TP&W connecting lines to destinations on Rock Island connecting lines where the destinations or junction points are also reached by the Minneapolis & St. Louis Ry., or where the junction can be served by connecting carriers of the Minneapolis & St. Louis Ry.	792	63341.00

Lettered Sheet	Description of Movement	Cars	R. I. Revenue
			$
(D-1)	From Origins on TP&W connecting lines to destinations on Rock Island connecting lines via Rock Island junctions west of the Missouri River	746	261064.71
(E)	From Rock Island Origins to TP&W destinations where origins are also reached by the Minneapolis & St. Louis Ry.	14	1222.63
(F)	From Rock Island Origins to destinations on TP&W connecting lines where the origins or junction points are also reached by the Minneapolis & St. Louis Ry.	843	123917.01
[fol. 2285]			
(G)	From Origins on Rock Island connecting lines to TP&W destinations where the origins or junction points are also reached by the Minneapolis & St. Louis Ry., or where the junction can be served by connecting carriers of the Minneapolis & St. Louis Ry.	51	4466.1
(H)	From Origins on Rock Island connecting lines to destinations on TP &W connecting lines where the origins or junction points are also reached by the Minneapolis & St. Louis Ry., or where the junction can be served by connecting carriers of the Minneapolis & St. Louis Ry.	797	84536.75
(H-1)	From Origins on Rock Island connecting lines via Rock Island junctions west of the Missouri River to destinations on TP&W connecting lines	1424	278222.92
	GRAND TOTAL	5189	$914383.74

[fol. 2286]

EXHIBIT (D-14) 112

WITNESS: R. C. DAVIDSON

Statement showing Freight Traffic, in carloads, which the Rock Island handled jointly, in road haul service via junctions with other carriers during six months of 1954 (April, May, June, October, November, and December),

the traffic terminating

at points in states east, of Lake Michigan, the Indiana-Illinois state line and the Ohio and Mississippi Rivers, *and*

The Traffic Originating

at points competitive between the *Rock Island* and the *Minneapolis and St. Louis Railway, in states of Iowa and Minnesota.*

Traffic is classified by following I.C.C. Commodity Groupings:

I Products of Agriculture II Animals and Products

III Products of Mines IV Products of Forests

V Manufacturers and Miscellaneous

(Detail on attached lettered sheets)

Lettered Sheets	Junction	ICC Group	Cars	R.I. Revenue
E	Chicago, Ill.	I	695	$ 114,001.48
		II	4235	715,199.31
		III	6	740.35
		IV	151	18,177.17
		V	1191	230,688.03
		TOTAL	6278	$1,078,806.34
F	Joliet, Ill.	I	39	5,968.52
		II	126	33,148.64
		III	—	—
		IV	3	398.64
		V	47	7,727.93
		TOTAL	215	$ 47,243.73
G	DePue, Ill.	I	—	—
		II	—	—
		III	—	—
		IV	—	—
		V	1	114.41
		TOTAL	1	$ 114.41
H	Peoria, Ill.	I	46	6,915.90
		II	87	17,168.30
		III	—	—
		IV	11	1,140.75
		V	228	41,172.07
		TOTAL	372	$ 66,397.02
	GRAND TOTAL		6866	$1,192,561.50

[fol. 2287]

Exhibit (D-18) 116

Cities Where Railroad Freight Traffic Offices Are Maintained by One or More of the Following Railroads as Shown in Official Guide of Railways (Does Not Include Representatives Classed as "Agents")

City	AT&SF	TP&W	CRI&P	Penn.	M&StL
Akron, Ohio				x	
Albany, N.Y.				x	
Albert Lea, Minn.					x
Alexandria, La.			x		
Albuquerque, N.M.	x				
Altoona, Pa.				x	
Amarillo, Tex.	x		x		
Atchison, Kans.	x				
Atlanta, Ga.	x		x	x	
Bakersfield, Calif.	x				
Baltimore, Md.				x	
Beaumont, Tex.	x				
Birmingham, Ala.			x	x	x
Boise, Idaho			x		
Boston, Mass.	x		x	x	x
Buffalo, N.Y.	x		x	x	
Camden, N.J.				x	
Canton, Ohio				x	
Cedar Rapids, Ia.			x		
Chanute, Kans.	x				
Charlotte, N.C.				x	
Chicago, Ill.	x	x	x	x	x
Chickasha, Okla.			x		
Cincinnati, Ohio	x	x	x	x	x
Cleveland, Ohio	x	x	x	x	x
Colorado Springs, Colo.	x		x		

City	AT&SF	TP&W	CRI&P	Penn.	M&St.L
Columbus, Ohio				X	
Dallas, Texas	X		X	X	X
Davenport, Iowa			X	X	
Dayton, Ohio				X	
Denver, Colo.	X		X	X	X
Des Moines, Ia.	X		X	X	X
Detroit, Mich.	X	X	X	X	X
Duluth, Minn.					X
Easton, Pa.				X	
Edmonton, Alberta				X	
El Centro, Calif.			X		
El Dorado, Ark.			X		
Elmira, N.Y.				X	
El Paso, Tex.	X		X		
Erie, Pa.				X	
Fargo, N.D.					X
Eugene, Ore.			X		
Flagstaff, Ariz.	X				
Ft. Dodge, Ia.					X
Fort Madison, Ia.	X				
Fort Wayne, Ind.				X	
Fort Worth, Tex.	X		X		
[fol. 2288]					
Fresno, Calif.	X		X		
Galveston, Tex.	X				
Grand Rapids, Mich.			X	X	
Hagerstown, Md.				X	
Harrisburg, Pa.				X	
Houston, Tex.	X		X	X	X
Hutchinson, Kans.	X		X		
Indianapolis, Ind.	X	X	X	X	X
Jackson, Miss.			X		
Jacksonville, Fla.				X	
Jersey City, N.J.				X	

City	AT&SF	TP&W	CRI&P	Penn.	M&StL
Joliet, Ill.			x		
Kansas City, Mo.	x	x	x	x	x
Keokuk, Ia.		x			
Lincoln, Nebr.			x		
Little Rock, Ark.			x		
Long Beach, Calif.	x				
Los Angeles, Calif.	x	x	x	x	x
Louisville, Ky.			x	x	
Lubbock, Tex.	x				
Mason City, Ia.			x		
Memphis, Tenn.	x		x	x	
Mexico City, Mex.	x			x	
Milwaukee, Wisc.	x		x	x	
Minneapolis, Minn.	x	x	x	x	x
Moline, Ill.			x		
Monterrey, Mex.	x				
Montreal, Que.				x	
Nashville, Tenn.				x	
Newark, N.J.				x	
New Haven, Conn.				x	
New Orleans, La.	x		x	x	x
New York, N.Y.	x	x	x	x	x
Norfolk, Va.				x	
Oakland, Calif.	x		x		
Oklahoma City, Okla.	x		x		
Omaha, Nebr.		x	x	x	x
Orlando, Fla.			x		
Peoria, Ill.	x	x	x	x	x
Philadelphia, Pa.	x	x	x	x	x
Phoenix, Ariz.	x		x	x	
Pittsburgh, Pa.	x	x	x	x	x
Portland, Ore.	x		x	x	x
Pueblo, Colo.	x				
Reading, Pa.				x	

City	AT&SF	TP&W	CRI&P	Penn.	M&St.
Richmond, Ind.				x	
Richmond, Va.			x		
Rochester, N.Y.				x	
Sacramento, Calif.	x		x		
St. Joseph, Mo.	x		x		
St. Louis, Mo.	x	x	x	x	x
St. Paul, Minn.			x		x
Salinas, Calif.			x		
Salt Lake City, Utah	x		x		
San Angelo, Tex.	x				
San Antonio, Tex.	x		x	x	
San Bernardino, Calif.	x				
San Diego, Calif.	x		x		
[fol. 2289]					
San Francisco, Calif.	x	x	x	x	x
San Jose, Calif.	x				
Santa Barbara, Calif.	x				
Scranton, Pa.				x	
Seattle, Wash.	x	x	x	x	x
Sioux Falls, S.D.			x		
South Bend, Ind.				x	
Spokane, Wash.			x		x
Stockton, Calif.	x				
Temple, Tex.	x				
Terre Haute, Ind.				x	
Toledo, Ohio				x	
Topeka, Kans.	x		x		
Toronto, Ont.			x	x	
Trenton, N.J.				x	
Tulsa, Okla.	x	x	x	x	
Uniontown, Pa.				x	
Washington, D.C.	x		x	x	x
Wheeling, W. Va.				x	
Wichita, Kans.	x	x	x		

Williamsport, Pa.					
Wilmington, Del.				x	
Winnipeg, Man.				x	
Wichita Falls, Tex.			x		
Winston Salem, N.C.	x				
York, Pa.	x		x	x	x
Youngstown, Ohio				x	
Zanesville, Ohio				x	
				x	
TOTAL	65	*19	71	76	32

* 16 offices are at cities where AT&SF and Penn. both have offices. Of the remainder, 1 (Keokuk) only TP&W has an office; 1 (Omaha) where Penn. has an office and 1 (Wichita) where AT&SF has an office.

EXHIBIT 120

(See Opposite) ☞

ICC Docket [illegible]
ICC Docket [illegible]
Exhibit
Witness

FREIGHT CAR SURPLUSES AND SHORTAGES BY CLASSES AS REPORTED TO AAR BY WESTL DURING 1955

SOURCE - AAR CS-44-A

1955 Week Ending	Box		Gondola		Hoppers		Covered Hoppers		Stock		Flat		Refer		Others		Total	
	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp
Jan 8				95				30				75						200
15				80				35				70						185
22				65				35				65						165
29				90				40				50						180
Feb 5				80				35				45						160
12	10			45				60				30					10	115
19	15			50				30				30					15	110
26	15			65				35				35					15	135
Mar 5	20			90				30				20					20	140
12	20			60				25				15					20	100
19	40			35				20									40	55
26	45			20				25									45	45
Apr 2	40			25							5						45	25
9	40			20							5						45	20
16	35			15							5						40	15
23	60			10			15				5						60	10
30	45						20			10							65	10
May 7	50						20			10	5						75	10
14	50						20			10	5						75	10
21	60						20			10	5						85	10
28	55						20			10				25			75	35
Jun 4	45						15			10	5						65	10
11	40						10			15	5						55	15
18	60				25					15	5						90	15
25	65				20					15	5						90	15

[fol. 2290]

1981

1982 [fol. 2291]

1955 Week Ending	Box		Gondola		Hoppers		Covered Hoppers		Stock		Flat		Refer		Others		Total	
	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp	Short	Surp
Jul 2	55				10					15	5						70	15
9	65				15					15	5						85	15
16	60				20					15	5						85	15
23	70				25					15	5						100	15
30	80				30					15	5						115	15
Aug 6	85				35		10			15							130	15
13	35				25		15			15							75	15
20	30		15		20		10			15							75	15
27	25				30		10			15							65	15
Sept 3	25				25		5			15							55	15
10	45				35					15							80	15
17	60				35					10	5						100	10
24	75				20												95	
Oct 1	80				25												105	
8	95				20		5										120	
15	110				25		5				5						145	
22	125				20						5						150	
29	135				30						5						170	
Nov 5	130				20												150	
12	90			10	15							10					105	20
19	60			10								5					60	15
26	30			5				45				5					30	55
Dec 3	20			5				50				5					20	60
10	20			5				45				5					20	55
17	20			30				50				5					20	85
24	20			15				50									20	60
31	20			20				55				5					20	80

2241

[fol. 2292]

EXHIBIT 121

ICC Finance Docket No. 10991
Exhibit No. 121
Witness _____

EASTWARD

		No. 140	No. 146
Lv	Kansas City	5:00 AM	4:00 PM
Ar	Shopton	3:00 PM	5:45 AM
Lv	Shopton	4:30 PM	5:15 AM
Ar	Lomax	8:00 PM	7:00 AM
	TP&W	No. 120	No. 122
Lv	Lomax	8:15 PM	7:30 AM
Ar	E. Peoria	11:45 PM	11:00 AM
		No. 20	No. 22
Lv	Peoria	2:00 AM	12:01 PM
Ar	Effner	6:30 AM	4:00 PM
		25'30"	28'00"

WESTWARD

		No. 21		No. 23
Lv	Effner	8:15 AM		4:15 PM
Ar	Peoria	10:48 AM		6:48 PM
Lv	Peoria	1:00 PM		1:00 AM
Ar	Lomax	5:45 PM		4:50 AM
Lv	Lomax	6:15 PM	Extra	1:00 PM
Ar	Shopton	7:30 PM	"	2:15 PM
Lv	Shopton	9:00 PM		9:00 PM
Ar	Kansas City	5:00 AM		5:00 AM
		20'45"		36'45"

[fol. 2293]

ICC Docket No. 18991
Exhibit H-
Witness

EASTWARD

#140			#146		
Lv	Kansas City	500 AM	Lv	Kansas City	400 PM
Arr	Shopton	300 PM	Arr	Shopton	345 AM
Lv	Shopton	430 PM	Lv	Shopton	515 AM
Arr	Nemo	800 PM	ARR	Nemo	800 AM
	M&StL No. 96			M&StL No. 20	
Lv	Nemo	905 PM	Lv	Nemo	610 PM
Arr	Peoria	1250 AM	Arr	Peoria	840 PM
	TP&W No. 22			TP&W No. 20	
Lv	Peoria	1201 PM	Lv	Peoria	200 AM
Arr	Effner	400 PM	Arr	Effner.	630 AM
	Elapsed Time 35'00"			Elapsed Time 38'30"	

WESTWARD

	TP&W No. 21			TP&W No. 23	
Lv	Effner	815 AM	Lv	Effner	415 PM
Arr	Peoria	1048 AM	Arr	Peoria	648 PM
	M&StL No. 19			M&StL No. 95	
Lv	Peoria	115 AM	Lv	Peoria	300 PM
Arr	Nemo	430 AM	Arr	Nemo	710 AM
	Santa Fe No. 59			Santa Fe No. 59	
Lv	Nemo	500 PM	Lv	Nemo	500 PM
Arr	Shopton	730 PM	Arr	Shopton	730 PM
Lv	Shopton	900 PM	Lv	Shopton	900 PM
Arr	Kansas City	500 AM	Arr	Kansas City	500 AM
	Elapsed Time 44'45"			Elapsed Time 36'45"	

22.93

I.C.C. DOCKET NO. 18991
EXHIBIT 122
SHEET 1 OF 2

THE PENNSYLVANIA RAILROAD COMPANY
GENERAL BALANCE SHEET, DECEMBER 31, 1955

ASSETS

INVESTMENTS:			
ROAD AND EQUIPMENT PROPERTY:			
ROAD	$698,718,755		
EQUIPMENT	1,051,844,910		
GENERAL EXPENDITURES	7,469,331		
			$1,758,032,996
IMPROVEMENTS ON LEASED PROPERTY:			
ROAD	156,884,772		
EQUIPMENT	1,942,902		
GENERAL EXPENDITURES	2,670,644		
			161,498,318
ACQUISITION ADJUSTMENT		CR.	32,367
DONATIONS AND GRANTS		CR.	3,464,649
INVESTMENTS IN TRANSPORTATION PROPERTY			1,916,034,298
ACCRUED DEPRECIATION-ROAD AND EQUIPMENT	CR. 620,935,888		
ACCRUED AMORTIZATION OF DEFENSE PROJECTS-ROAD AND EQUIPMENT	CR. 60,214,633		
RECORDED DEPRECIATION AND AMORTIZATION		CR.	681,150,521
INVESTMENT IN TRANSPORTATION PROPERTY LESS RECORDED DEPRECIATION AND AMORTIZATION			1,234,883,777
SINKING FUNDS			250,832
CAPITAL AND OTHER RESERVE FUNDS (EXCLUDES SECURITIES OF COMPANY'S ISSUES $[illegible],000)			5,935,841
MISCELLANEOUS PHYSICAL PROPERTY			15,152,363
INVESTMENTS IN AFFILIATED COMPANIES			727,695,648
OTHER INVESTMENTS			26,024,587
TOTAL INVESTMENTS LESS RECORDED DEPRECIATION AND AMORTIZATION			2,009,943,048
CURRENT ASSETS:			
CASH	69,849,629		
TEMPORARY CASH INVESTMENTS	67,667,929		
SPECIAL DEPOSITS	2,258,792		
LOANS AND BILLS RECEIVABLE	6,200,775		
NET BALANCE RECEIVABLE FROM AGENTS AND CONDUCTORS	20,939,510		
MISCELLANEOUS ACCOUNTS RECEIVABLE	33,571,936		
MATERIAL AND SUPPLIES	56,254,735		
INTEREST AND DIVIDENDS RECEIVABLE	983,477		
ACCRUED ACCOUNTS RECEIVABLE	8,398,930		
OTHER CURRENT ASSETS	1,193,489		
TOTAL CURRENT ASSETS			267,309,202
DEFERRED ASSETS:			
WORKING FUND ADVANCES	1,331,932		
INSURANCE AND OTHER FUNDS (EXCLUDES SECURITIES OF COMPANY'S ISSUES $1,485,000)	165,308,187		
OTHER DEFERRED ASSETS	11,797,578		
TOTAL DEFERRED ASSETS			178,437,697
UNAMORTIZED DEBT:			

[fol. 2294]

EXHIBIT 122

EQUIPMENT	CR. 620,935,888	
CURRENT ASSETS:		
CASH	69,849,629	
TEMPORARY CASH INVESTMENTS	67,667,929	
SPECIAL DEPOSITS	2,258,792	
LOANS AND BILLS RECEIVABLE	6,200,775	
NET BALANCE RECEIVABLE FROM AGENTS AND CONDUCTORS	20,939,510	
MISCELLANEOUS ACCOUNTS RECEIVABLE	33,571,936	
MATERIAL AND SUPPLIES	56,254,735	
INTEREST AND DIVIDENDS RECEIVABLE	983,477	
ACCRUED ACCOUNTS RECEIVABLE	8,398,930	
OTHER CURRENT ASSETS	1,193,489	
TOTAL CURRENT ASSETS		267,309,202
DEFERRED ASSETS:		
WORKING FUND ADVANCES	1,331,932	
INSURANCE AND OTHER FUNDS (EXCLUDES SECURITIES OF COMPANY'S ISSUES $1,486,000)	165,308,187	
OTHER DEFERRED ASSETS	11,797,578	
TOTAL DEFERRED ASSETS		178,437,697
UNADJUSTED DEBITS:		
PREPAYMENTS	1,515,943	
DISCOUNT ON FUNDED DEBT	572,001	
OTHER UNADJUSTED DEBITS	6,560,773	
SECURITIES ISSUED OR ASSUMED - UNPLEDGED $28,942,000		
TOTAL UNADJUSTED DEBITS		8,648,717
GRAND TOTAL		2,464,[illegible]

THE PENNSYLVANIA RAILROAD COMPANY

GENERAL BALANCE SHEET, DECEMBER 31, 1955

LIABILITIES

STOCK:		
CAPITAL STOCK	$658,357,700.	
PREMIUMS AND ASSESSMENTS ON CAPITAL STOCK	10,148,229	
TOTAL		$668,505,929
LONG TERM DEBT:		
FUNDED DEBT UNMATURED (EXCLUDES COMPANY'S HOLDINGS $30,193,000)	434,290,045	
EQUIPMENT OBLIGATIONS (EXCLUDES COMPANY'S HOLDINGS $624,000)	303,783,041	
AMOUNT PAYABLE TO AFFILIATED COMPANIES	2,136,083	
TOTAL LONG TERM DEBT		740,209,169
CURRENT LIABILITIES:		
TRAFFIC AND CAR-SERVICE BALANCES - CR.	10,493,331	
AUDITED ACCOUNTS AND WAGES PAYABLE	48,830,814	
MISCELLANEOUS ACCOUNTS PAYABLE	19,133,295	
INTEREST MATURED UNPAID	4,805,849	
DIVIDENDS MATURED UNPAID	1,089,760	
UNMATURED INTEREST ACCRUED	3,606,013	
ACCRUED ACCOUNTS PAYABLE	18,747,400	
TAXES ACCRUED	34,379,234	
OTHER CURRENT LIABILITIES	4,003,159	
TOTAL CURRENT LIABILITIES		145,088,855
DEFERRED LIABILITIES:		
OTHER DEFERRED LIABILITIES		2,469,520
UNADJUSTED CREDITS:		
PREMIUM ON FUNDED DEBT	197,134	
INSURANCE RESERVES	16,526,203	
OTHER UNADJUSTED CREDITS	23,927,714	
ACCRUED DEPRECIATION-LEASED PROPERTY	132,925,649	
TOTAL UNADJUSTED CREDITS		173,576,700
SURPLUS:		
UNEARNED SURPLUS	398,891	
EARNED SURPLUS-APPROPRIATED	464,293,358	
EARNED SURPLUS-UNAPPROPRIATED	269,766,242	
TOTAL SURPLUS		734,459,491
GRAND TOTAL		2,464,338,664

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF PHILADELPHIA)

I, THE UNDERSIGNED, H. J. WARD, COMPTROLLER OF THE PENNSYLVANIA RAILROAD COMPANY, ON MY OATH DO SAY THAT THE FOREGOING GENERAL BALANCE SHEET HAS BEEN PREPARED UNDER MY DIRECTION: THAT I HAVE CAREFULLY EXAMINED THE SAME, AND DECLARE THE SAME TO BE COMPLETE AND CORRECT, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

.....	[illegible]	
ACCRUED DEPRECIATION-LEASED PROPERTY ..	132,925,649	
TOTAL UNADJUSTED CREDITS		173,576,700
SURPLUS:		
UNEARNED SURPLUS	398,891	
EARNED SURPLUS-APPROPRIATED	464,293,358	
EARNED SURPLUS-UNAPPROPRIATED	269,766,242	
TOTAL SURPLUS		734,458,491
GRAND TOTAL		2,464,338,664

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF PHILADELPHIA)

I, THE UNDERSIGNED, H. J. WARD, COMPTROLLER OF THE PENNSYLVANIA RAILROAD COMPANY, ON MY OATH DO SAY THAT THE FOREGOING GENERAL BALANCE SHEET HAS BEEN PREPARED UNDER MY DIRECTION. THAT I HAVE CAREFULLY EXAMINED THE SAME, AND DECLARE THE SAME TO BE COMPLETE AND CORRECT, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

H. J. WARD

SUBSCRIBED AND SWORN TO BEFORE ME THIS
7TH DAY OF FEBRUARY, 1956.

JAMES E. BARTON
NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA CO., PA.

MY COMMISSION EXPIRES JUNE 24, 1958.

I.C.C. DOCKET NO. 18991
EXHIBIT 173
SHEET 1 OF 2

PENNSYLVANIA COMPANY
GENERAL BALANCE SHEET, DECEMBER 31, 1955

ASSETS

INVESTMENTS:		
ROAD AND EQUIPMENT PROPERTY:		
EQUIPMENT		$14,699,555
INVESTMENT IN TRANSPORTATION PROPERTY		14,699,555
ACCRUED DEPRECIATION - EQUIPMENT		CR. 694,826
INVESTMENT IN TRANSPORTATION PROPERTY LESS RECORDED DEPRECIATION		14,004,727
MISCELLANEOUS PHYSICAL PROPERTY	$1,887,472	
ACCRUED DEPRECIATION	CR. 181,321	
MISCELLANEOUS PHYSICAL PROPERTY LESS ACCRUED DEPRECIATION		1,706,151
INVESTMENTS IN AFFILIATED COMPANIES		167,442,583
OTHER INVESTMENTS		86,204,487
TOTAL INVESTMENTS, LESS RECORDED DEPRECIATION		269,357,948
CURRENT ASSETS:		
CASH	5,726,356	
TEMPORARY CASH INVESTMENTS	5,187,718	
SPECIAL DEPOSITS	1,059,300	
INTEREST AND DIVIDENDS RECEIVABLE	2,207,780	
ACCRUED ACCOUNTS RECEIVABLE	224,053	
TOTAL CURRENT ASSETS		14,405,203
UNADJUSTED DEBITS:		
DISCOUNT ON FUNDED DEBT		409,498
SECURITIES ISSUED OR ASSUMED - UNPLEDGED $2,470,000		
GRAND TOTAL		284,172,649

LIABILITIES

STOCK:		
CAPITAL STOCK		124,625,700
LONG TERM DEBT:		
FUNDED DEBT UNMATURED (EXCLUDES COMPANY'S HOLDINGS $2,470,000)		62,030,000
CURRENT LIABILITIES:		
AUDITED ACCOUNTS AND WAGES PAYABLE	2,241,321	
MISCELLANEOUS ACCOUNTS PAYABLE	342	
INTEREST MATURED UNPAID	4,180	
UNMATURED INTEREST ACCRUED	370,774	
ACCRUED ACCOUNTS PAYABLE	2,246,597	
TAXES ACCRUED	1,568,061	
OTHER CURRENT LIABILITIES	29,851	
TOTAL CURRENT LIABILITIES		6,460,126
SURPLUS:		
EARNED SURPLUS - UNAPPROPRIATED		91,057,523
GRAND TOTAL		284,172,649

7796.

COMMONWEALTH OF PENNSYLVANIA }
} ss.
COUNTY OF MONTGOMERY }

I, THE UNDERSIGNED, H. J. WARD, COMPTROLLER OF THE PENNSYLVANIA COMPANY, ON MY OATH DO SAY THAT THE FOREGOING GENERAL BALANCE SHEET HAS BEEN PREPARED UNDER MY DIRECTION; THAT I HAVE CAREFULLY EXAMINED THE SAME, AND DECLARE THE SAME TO BE COMPLETE AND CORRECT, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

H. J. WARD

SUBSCRIBED AND SWORN TO BEFORE ME THIS
27TH DAY OF JANUARY, 1956.

DONALD R. POWELL
NOTARY PUBLIC
LOWER MERION TOWNSHIP, MONTGOMERY CO.

MY COMMISSION EXPIRES JANUARY 29, 1959.

I.C.C. DOCKET NO. 18991
EXHIBIT 12.4
SHEET 1 OF 2

THE PENNSYLVANIA RAILROAD COMPANY

INCOME ACCOUNT AND EARNED SURPLUS STATEMENT FOR THE YEAR 1955

	YEAR 1955
OPERATING INCOME	
RAILWAY OPERATING INCOME	
RAILWAY OPERATING REVENUES	$934,972,870
RAILWAY OPERATING EXPENSES	768,201,214
NET REVENUE FROM RAILWAY OPERATIONS	166,771,656
RAILWAY TAX ACCRUALS	61,583,292
RAILWAY OPERATING INCOME	105,188,364
RENT INCOME	
RENT FROM LOCOMOTIVES	346,333
RENT FROM PASSENGER-TRAIN CARS	6,603,347
RENT FROM FLOATING EQUIPMENT	30,761
RENT FROM WORK EQUIPMENT	18,833
JOINT FACILITY RENT INCOME	4,764,420
TOTAL RENT INCOME	11,763,694
RENTS PAYABLE	
HIRE OF FREIGHT CARS-DEBIT BALANCE	34,221,511
RENT FOR LOCOMOTIVES	2,191,727
RENT FOR PASSENGER-TRAIN CARS	4,801,521
RENT FOR FLOATING EQUIPMENT	192,623
RENT FOR WORK EQUIPMENT	6,148
JOINT FACILITY RENTS	6,571,725
TOTAL RENTS PAYABLE	47,985,455
NET RENTS-DEBIT	36,221,761
NET RAILWAY OPERATING INCOME	68,966,603
OTHER INCOME	
INCOME FROM LEASE OF ROAD AND EQUIPMENT	294,060
MISCELLANEOUS RENT INCOME	2,734,297
INCOME FROM NONOPERATING PROPERTY	1,162,463
SEPARATELY OPERATED PROPERTIES-PROFIT	52,813
DIVIDEND INCOME	16,145,925
INTEREST INCOME	3,035,790
INCOME FROM SINKING AND OTHER RESERVE FUNDS	1,872,734
RELEASE OF PREMIUMS ON FUNDED DEBT	15,985
MISCELLANEOUS INCOME	5,458
TOTAL OTHER INCOME	25,319,525
TOTAL INCOME	94,286,128
MISCELLANEOUS DEDUCTIONS FROM INCOME	
MISCELLANEOUS RENTS	463,593
MISCELLANEOUS TAX ACCRUALS	379,744
SEPARATELY OPERATED PROPERTIES-LOSS	4,365,409
MAINTENANCE OF INVESTMENT ORGANIZATION	252,416
MISCELLANEOUS INCOME CHARGES	452,300
TOTAL MISCELLANEOUS DEDUCTIONS	5,913,962
INCOME AVAILABLE FOR FIXED CHARGES	88,372,166
FIXED CHARGES	
RENT FOR LEASED ROADS AND EQUIPMENT	20,308,048
INTEREST ON FUNDED DEBT:	
FIXED INTEREST NOT IN DEFAULT	26,633,426
INTEREST ON UNFUNDED DEBT	45,045
AMORTIZATION OF DISCOUNT ON FUNDED DEBT	112,114
TOTAL FIXED CHARGES	47,188,633
INCOME AFTER FIXED CHARGES	41,183,533

[illegible]	[illegible]
RENT FOR FLOATING EQUIPMENT	192,623
RENT FOR WORK EQUIPMENT	6,148
JOINT FACILITY RENTS	6,571,925
TOTAL RENTS PAYABLE	47,985,455
NET RENTS-DEBIT	36,221,761
NET RAILWAY OPERATING INCOME	68,966,603
OTHER INCOME	
INCOME FROM LEASE OF ROAD AND EQUIPMENT	294,060
MISCELLANEOUS RENT INCOME	2,734,297
INCOME FROM NONOPERATING PROPERTY	1,162,463
SEPARATELY OPERATED PROPERTIES-PROFIT	52,813
DIVIDEND INCOME	16,145,925
INTEREST INCOME	3,035,790
INCOME FROM SINKING AND OTHER RESERVE FUNDS	1,872,734
RELEASE OF PREMIUMS ON FUNDED DEBT	15,985
MISCELLANEOUS INCOME	5,458
TOTAL OTHER INCOME	25,319,525
TOTAL INCOME	94,286,128
MISCELLANEOUS DEDUCTIONS FROM INCOME	
MISCELLANEOUS RENTS	463,593
MISCELLANEOUS TAX ACCRUALS	379,744
SEPARATELY OPERATED PROPERTIES-LOSS	4,365,909
MAINTENANCE OF INVESTMENT ORGANIZATION	252,416
MISCELLANEOUS INCOME CHARGES	452,300
TOTAL MISCELLANEOUS DEDUCTIONS	5,913,962
INCOME AVAILABLE FOR FIXED CHARGES	88,372,166
FIXED CHARGES	
RENT FOR LEASED ROADS AND EQUIPMENT	20,398,048
INTEREST ON FUNDED DEBT:	
FIXED INTEREST NOT IN DEFAULT	26,633,426
INTEREST ON UNFUNDED DEBT	45,045
AMORTIZATION OF DISCOUNT ON FUNDED DEBT	112,114
TOTAL FIXED CHARGES	47,188,633
INCOME AFTER FIXED CHARGES	41,183,533
OTHER DEDUCTIONS	-
NET INCOME AFTER FIXED CHARGES AND OTHER DEDUCTIONS	41,183,533
DISPOSITION OF NET INCOME	
INCOME APPLIED TO SINKING AND OTHER RESERVE FUNDS	9,169,311
TOTAL APPROPRIATIONS OF INCOME	9,169,311
BALANCE OF INCOME TRANSFERRED TO EARNED SURPLUS - UNAPPROPRIATED	32,014,222

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THE PENNSYLVANIA RAILROAD COMPANY

	YEAR 1955
EARNED SURPLUS - UNAPPROPRIATED	
CREDIT BALANCE AT BEGINNING OF YEAR	$268,473,270
CREDIT BALANCE TRANSFERRED FROM INCOME	32,014,222
MISCELLANEOUS CREDITS	8,638,162
	309,125,654
DIVIDEND APPROPRIATIONS OF SURPLUS	19,751,631
MISCELLANEOUS DEBITS	19,607,781
	39,359,412
CREDIT BALANCE AT END OF YEAR	269,766,242

COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF PHILADELPHIA)

I, THE UNDERSIGNED, H. J. WARD, COMPTROLLER OF THE PENNSYLVANIA RAILROAD COMPANY, ON MY OATH DO SAY THAT THE FOREGOING INCOME AND EARNED SURPLUS ACCOUNT HAS BEEN PREPARED UNDER MY DIRECTION: THAT I HAVE CAREFULLY EXAMINED THE SAME, AND DECLARE THE SAME TO BE COMPLETE AND CORRECT, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

H. J. WARD

SUBSCRIBED AND SWORN TO BEFORE ME THIS
3RD DAY OF FEBRUARY, 1956.

JAMES E. BARTON
NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY, PA.

MY COMMISSION EXPIRES JUNE 24, 1958.

[fol. 2300]

EXHIBIT 125

I.C.C. DOCKET NO. 18991
EXHIBIT 125
SHEET 1 OF 2

PENNSYLVANIA COMPANY
INCOME ACCOUNT AND EARNED SURPLUS STATEMENT FOR THE YEAR 1955

	YEAR 1955
OPERATING INCOME	
RAILWAY OPERATING INCOME	
RAILWAY OPERATING EXPENSES	(318,295)
NET DEFICIT FROM RAILWAY OPERATIONS	(318,295)
RAILWAY OPERATING DEFICIT	(318,295)
RENT INCOME	
HIRE OF FREIGHT CARS - CREDIT BALANCE	179,500
RENT FROM LOCOMOTIVES	1,059,600
TOTAL RENT INCOME	1,239,100
NET RENTS	1,239,100
NET RAILWAY OPERATING INCOME	920,805
OTHER INCOME	
INCOME FROM NONOPERATING PROPERTY	46,447
DIVIDEND INCOME	18,796,521
INCOME FROM FUNDED SECURITIES	-
INCOME FROM UNFUNDED SECURITIES	-
INTEREST INCOME	3,319,625
MISCELLANEOUS INCOME	16
TOTAL OTHER INCOME	22,162,609
TOTAL INCOME	23,083,414
MISCELLANEOUS DEDUCTIONS FROM INCOME	
MISCELLANEOUS TAX ACCRUALS	799,294
MAINTENANCE OF INVESTMENT ORGANIZATION	22,344
MISCELLANEOUS INCOME CHARGES	1,428
TOTAL MISCELLANEOUS DEDUCTIONS	823,066
INCOME AVAILABLE FOR FIXED CHARGES	22,260,348
FIXED CHARGES	
INTEREST ON FUNDED DEBT:	
FIXED INTEREST NOT IN DEFAULT	2,098,309
INTEREST ON UNFUNDED DEBT	568
AMORTIZATION OF DISCOUNT ON FUNDED DEBT	42,526
TOTAL FIXED CHARGES	2,141,397
INCOME AFTER FIXED CHARGES	20,118,951
DISPOSITION OF NET INCOME	
DIVIDEND APPROPRIATIONS OF INCOME	-
BALANCE OF INCOME TRANSFERRED TO EARNED SURPLUS-UNAPPROPRIATED	20,118,951
EARNED SURPLUS-UNAPPROPRIATED	
BALANCE AT BEGINNING OF YEAR	88,632,510
CREDIT BALANCE TRANSFERRED FROM INCOME	20,118,951
MISCELLANEOUS CREDITS	58,619
	108,810,080
DIVIDEND APPROPRIATIONS OF SURPLUS	10,000,000
MISCELLANEOUS DEBITS	7,752,557
CREDIT BALANCE AT END OF PERIOD	91,057,523

SHEET 2 OF 2

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF MONTGOMERY.)

I, THE UNDERSIGNED, H. J. WARD, COMPTROLLER OF THE PENNSYLVANIA COMPANY, ON MY OATH DO SAY THAT THE FOREGOING INCOME ACCOUNT AND EARNED SURPLUS STATEMENT HAS BEEN PREPARED UNDER MY DIRECTION; THAT I HAVE CAREFULLY EXAMINED THE SAME, AND DECLARE THE SAME TO BE COMPLETE AND CORRECT, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

H. J. WARD

SUBSCRIBED AND SWORN TO BEFORE ME THIS
27TH DAY OF JANUARY, 1956.

DONALD H. POWELL
NOTARY PUBLIC
LOWER MERION TOWNSHIP, MONTGOMERY CO.

MY COMMISSION EXPIRES JANUARY 29, 1959.

X301

[fol. 2302]

EXHIBIT 126

Exhibit No. 126
Finance Docket Nos. 18991 and 19086

INTERCHANGE AT PEORIA, ILLINOIS BETWEEN THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY AND THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

Received			Delivered			Total		
Road Haul	Switch	Total	Road Haul	Switch	Total	Road Haul	Switch	Total
				1953				
1520	370	1890	1604	147	1751	3124	517	3641
				1954				
1672	342	2014	1745	51	1796	3417	393	3810
				1955				
1708	311	2019	1928	112	2040	3636	423	4059

Source: Records of The New York, Chicago and St. Louis Railroad Company.

2302

[fol. 2303]

EXHIBIT 127 /

EXHIBIT NUMBER 127
Finance Docket
Nos. 18991 & 19086

Application of the Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company by purchase of its capital stock.	Finance Docket No. 18991
Application of the Minneapolis & St. Louis Railway Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of its capital stock.	Finance Docket No. 19086

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Loaded cars interchanged by the A.T.&S.F. Ry Co with connections at Chicago, Illinois	1
Loaded cars interchanged by the A.T.&S.F. Ry Co with connections at Joliet, Illinois.	2
Loaded cars interchanged by the A.T.&S.F. Ry Co with New York Central R.R. Co. at Streator, Illinois.	3
Traffic solicitation offices of the A.T.&S.F. Ry System and number of employees engaged in solicitation.	4
Expenditures charged by the A.T.&S.F. Ry System to I.C.C. Accounts Numbers 351 to 359 inclusive	5

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[fol. 2304]

A.T.&S.F. RAILWAY COMPANY

Loaded Cars Interchanged with Connections at Chicago, Illinois (Including McCook)

Year	Pennsylvania R.R.		Wabash R. R.		All Other Carriers	
	Received	Delivered	Received	Delivered	Received	Delivered
1951	18,707	11,868	894	2,404	101,601	129,921
1952	18,085	12,338	1,368	2,735	98,548	138,231
1953	23,281	11,524	1,361	2,374	99,729	141,769
1954	23,937	11,331	517	2,099	90,355	135,600
1955	27,459	14,655	629	2,419	99,262	160,441

Note: Figures cover past five years available generally and include:
a. Cars road hauled on A.T.&S.F. Ry Co and connections.
b. Cars road hauled on A.T.&S.F. Ry Co, switched on connections.
c. Cars switched on A.T.&S.F. Ry Co, road hauled on connections.
d. Cars switched on A.T.&S.F. Ry Co and connections.

7304

A.T.&S.F. RAILWAY COMPANY

Loaded Cars Interchanged with Connections at Joliet, Illinois

Year	Received	Delivered
1951	40,588	21,407
1952	32,670	17,667
1953	35,898	20,354
1954	22,612	18,058
1955	33,146	17,851

Note: Figures cover past five years available generally and include:

a. Cars road hauled on A.T.&S.F. Ry Co and connections.
b. Cars road hauled on A.T.&S.F. Ry Co, switched on connections.
c. Cars switched on A.T.&S.F. Ry Co, road hauled on connections.
d. Cars switched on A.T.&S.F. Ry Co and connections.

2305

A.T.&S.F. RAILWAY COMPANY

Loaded Cars Interchanged with New York Central at Streator, Illinois

Year	Received	Delivered
1951	13,054	3,860
1952	15,045	3,760
1953	15,397	3,828
1954	15,428	3,104
1955	17,296	3,668

Note: Figures cover past five years available generally and include:
a. Cars road hauled on A.T.&S.F. Ry Co and N.Y.C. RR Co.
b. Cars road hauled on A.T.&S.F. Ry Co, switched on N.Y.C. RR Co.
c. Cars switched on A.T.&S.F. Ry Co, road hauled on N.Y.C. RR Co.
d. Cars switched on A.T.&S.F. Ry Co and N.Y.C. RR Co.

7306

Location of freight and combined freight-passenger traffic solicitation offices of the A.T.&S.F. Ry. System -

Albuquerque, N. M.
Amarillo, Tex.
Atchison, Kans.
Atlanta, Ga.
Bakersfield, Calif.
Beaumont, Tex.
Boston, Mass.
Buffalo, N. Y.
Chanute, Kans.
Chicago, Ill.
Cincinnati, O.
Cleveland, O.
Colorado Springs, Colo.
Dallas, Tex.
Denver, Colo.
Des Moines, Ia.
Detroit, Mich.
El Paso, Tex.
Fort Madison, Ia.
Fort Worth, Tex.
Fresno, Calif.
Galveston, Tex.
Houston, Tex.
Hutchinson, Kans.
Indianapolis, Ind.
Kansas City, Mo.
Long Beach, Calif.
Los Angeles, Calif.
Lubbock, Tex.
Memphis, Tenn.
Mexico City, Mexico
Milwaukee, Wis.
Minneapolis, Minn.
New Orleans, La.
New York, N. Y.
Oakland, Calif.
Oklahoma City, Okla.
Peoria, Ill.
Philadelphia, Pa.
Phoenix, Ariz.
Pittsburgh, Pa.
Portland, Ore.
Pueblo, Colo.
Sacramento, Calif.
St. Joseph, Mo.
St. Louis, Mo.
Salt Lake City, Utah
San Angelo, Tex.
San Antonio, Tex.
San Bernardino, Calif.
San Diego, Calif.
San Francisco, Calif.
San Jose, Calif.
Santa Ana, Calif.
Santa Barbara, Calif.
Seattle, Wash.
Stockton, Calif.
Temple, Tex.
Topeka, Kans.
Tulsa, Okla.
Washington, D. C.
Wichita, Kans.

Number of employes in above listed offices engaged in freight traffic solicitation or combined freight-passenger traffic solicitation -- 257.

Note: Exclusive passenger traffic offices are not included.

2307

[fol. 2308]

A.T.&S.F. RAILWAY SYSTEM

Expenditures charged to I.C.C. Accounts Nos. 351 to 359, inclusive during the past five years

	1951	1952	1953
351. Superintendence	$ 2,957,532.43	$ 3,081,493.20	$ 3,629,629.96
352. Outside Agencies	6,707,459.45	6,932,352.98	7,314,516.35
353. Advertising	3,095,487.10	3,083,410.00	3,422,892.24
354. Traffic Associations	383,628.59	392,266.29	399,653.70
355. Fast Freight Lines	-	-	-
356. Industrial and Immigration Bureaus	175,298.49	162,584.79	243,402.13
357. Insurance	812.65	779.13	807.55
358. Stationery and printing	338,335.02	363,512.18	396,497.22
359. Other expenses	3,031.38	-	1,028.00
Total traffic	$13,660,585.11	$14.016,398.57	$15,408,427.15

2308

(continued on page 6)

A.T.&S.F. RAILWAY SYSTEM

Expenditures charged to I.C.C. Accounts Nos. 351 to 359, inclusive, during the past five years

(continued from Page 5)

	1954	1955
351. Superintendence	$ 3,269,576.88	$ 3,288,276.45
352. Outside Agencies	7,154,972.39	7,233,405.24
353. Advertising	3,010,899.89	3,075,518.85
354. Traffic Associations	415,541.32	395,140.55
355. Fast Freight Lines	-	-
356. Industrial and Immigration Bureaus	206,157.64	229,079.34
357. Insurance	890.84	1,388.39
358. Stationery and Printing	371,920.14	325,356.67
359. Other expenses	179.69	41,627.17
Total Traffic	$14,430,138.79	$14,589,792.66

7309

[fol. 2310]

EXHIBIT 128

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF REVENUE CARS INTERCHANGED AT PEORIA

FOR THE YEARS 1951 TO 1955, INCLUSIVE

2310

✓ 433
WANSON

[Fol. 2311]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF REVENUE CARS INTERCHANGED AT PEORIA

FOR THE YEARS 1963 TO 1965, INCLUSIVE

Interchanged with	1965				1964			
	Received	Delivered	Switched	Total	Received	Delivered	Switched	Total
Chicago, Burlington & Quincy	81	7	332	420	47	14	536	597
Chicago & Illinois Midland	2,[illegible]	4,[illegible]	[illegible]	6,470	1,804	3,662	658	6,124
Chicago & North Western	[illegible]42	726	6	1,014	244	1,100	4	1,348
Chicago, Rock Island & Pacific	2[illegible]6	2,[illegible]72	[illegible]71	[illegible],067	284	2,012	427	2,723
Gulf, Mobile & Ohio	[illegible],[illegible]54	4,821	-	[illegible],875	[illegible],097	2,703	-	4,800
Illinois Central	6,[illegible]02	4,770	2[illegible]	11,297	[illegible],655	4,190	-	9,845
Illinois Terminal	2,[illegible]48	2,[illegible]62	-	4,[illegible]10	1,867	2,036	31	3,923
Nickel Plate	6,[illegible]65	7,298	-	[illegible],[illegible]63	5,935	6,570	-	12,505
Pennsylvania	1,[illegible]14	1,[illegible]38	-	2,652	1,245	1,324	-	2,569
Peoria & Eastern	6,[illegible]49	4,887	[illegible]9	11,275	6,929	4,881	81	11,891
Peoria & Pekin Union	-	-	8,[illegible]48	8,948	-	-	7,954	7,954
Peoria Terminal	-	-	2,668	2,668	-	-	3,851	3,851
Toledo, Peoria & Western	[illegible],[illegible]11	6,834	1,116	12,165	4,738	5,920	1,218	11,876
Total	[illegible]2,[illegible]11	37,669	[illegible]1,116	84,124	[illegible]1,844	34,417	14,758	81,021

2311

Interchanged with	1953 Received	1953 Delivered	1953 Switched	1953 Total	1952 Received	1952 Delivered	1952 Switched	1952 Total
Chicago, Burlington & Quincy	11	4	368	383	12	35	[illegible]	[illegible]
Chicago & Illinois Midland	2,014	3,596	703	6,313	1,994	3,571	683	6,248
Chicago & North Western	370	1,322	1	1,693	463	743	-	1,206
Chicago, Rock Island & Pacific	235	3,771	604	4,610	408	6,493	954	7,855
Gulf, Mobile & Ohio	3,429	3,291	-	6,720	3,359	3,644	-	7,003
Illinois Central	5,312	3,975	114	9,402	5,605	4,274	42	9,921
Illinois Terminal	1,736	2,054	-	3,790	1,882	1,598	-	3,480
Nickel Plate	7,058	7,837	-	14,895	7,336	9,155	-	16,491
Pennsylvania	1,369	1,646	-	3,015	1,588	1,632	-	3,220
Peoria & Eastern	7,973	4,292	85	13,350	8,600	6,004	89	14,693
Peoria & Pekin Union	-	-	4,892	4,892	-	-	5,015	5,015
Peoria Terminal	-	-	4,830	4,830	-	-	4,880	4,880
Toledo, Peoria & Western	5,559	5,132	1,678	12,369	6,234	7,312	242	13,788
Total	35,066	37,124	14,274	87,392	37,681	44,461	12,245	94,087

2312

Interchanged with	1951 Received	Delivered	Switched	Total
Chicago, Burlington & Quincy	14	37	317	368
Chicago & Illinois Midland	1,973	3,451	686	6,110
Chicago & North Western	395	976	4	1,375
Chicago, Rock Island & Pacific	565	8,529	1,557	10,651
Gulf, Mobile & Ohio	3,189	3,166	-	6,355
Illinois Central	5,720	3,205	66	8,991
Illinois Terminal	1,880	1,292	-	3,172
Nickel Plate	8,099	10,772	-	18,871
Pennsylvania	1,978	1,329	-	3,307
Peoria & Eastern	8,269	5,688	193	14,150
Peoria & Pekin Union	-	-	6,993	6,993
Peoria Terminal	-	-	4,978	4,978
Toledo, Peoria & Western	6,918	7,322	78	14,318
Total	39,000	45,767	14,872	99,639

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[fol. 2314]

EXHIBIT H-132

Finance Docket Nos. 18991 and 19086

See page 1460 of transcript

Paul C. Albus
Examiner

WABASH RAILROAD COMPANY
44 WALL STREET
NEW YORK 5, N. Y.

W. D. STEELE,
VICE-PRESIDENT
SECRETARY
TREASURER

Extract from minutes of meeting of Board of Directors held March 15, 1956

WHEREAS, pursuant to the resolutions adopted at the meeting of the Board of Directors held on January 19, 1956, Wabash Railroad Company intervened in Interstate Commerce Commission Finance Docket No. 18991, Application of The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of Toledo, Peoria & Western Railroad Company through purchase of its capital stock, and requested that, in the event other carriers were authorized to participate equally with the aforesaid applicants in acquisition of such control, this Company should be authorized to participate equally in the transaction proposed; and

WHEREAS, on or about October 12, 1955, The Minneapolis & St. Louis Railway Company filed an application with the Interstate Commerce Commission for authority under Section 5(2) of the Interstate Commerce Act to acquire control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock, which application was assigned Finance Docket No. 19086; and

WHEREAS, the Interstate Commerce Commission consolidated said application in Finance Docket No. 19086 for hearing with said application in Finance Docket No. 18991; and

WHEREAS, the same vital interests of this Company which occasioned its intervention and request for participation in the transaction proposed in Finance Docket No. 18991 being present in the transaction proposed in Finance Docket No. 19086, this Company through Arthur K. Atkinson, its President, intervened in said Finance Docket No. 19086 and requested:

(a) That the authority sought by The Minneapolis & St. Louis Railway Company therein be denied by the Commission for the reason that said application does not present a transaction within the meaning of Section 5(2) of the Interstate Commerce Act for approval of the Commission, and that control of Toledo, Peoria & Western Railroad Company will operate to the competitive disadvantage of Wabash Railroad Company, would disturb the contractual and operating arrangements and relationships between Wabash Railroad Company and Toledo, Peoria & Western Railroad Company and would, therefore, adversely affect the public interest;

(b) That in the event The Minneapolis & St. Louis Railway Company is, or The Minneapolis & St. Louis Railway Company together with any other parties to said proceeding are, authorized by the Commission to acquire control of Toledo, Peoria & Western Railroad Company through stock ownership, then Wabash Railroad Company should [fol. 2315] be authorized to participate and be included in any such transaction upon equal terms with The Minneapolis & St. Louis Railway Company and any other parties thereto; and

(c) That in the event the Commission does not authorize Wabash Railroad Company to participate in any such transaction, then the public interest demands that the Toledo, Peoria & Western Railroad Company and the parties authorized to acquire control thereof, and each of them, be required, as a condition to such authorization, to main-

tain and keep open or in effect as between themselves and Wabash Railroad Company:

(1) All existing routes and channels of trade via existing junctions and gateways; and

(2) All existing traffic and operating relationships and arrangements;

and

WHEREAS, a hearing in the said proceeding was held before an examiner of the Interstate Commerce Commission at Peoria, Illinois, beginning on February 1, 1956, and concluded on February 14, 1956, and The New York, Chicago and St. Louis Railroad Company, the Chicago, Rock Island and Pacific Railroad Company, and Chicago, Burlington & Quincy Railroad Company have requested the Commission's authorization to become equal participants with the applicants in the transactions proposed in said Finance Dockets 18991 and 19086; and

WHEREAS, The New York, Chicago and St. Louis Railroad Company and the Chicago, Rock Island and Pacific Railroad Company have stated at the aforesaid hearing that in the event the applicants in Finance Docket No. 18991 or the applicant in Finance Docket No. 19086 are authorized to acquire control of Toledo, Peoria & Western Railroad Company on condition that other carriers be included in such transaction on an equal basis but said applicants or applicant refuse to complete the acquisition upon such condition, then said two carriers desire to purchase together, or together with such other carriers as may desire to participate equally, the capital stock of Toledo, Peoria & Western Railroad Company at the price a share proposed in the aforesaid applications, namely, $135.00 a share; and

WHEREAS, this Company has a vital interest in the subject matter of said application in Finance Docket No. 19086 and in the control of Toledo, Peoria & Western Railroad Company generally for the reasons, among others, that the railroad of this Company connects directly with the line of the Toledo, Peoria & Western Railroad Company at Forrest, Elvaston, Fairbury, Hamilton and Hon-

egger, Illinois, and Keokuk, Iowa; that there exist between this Company and the Toledo, Peoria & Western Railroad Company many vital contractual and traffic arrangements and relationships, examples of which are trackage rights over the line of the Toledo, Peoria & Western Railroad Company which connects disconnected sectors of the railroad of this Company and permit this Company to reach its Streator Branch and Keokuk, Iowa; that this Com- [fol. 2316] pany interchanges a substantial volume of carload and less-than-carload business with the Toledo, Peoria & Western Railroad Company and with the applicant and other intervening carriers in Finance Docket No. 19086; and that in the movement of traffic jointly with the Toledo, Peoria & Western Railroad Company and its connections, this Company is a party to service routes and competes in varying degrees with the applicant and other carriers who have intervened in said proceeding and have requested to be included in the transaction; and

WHEREAS, the interests of this Company required the intervention and position taken by this Company in Finance Docket No. 19086, and it is recommended that said actions be ratified and the proper officers of this Company be authorized to take such further action as may be required to permit this Company to participate equally in the transaction proposed in Finance Docket No. 19086 with the applicant therein and with any other parties thereto, and be authorized further to take such action as may be required to make this Company an equal participant with the intervening carriers in Finance Docket No. 18991 and Finance Docket No. 19086 in acquiring control of the Toledo, Peoria & Western Railroad Company independent of the participation in such control by the applicants and applicant in the aforesaid Finance Dockets:

NOW, THEREFORE, BE IT

RESOLVED, That all actions taken and all documents filed with the Interstate Commerce Commission by Arthur K. Atkinson, President of this Company, in intervening in and in requesting authority to become an equal participant in the transaction proposed in Finance Docket No. 19086 be and the same hereby are approved, ratified and confirmed.

FURTHER RESOLVED, That Arthur K. Atkinson, President, or C. A. Johnston, Vice President, of this Company, be and he hereby is authorized and directed to do any and all other and further things and to take all other and further action and execute in the name of this Company and under its corporate seal any and all instruments and documents which may be necessary or proper in the opinion and discretion of the President of this Company to effect and carry out the equal participation of this Company in the proceedings and transactions described in the foregoing resolution and preambles preceding these resolutions as set forth therein, including the purchase of shares of the capital stock of Toledo, Peoria & Western Railroad Company in the event the Interstate Commerce Commission should authorize this Company and any other carriers to be included in the transaction proposed in Finance Docket No. 19086, and including the purchase of shares of the capital stock of the Toledo, Peoria & Western Railroad Company in such numbers as will be equal to the number of shares which may be acquired by the Chicago, Rock Island and Pacific Railroad Company or The New York, Chicago, and St. Louis Railroad Company, or any other [fol. 2317] intervening carriers in Finance Docket No. 18991 or Finance Docket No. 19086 in the event the Interstate Commerce Commission should authorize such intervening carriers to acquire said stock independent of the participation of the applicants or applicant in the aforesaid proceedings in such transaction.

I, W. D. Steele, Secretary of Wabash Railroad Company, do hereby certify that the foregoing is a true and correct copy of preambles and resolutions duly adopted by the Board of Directors of Wabash Railroad Company at a meeting duly called and held on March 15, 1956; a quorum being present at said meeting.

W. D. Steele

(SEAL)

[fol. 2319]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 18991

In the Matter of:

Application of the Atchison, Topeka & Santa Fe Railway Company, The Pennsylvania Railroad Company and the Pennsylvania Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of The Toledo, Peoria & Western Railroad Company, through purchase of the capital stock.

FINANCE DOCKET No. 19086

In the Matter of:

Application of the Minneapolis and St. Louis Railway Company for authority under Section 5(2) of the Interstate Commerce Act to acquire control of The Toledo, Peoria & Western Railroad Company, through ownership of its capital stock.

REPLY OF INTERVENOR RAILWAY LABOR EXECUTIVES' ASSOCIATION TO EXCEPTIONS OF THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY AND THE STATES OF MINNESOTA AND SOUTH DAKOTA TO EXAMINER'S PROPOSED REPORT—February 11, 1957.

Preliminary Statement

The Railway Labor Executives' Association, on whose behalf this reply is filed, encompasses standard railway labor organizations which are the collective bargaining representatives for the great majority of the employees of the carriers here involved. Because the interests of

those employees constitute an important segment of the public interest to which the Commission is required to give [fol. 2320] weight by Section 5 (2) (c) of the Interstate Commerce Act, and to protect by appropriate conditions attached to its approval of any transaction here involved (Sec. 5 (2) (f) of the Act), said Association sought and was granted leave to intervene herein.

Because our primary concern is with the interest of the employees involved, our discussion will emphasize that aspect of the public interest, and will not undertake any detailed analysis of the other considerations raised by these applications.

Statement of the Case

For purposes of the points to be discussed here, the facts of the case may be simply stated.

The present owners of the Toledo, Peoria, and Western Railroad Company, as a matter of their own desires and investment policies, determined to dispose of their interest in the company, and after a series of negotiations agreed, subject to approval of the Commission, to sell all of the outstanding stock of the TP & W to The Atchison, Topeka and Santa Fe Railway Company. (Exhibits 7, 7-a, 7-b, and 7-c, of application in F.D. 18991, and H.-7.) Santa Fe in turn entered into an agreement with the Pennsylvania Company (a wholly-owned subsidiary of The Pennsylvania Railroad Company) to sell it sufficient shares to make each company the owner of 50 per cent of the TP & W stock. (Exhibit 7-d of application in F.D. 18991.)

The agreement between the Santa Fe and the Pennsylvania provided that the TP & W would continue to be operated as a separate and independent carrier with responsible management located along its lines in order to preserve to shippers and communities the present direct access to [fol. 2321] its officials; that the TP & W would be properly maintained and improved; that the TP & W would continue to maintain its own solicitation forces, and be free to solicit traffic for its own best interests; that existing routes and channels of trade would be maintained and kept open without discrimination between connecting lines; and that the Board of Directors would consist of the president of the

company, two officers of the Santa Fe, two officers of the Pennsylvania, and six prominent citizens selected by, but not connected with, the Santa Fe and the Pennsylvania. In seeking Commission approval of the purchase, the Santa Fe and the Pennsylvania represented to the Commission that they would maintain the present independent management and operation, that there would be no change in the TP & W as a route open to all roads on an equal basis, and that existing interchange points, through routes and other traffic arrangements would be continued in effect. (Application in F.D. 18991, p. 19.) And at the hearing, these applicants expressed willingness to have the aforementioned provisions in their joint agreement incorporated as conditions in any order of the Commission approving the transaction. (R. 190.) It should further be noted that approval of the Santa Fe and Pennsylvania application would result in no issue of securities or increase in debt or fixed charges.

Subsequent to the application in F.D. 18991, The Minneapolis and St. Louis Railway Company filed its application for authority to acquire the TP & W stock (F.D. 19086), and both applications were consolidated for hearing. Although it had offered to buy the stock at a lower price before the Santa Fe's stock purchase agreement was consummated, and has subsequently expressed willingness [fol. 2322] to pay the same price as the Santa Fe and the Pennsylvania, the M & StL has no outstanding agreements, contracts, or understanding for the purchase of any TP & W stock. (R. 1603.) The M & StL proposal calls for financing the purchase of the TP & W stock by issuance of $12,000,000 first mortgage sinking fund bonds, but no application has been filed with the Commission for approval of such a security issue.

The M & StL contemplates an "integration" of the TP & W into the M & StL, whereby, though the two would retain separate corporate identities, they would be managed and operated as one railroad. They urge that economies would result, principally through reduction in the total number of employees, which we shall discuss in more detail later. The headquarters of the combined railroads would be at Minneapolis instead of Peoria.

A number of other carriers intervened, and took varying positions with respect to the two applications. The Rock Island and Nickel Plate opposed both applications unless they should be permitted to participate on an equal ownership basis with any acquiring carrier or carriers. The Burlington and Wabash did not object to acquisition by the Santa Fe and Pennsylvania *only*, but took the position that they should participate on an equal basis with all carriers involved if the M & StL application should be granted, or if any carrier other than the Santa Fe and Pennsylvania were authorized to acquire an interest in the TP & W. All four of these intervening carriers opposed the M & StL applications insofar as it would terminate the existence of the TP & W as a separate independent, "neutral" carrier. (See, for example, testimony of President Jenks of the Rock Island, expressing such sentiments and advocating that the present officers and management of the TP & W should be maintained. R. 1697-1698.)

[fol. 2323] The foregoing, and all other carrier intervenors, including the Illinois Central, GM & O, North Western and Monon, sought the imposition of conditions for maintenance of existing routes and channels of trade, and the Monon urged an additional condition giving it access to an interchange with the TP & W at Effner.

All of the shippers, communities, and civic organizations which intervened or appeared as witnesses supported the application of the Santa Fe and Pennsylvania, excepting the States of Minnesota and South Dakota, and their utility commissions, which supported the M & StL application.

In his proposed report Examiner Albus recommended approval of the application of the Santa Fe and Pennsylvania (F.D. 18991), without inclusion of any of the other carriers seeking to participate in the acquisition, and dismissal of the application of the M & StL (F.D. 19086).

Exceptions were filed by a number of parties to the proceedings, including the M & StL and the States of Minnesota and South Dakota and their utility commissions. Because of our primary concern with the employee aspect of the public interest, this reply is directed to the exceptions of these latter named parties, the only ones favoring discontinuance of the TP & W as a separate operating company, with attendant severe adverse effect upon employees.

Argument

Introduction

As noted above, several different arrangements have been suggested with respect to the future of the TP & W, and a considerable record has been made with respect to the merits of the various proposals. We do not believe, [fol. 2324] however, that the situation presented is necessarily to be resolved on the basis of a choice of the best plan by the Commission. Thus, it is conceivable that in any case such as this, a number of different plans might meet the requirements of Section 5 (2) of the Act. Here, however, we have the rather unusual situation of having only one plan, that proposed by the Santa Fe and Pennsylvania, which would certainly be consummated if approved by the Commission. Neither the M & StL, which has applied for authority to acquire full ownership of the TP & W, nor the intervening carriers which seek, under varying conditions, equal ownership participation, have negotiated any contracts for the purchase of TP&W stock. Approval of the M & StL application, or of the requests for participation by the other carriers, could have no more than an advisory effect, there being no assurance that a plan thus approved would be consummated. For it is clear, as pointed out in the Supreme Court's decision in *St. Joe Paper Co.* v. *Atlantic C.L.R. Co.*, 347 U.S. 298, that the Commission's authority to approve transactions under Section 5 of the Act is strictly limited to proposals voluntarily initiated by the participating carriers.

The only proposal before the Commission which meets the test thus laid down by the Supreme Court is that contained in the application of the Santa Fe and the Pennsylvania.

The paramount interest of the employees on whose behalf this brief is presented is in the continued operation of the TP & W as an independent carrier under conditions assuring its continued strength and stability. This result would be guaranteed by approval of the application of the Santa Fe and Pennsylvania in F.D. 18991. It necessarily would be defeated by approval of the M & StL application in F.D. 19086.

[fol. 2325]

I. The Transaction Proposed by the M & StL Is Not Consistent With the Public Interest. With Respect to the Factor of Employee Interest.

There is in this case no issue as to compliance with the requirements of Section 5 (2) (f) for the protection of employees who may be adversely affected by approval of any of the various proposals before the Commission. The applicants in both dockets, and the intervening carriers, indicated that they had no objection to conditioning approval of any proposal for acquisition of the TP & W upon compliance with the provisions of the Washington Job Protection Agreement of 1936. (R. 187-188, 1055 A, 1425, 1523, 1720.) The Commission has recognized the reasonableness of those conditions in numerous cases, and has used them as a pattern in cases where employee protection was not stipulated, and the requirements of Section 5 (2) (f) had to be met. We therefore respectfully request that approval of any transaction herein be conditioned upon compliance with the provisions of the Washington Agreement. Such was the recommendation of the Examiner (Sheet 26, Proposed Report), to which no exception has been taken by any of the parties.

It is well established, however, that in a proposed transaction under Section 5 (2) of the Act, the Commission's duty to give consideration to the interests of employees is not discharged by simply providing for compensatory allowances to dismissed and displaced personnel for a limited period pursuant to the provisions of Section 5 (2) (f). These provisions make such compensatory allowances mandatory only *after* a transaction subject to Section 5 (2) has [fol. 2326] been determined to be "consistent with the public interest". Thus before the Commission reaches Section 5 (2) (f) it has a prior obligation with respect to employees, to consider *their interests* in making the *public interest* determination. Indeed, Congress considered the employee interest so vital a part of the public interest as to specify it as one of four factors which, aside from any other con-

siderations, the Commission was *required* to give weight to. (Section 5 (2) (c) of the Act.)[1]

Acquisition of the TP & W by the Santa Fe and the Pennsylvania under the conditions proposed for future operation of the former carrier as a separate, independent railroad would obviously have little adverse effect upon employees. While such a transition would in all probability affect some employees, the total impact would undoubtedly be so slight as to create little or no problem from a public interest point of view.

The effect upon employees of approval of the M & StL application, however, involving as it would a complete integration of the TP & W into the M & StL, would be extremely severe. Indeed, the principal argument of the M & StL in support of its proposal is based on alleged economies the greatest proportion of which would be accomplished at the expense of the employees. Thus, the M & StL introduced evidence that by unification, the combined operating expenses of the two roads could be reduced to $1,770,945 (R. 1384-1385), of which $1,327,062 would take the form of savings in wages and salaries, to be accomplished by elimination of 256 positions on the com- [fol. 2327] bined roads (Exhibit H-44, Schedule 19). *It further appeared that this cost of $1,327,062 to the employees would result in an increase in the net income of the two roads of only $1,279,900.* (R. 1387.)

The figure of 256 positions to be abolished is of course no adequate indication of the total number of employees who would be adversely affected by the M & StL proposal. It is a *net* figure, and fails to show the additional TP & W positions that would be abolished in connection with a *transfer* of the work of the positions from Peoria to Minneapolis, for example. In such case, an employee would be out of work at Peoria, but the 256 figure would not include him because of the hiring of a new employee at Minneap-

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[1] Even apart from the mandatory provisions of Section 5 (2) (c), the Supreme Court has recognized that employee interest is part of the public interest which the Commission must consider in passing upon transactions under the Interstate Commerce Act. *United States v. Lowden*, 308 U.S. 225, at 235-236.

olis. While it is true that some TP & W facilities would be continued on the present line of road, it is also true that others, such as the general offices, would be closed down and the work transferred to Minneapolis. Thus the total positions abolished would be somewhere between 256 and 527. (See Exhibit H-44, Schedule 19, showing 527 current TP & W positions; proposed abolishment of 256 positions *net*; and increase in total M & StL employees, under the new operation, of 271.)

It further appeared that the bulk of the positions to be abolished would be in Peoria. (R. 1582.) Most of the positions transferred (and thus not listed as "abolished") would involve a move from Peoria to Minneapolis, a distance of approximately 430 miles. Even though the M & StL indicated that displaced TP & W people would be given preference to fill the transferred positions, as well as other vacancies occurring from normal attrition of the M & StL working forces, such a move would involve an "uprooting" [fol. 2328] that most people would find a serious hardship, if they were willing to undertake it at all.

It should also be pointed out that in many instances the number of positions to be abolished or transferred is not determinative of the number of employees who will be adversely affected by a transaction such as the M & StL proposes. Thus in the railroad industry, operating as it does under an elaborate seniority system, the abolishing of one position will frequently lead to a chain reaction of displacement of junior men by those having greater seniority, with the result that a number of men will have to take lower paying positions and the last one in the "chain" will be laid off.

It is of course true that employee interest, while one of the most vital matters to be considered by the Commission, has been found to be outweighed by other factors in some cases where it appeared that irrespective of the effect on employees, very substantial benefits to the rest of the public could be achieved. But here we do not have such a situation. Essentially the only substantial benefit to be achieved from the M & StL proposal is the economic strengthening of the M & StL. No new or greater services to the public would be realized. Economies from the proposed unifica-

tion of the two roads would simply inure to the benefit of M & StL stockholders, in the form of increased dividends or greater book value of their stock. As we have shown, these savings would be more than offset by the cost to employees. The only parties supporting the M & StL proposal were the States of Minnesota and South Dakota, with their respective public utilities commissions; and their position with respect to the "public interest" can be boiled down [fol. 2329] to the bare proposition that "what's good for the M & StL is good for the territory it serves".

Under such circumstances, where no decisive advantage or benefit would inure to the public from the proposed transaction, and where a definite and substantial hardship would be worked upon the employees involved, a balancing of the factors consideration of which is made mandatory under Section 5 (2) (c) compels the conclusion that the transaction proposed by the M & StL would not be consistent with the public interest. Such was the ruling in *Fort Worth & D. C. Ry. Co. Lease*, 247 I.C.C. 119, where the Commission said:

> "Railroad organization consists of four important and indispensable factors, namely, land, labor, capital, and management. High specialization is necessary for each railroad factor. Whenever expert railroad labor is compelled to readjust and adapt itself to another industry, there is substantial loss to the individuals and to the general public. Congress has recognized this fact and in revising the statute has specifically required us to give consideration to 'the interest of the carrier employees affected.' Heretofore, we have given consideration to the interest of the carrier employees affected to the extent of imposing appropriate conditions in our order of approval. See *Chicago, R. I. & G. Ry. Co. Trustees Lease*, 233 I.C.C. 21. *We are now specifically required to give consideration to the interest of such employees in determining whether the transaction is consistent with the public interest.* . . ."
> (P. 127; emphasis supplied.)

Accordingly we submit that in the instant case, insofar as the M&StL application is concerned the factor of em

ployee interest would require its disapproval. By the same token, this and other factors support the conclusion that the public interest will be best served by continuance of the TP & W as a separate, independent carrier, as proposed by the Santa Fe and Pennsylvania.
[fol. 2330]

II. Other Public Interest Factors Support the Examiner's Recommendation of Approval of the Transaction Proposed by Santa Fe and Pennsylvania.

Because our primary interest relates to the welfare of the employees involved, and because we are confident that other aspects of the case will be exhaustively analyzed by the various applicant and intervening carriers, we shall comment only briefly on what seem to us to be the significant points with respect to the other public interest factors involved.

(a) *Service to the Public*

Insofar as *ability* to assist the TP & W management in rendering service to the public is concerned, it would be difficult to name two stronger carriers than the Santa Fe and the Pennsylvania. In terms of past performance, they have established a record of cooperation with the TP & W, in building up its traffic and improving service to the communities and shippers along its right of way. And the additional incentive which would be provided these two carriers by their respective 50% ownership of the TP & W could only increase assurance of their continued efforts on behalf of this line and the territory it serves.

Over 91% of the revenues of the TP & W are derived from interline traffic. (Exhibit H-5, p. 3.) Nearly 70% of its interline revenues are derived from traffic interchanged with the Santa Fe, the Pennsylvania or both. (Exhibit H-5, p. 5.) The geographical relation of the three railroads further emphasizes their interdependence and importance to each other, the interchange points for service routes on [fol. 2331] east-west traffic being located at the eastern and western extremities of the TP & W. The Santa Fe

and Pennsylvania are thus the only carriers involved which do not tend to shorthaul the TP & W on interchange traffic. With their simple, "corn-field" interchanges, avoiding expense and delay attendant upon interchange at large cities like Chicago, the direct, through route provided by these three carriers affords economical and expeditious service to the public.

The additional incentive afforded by ownership of the TP & W will without question increase the utilization of this desirable route. While they have supported this route in the past, as the record conclusively demonstrates, the Santa Fe and Pennsylvania in the past naturally preferred the longer haul and greater divisions obtainable by routing traffic through Chicago. However, under their proposed plan of operation, both applicants represented to the Commission that they would place their respective TP & W interchanges, at Lomax and Effner, on a parity with Chicago in their traffic solicitation practices. (R. 224, 358.) These representations are backed up by the economics of the situation. The expense and delay of interchanging at Chicago has in the past offset to a considerable extent the advantage of the long haul. And the practical effect of co-ownership of the TP & W by these two applicants would be comparable to an increase in their divisions on traffic routed through the Peoria gateway.

This increased attractiveness of the TP & W route to its principal users would also spur industrial development in [fol. 2332] the Peoria area. The TP & W has many acres of desirable industrial property around Peoria and elsewhere on its right of way. (R. 227.) Witnesses for the Santa Fe and the Pennsylvania testified that both roads are lacking in sufficient industrial sites in the Chicago area and in Illinois (R. 225-26, 358, 378-79), and that their large industrial staffs would be made available to assist the TP & W in developing this territory (R. 227-228, 358.)

Perhaps most significant from the point of view of public interest, however, is the fact that *all* of the shippers and representatives of community interests in the territory served by the TP & W supported the application of the Santa Fe and Pennsylvania. Most vital to them, as to the employees we represent, was the assurance of continued

operation of the TP & W as a separate, independent carrier of assured stability, and with a local and readily accessible management.

(b) *Interests of Other Carriers*

With respect to the question of the inclusion of other carriers in any transaction that may be approved herein, we leave to the various carriers the detailed analysis and arguments that will certainly be made on the complex competitive and economic factors involved. It appears to us, however, that substantial protection would be afforded other carriers both by the conditions with respect to preserving existing interchanges, routes and channels of traffic that all of the involved carriers have agreed to, as well as the system of "checks and balances" against impairment of service or discriminatory solicitation that would be in- [fol. 2333] herent in an equal division of ownership between the largest connecting carrier in the east and the largest one in the west. And finally, we do not believe that any plan for participation by other carriers should be entertained if, in the Commission's opinion, it would so impair the economic incentive of the Santa Fe and Pennsylvania for future development of the TP & W as to present a substantial threat to that road's continued existence as a separate and independent carrier.

(c) *Resulting Fixed Charges*

The proposal of the Santa Fe and the Pennsylvania requires no discussion here. This aspect of the public interest, as specified in Section 5 (2) (c) of the Act, is disposed of by the simple fact that no increase in fixed charges would result.

Recommended Findings and Conclusion

In our discussion we have emphasized the importance of continued operation of the TP & W as a separate, independent carrier of assured stability. Its integration into another carrier, as the M & StL requests, would result in hardship to employees far outweighing, from the point of view of the public interest, benefits to the stockholders of

the acquiring carrier. And we have shown that other public interest considerations, irrespective of employee interest, clearly require approval of a plan for preservation of the TP & W.

We therefore submit that the exceptions of the M & StL, the States of Minnesota and South Dakota, and their utility commissions should be overruled, and that the application [fol. 2334] of the Santa Fe and the Pennsylvania in F.D. 18991, with the addition of the various conditions agreed to herein, including the requirement of compliance with the provisions of the Washington Job Protection Agreement for the protection of employees who may be adversely affected, be found by the Commission to be consistent with the public interest, and approved.

Respectfully submitted,

Clarence M. Mulholland, 741 National Bank Building, Toledo 4, Ohio; Richard R. Lyman, 741 National Bank Building, Toledo 4, Ohio; Attorneys for Railway Labor Executives' Association.

Of Counsel: Mulholland, Robie & Hickey, 741 National Bank Building, Toledo 4, Ohio.

Dated at Toledo, Ohio, February 8, 1957.

[fol. 2335] Certificate of service (omitted in printing).

[fol. 2336]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19086

In the Matter

of the

APPLICATION OF MINNEAPOLIS & ST. LOUIS RAILWAY CO. FOR AUTHORITY TO ACQUIRE CONTROL OF THE TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

Finance Docket No. 18991

APPLICATION OF SANTA FE, PENNSYLVANIA R.R. AND PENNSYLVANIA CO. FOR AUTHORITY TO ACQUIRE CONTROL OF THE TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

PETITION OF MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 4, DATED MAY 31, 1957—Filed July 25, 1957

Oral Argument Is Requested

[fol. 2337]

IX.

Protection of the Minneapolis Requires Its Inclusion in the Owning Group in the Event Joint or Multiple Ownership of the Western Is Approved by the Commission.

The Pennsylvania, the Santa Fe and the Pennsylvania's 99% owned subsidiary, the Wabash, all compete with the Western in its entirety.

It would not be in the public interest to permit a competitor, or a group of competitors, such as Pennsylvania-

Santa Fe, to acquire stock control of the Western. Legitimate competition can be an incentive for progressive development, but where there is a probability of existing or potential competition being diminished or strangled, public interest will not be enhanced.

The competitors here would be more interested in their wholly-owned lines through other competitive gateways [fol. 2338] than they would be in the part-ownership of the Western. Any plan calling for control by these competitors offers little or no prospect that the Western's properties would continue to be operated as vigorously in the solicitation of rail traffic as they are now. On the other hand, everything points to the inevitable conclusion that the status of the Western would soon deteriorate to an inferior position, subordinate in all respects to the best interests of its competitor owners. It is as unsound for rail carriers as for motor carriers to conduct duplicate and ostensibly competitive operations under two distinctive names. This is precisely what the Pennsylvania and the Santa Fe would be doing whether either of them alone owned the Western or if they were parties to a joint ownership arrangement. See *Bender—Control—Arco Auto Carriers*, 39 M.C.C. 161.

On the other hand, the Peoria Gateway is the lifeblood of the Minneapolis. The Minneapolis is the only interested carrier which does not enter any gateway other than Peoria. Under these circumstances, we respectfully submit that it would flout the National Transportation Policy to make Minneapolis' very existence dependent upon the "benevolent" attitudes of Pennsylvania-Santa Fe. Congress decreed that Section 5 shall be administered to foster sound economic conditions among the several carriers. In the event the Commission approves ownership of the Western by Pennsylvania-Santa Fe, protection of the Western requires that it be included in the ownership group.

[fol. 2340]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

In the Matter of:

Application of the Atchison, Topeka & Santa Fe Railway Company, The Pennsylvania Railroad Company and the Pennsylvania Company for authority under Section 5 (2) of the Interstate Commerce Act to acquire control of The Toledo, Peoria & Western Railroad Company through purchase of the capital stock.

In the Matter of:

Finance Docket No. 19086

Application of the Minneapolis and St. Louis Railway Company for authority under Section 5 (2) of the Interstate Commerce Act to acquire control of The Toledo, Peoria & Western Railroad Company, through ownership of its capital stock.

REPLY OF INTERVENOR RAILWAY LABOR EXECUTIVES' ASSOCIATION TO PETITION OF THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 4, DATED MAY 31, 1957—August 20, 1957

In its petition for reconsideration of the report and order of Division 4 herein, the Minneapolis & St. Louis Railway Company has advanced substantially the same arguments as those previously set forth in its exceptions to the proposed report of the Examiner in these proceedings. In our reply to those exceptions we opposed the application of the M. & St. L., which contemplated "integration" of [fol. 2341] The Toledo, Peoria and Western so that the two carriers would be operated as one railroad, and supported the acquisition of the T.P. & W. by the Atchison, Topeka & Santa Fe Railway Company and the Pennsyl-

vania Railroad Company for the reason that the latter application would assure continued operation of the T.P. & W. as a separate, independent carrier. Such continued operation, we pointed out, is essential to the public interest factors which the Commission is required to consider under Section 5 (2) (c) of the Interstate Commerce Act.

Since the ultimate purpose of the present petition of M. & St. L. for reconsideration is to have the Commission reverse the order of Division 4, deny the application of the Santa Fe and Pennsylvania, and approve acquisition of the T.P. & W. by the M. & St. L., it is respectfully requested that this intervenor's original brief, and reply to the exceptions of the M. & St. L. to the Examiner's proposed report, be referred to as stating our position in opposition to the present petition for reconsideration. The public interest, and particularly that aspect thereof bearing upon employee interest, demands the continued operation of the T.P. & W. as a separate, independent carrier.

Wherefore, it is respectfully submitted that the Report and Order of Division 4 should be permitted to stand as the order of this Commission, and that the petition for reconsideration thereof should be denied.

Respectfully submitted,

Clarence M. Mulholland, 741 National Bank Building, Toledo 4, Ohio; Richard R. Lyman, 741 National Bank Building, Toledo 4, Ohio.

Of Counsel: Mulholland, Robie & Hickey, 741 National Bank Building, Toledo 4, Ohio.

Dated at Toledo, Ohio, August 20, 1957.

[fol. 2342] Certificate of Service (omitted in printing).

[fol. 2343]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18991

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY CONTROL

Finance Docket No. 19086

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY CONTROL

ORDER—December 13, 1955

It appearing, That on July 8, 1955, an application was filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company for authority to acquire joint control of the Toledo, Peoria & Western Railroad Company through purchase of its capital stock in equal amounts by The Atchison, Topeka and Santa Fe Railway Company and by Pennsylvania Company, a wholly-owned subsidiary of the Pennsylvania Railroad Company, Finance Docket No. 18991;

It further appearing, That on October 13, 1955, The Minneapolis & St. Louis Railway Company filed application for authority to acquire control of said Toledo, Peoria & Western Railroad Company through purchase of capital stock and suggested that a comparative or consolidated hearing be held with the application on file in Finance Docket No. 18991, Finance Docket No. 19086;

It further appearing, That on November 16, 1955, The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company filed their petition for leave to intervene in opposition to the application in Finance Docket No. 19086 alleging that their application in Finance Docket No. 18991 is based on duly executed contracts with the holders of the capital stock of Toledo, Peoria & Western Railroad Company while the application in Finance Docket No.

19086 is totally devoid of any contracts or agreements for purchase of said stock; requested denial of the suggestion of The Minneapolis & St. Louis Railway Company that a comparative or consolidated hearing be held; and, that the application in said Finance Docket No. 19086 be denied after hearing thereon;

It is ordered, That said The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company be, and they are hereby, permitted to intervene and be treated as parties to said proceeding in Finance Docket No. 19086;

It is further ordered, That these proceedings be consolidated for hearing at a time and place to be hereafter designated by the Commission; and petitioners' request in this respect be, and it is hereby denied;

It is further ordered, That action on the protest filed by the interveners in opposition to the application in said Finance Docket No. 19086 be, and it is hereby deferred [fol. 2344] until after hearing and any other appropriate proceedings before the Commission;

And it is further ordered, That a copy of the petition and of this order be served upon the Governor and public regulatory commissions of the States of Illinois and Iowa, and that a copy of this order be served upon each of the parties to these proceedings and the Governors and public regulatory commissions of the States of Arizona, California, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Virginia and West Virginia.

By the Commission, division 4.

HAROLD D. McCOY,
Secretary

(SEAL)

[fol. 2345]

SUPREME COURT OF THE UNITED STATES

Nos. 552, 620 and 633, October Term, 1958

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Appellant,

vs.

UNITED STATES OF AMERICA et al.; SOUTH DAKOTA et al., Appellants,

vs.

UNITED STATES et al.; and MINNESOTA et al., Appellants,

vs.

UNITED STATES et al.

APPEALS from the United States District Court for the District of Minnesota.

ORDER NOTING PROBABLE JURISDICTION—March 9, 1959

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted and the cases are transferred to the summary calendar.

FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. [redacted] 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, A MINNESOTA CORPORATION

Appellant

VS.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

JURISDICTIONAL STATEMENT

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Chicago 3, Illinois
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In the
Supreme Court of the United States

OCTOBER TERM, 1958

No. ———

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, A MINNESOTA CORPORATION

Appellant

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

JURISDICTIONAL STATEMENT

Appellant appeals from the final order of the United States District Court for the District of Minnesota, entered September 16, 1958, dismissing the appellant's complaint and refusing to set aside an order of Division 4 of the Interstate Commerce Commission issued May 31, 1957, and an order of the Interstate Commerce Commission issued October 30, 1957. Those orders, in substance, granted the application of The Atchison, Topeka and Santa Fe Railway

Company, the Pennsylvania Company and The Pennsylvania Railroad Company to purchase the stock of, and acquire control of, the Toledo, Peoria & Western Railroad Company, and dismissed the competing application of this appellant.[1] This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW

The opinion of the District Court for the District of Minnesota, 4th Division, is reported in 165 F. Supp. 893. A copy of that opinion is attached hereto as Appendix A. The report of Division 4 of the Interstate Commerce Commission is reported in 295 I.C.C. 523. Copies of that report and of the orders of Division 4 and of the full Commission are attached hereto as Appendix B.

JURISDICTION

This action was brought under 28 U.S.C. § 1336, to set aside the above-mentioned orders of Division 4 of the Interstate Commerce Commission and of the Interstate Commerce Commission. It was heard by a District Court of three judges, as provided in 28 U.S.C. § 2284 and §§ 2321-2325. The final order of the District Court was entered September 16, 1958, and the Notice of Appeal was filed

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[1] The interested railroads will be referred to hereinafter as follows:

Toledo, Peoria & Western Railroad Company	Western
The Pennsylvania Railroad Company	Pennsylvania Railroad
The Atchison, Topeka & Santa Fe Railway Company	Santa Fe
Chicago, Burlington & Quincy Railroad Company	Burlington
Wabash Railroad Company	Wabash
The Monon Railroad	Monon
New York, Chicago & St. Louis Railroad Company	Nickel Plate
Chicago, Rock Island & Pacific Railroad Company	Rock Island

in that Court October 2, 1958. The jurisdiction of the Supreme Court to review that decision by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review that decision on direct appeal in this case: *Chicago, M., St. P. & P. R.R. Co. v. Illinois*, 355 U.S. 300 (1958); *Allegheny Corp. v. Breswick & Co.*, 353 U.S. 151 (1957); *United States v. I.C.C.*, 352 U.S. 158 (1956); *United States v. Pierce Auto Freight Lines*, 327 U.S. 515 (1946).

STATUTES INVOLVED

Section 1 of the Sherman Act, as amended (15 U.S.C. § 1), sections 7 and 10 of the Clayton Act, as amended (15 U.S.C. §§ 18 and 20), and the National Transportation Policy and sections 5(2) and 5(11) of the Interstate Commerce Act, as amended (49 U.S.C. preceding § 1, and §§ 5(2) and 5(11)) are set forth in Appendix C hereto.

THE QUESTIONS PRESENTED

1. The orders of the Interstate Commerce Commission should be set aside because of the failure to make findings and the making of improper findings, including the following instances:

(a) The Commission failed to make any findings with respect to appellant's showing of large economies in operation, improved efficiency in service, promotion of the Peoria gateway, strengthening of a small carrier, enhancement of competitive conditions and related material issues.

(b) Substantial evidence is lacking to support the Commission's findings with respect to adequacy of the

appellant's service, the fairness of the proposed purchase price, the effect of a Pennsylvania-Santa Fe acquisition on appellant's revenues, competing freight car availability, and the illusory notion of "independent" operations of Western under Pennsylvania-Santa Fe ownership.

(c) The Commission's findings that Pennsylvania-Santa Fe would solicit Peoria gateway traffic on a parity with their long haul gateways is in direct contradiction to the sworn testimony of the principal officers of both carriers. There are similar conflicts between the Commission's findings and the testimony of the successful applicants respecting industrial development and operating economies.

2. The orders of the Interstate Commerce Commission should be set aside because the Commission failed to give appellant a true comparative hearing, by virtue of the following actions:

(a) The Commission made no determination of the standards required by the National Transportation Policy and the Interstate Commerce Act as applied to these applications, and made no comparative findings of the extent to which the competing applications would comply with or promote each of such standards.

(b) The Commission erroneously adopted, as the determinative standard of public interest and the National Transportation Policy, the continued operation of Western as a "separate" entity. Such erroneous standard (i) ignored the reality of actual control by Pennsylvania-Santa Fe, (ii) was unsupported by any findings of fact as to public advantage of such separate entity, and (iii) precluded consideration of the merits of appellant's

competing application which contemplated merger of service and enormous economies.

(c) In adopting the sole standard of separateness, the Commission ignored the following considerations: the contrasting motives and objectives of the competing applicants, the contrasting economic self-interests of the competing applicants in the Peoria gateway, the advantages to commerce and the national defense of strengthening small carriers and promoting competing gateways, and appellant's proposed improvement in public service by integration of operations and operating economies approximating 35 per cent of the total operating expenditures of Western.

(d) The Commission applied different standards with respect to the results, particularly the diversion of traffic from other carriers, which would follow from the grant of either of the competing applications.

3. Does the authority of the Commission, under section 5(11) of the Interstate Commerce Act, to relieve carriers and their employees of the restraints of the antitrust laws, "insofar as may be necessary to enable them to carry into effect the transaction so approved", carry with it power to condone the violation of section 10 of the Clayton Act occurring prior to the Commission proceedings? If such statutory authority does exist, may it be exercised without any findings with respect to the violation or the considerations motivating the Commission to condonation? Can the statute be avoided by the fact that only one of the Pennsylvania-Santa Fe partnership signed the second contract of purchase, as suggested by the Commission, or by the fact that Pennsylvania Railroad acted through its wholly-owned subsidiary, as suggested by the District Court?

4. Has the Commission authority to sanction a violation by Pennsylvania Railroad and Santa Fe of section 1 of the Sherman Act and section 7 of the Clayton Act without findings of fact respecting the nature and scope of such violations and without disclosing the facts or considerations that warrant relief from the operation of the antitrust laws pursuant to section 5(11) of the Interstate Commerce Act? Was appellant deprived of adequate judicial review and due process by the absence of findings or a statement of the considerations upon which the Commission's sanction of such antitrust violations was predicated?

5. Did the District Court err in holding that "within the limits of the jurisdiction conferred upon it, the power of a court or an administrative agency to decide questions is not confined to deciding them correctly"? Has appellant been deprived of judicial review and due process by the application of that standard without distinction between questions of law, questions of fact, and mixed questions of law and fact, and without regard to the Commission's failure to grant procedural due process to the appellant?

STATEMENT OF THE CASE

1. The Purposes and Motives of the Competing Applicants.

Appellant, whose operating slogan is "The Peoria Gateway", is a small carrier with its main line operating between Minneapolis, Minnesota, and Peoria, Illinois. The latter city is its sole gateway to the east. Western is a short railroad spanning Illinois east and west through Peoria, utilizing the Peoria gateway to avoid the longer haul and congestion through Chicago or St. Louis.

Western has long been regarded as a natural extension of appellant by leading rail experts including the President of Western (Mr. Coulter) and the President of Pennsylvania Railroad (Mr. Symes). The Interstate Commerce Commission denied appellant's application to purchase the stock of Western and instead awarded it jointly to Pennsylvania Railroad, the largest railroad in the east, and Santa Fe, the largest railroad in the west.

More than four years ago appellant began negotiating vigorously for the purchase of Western for the purpose of consolidating operations, effecting economies of almost $2 million per year, and effecting improved and integrated service through the Peoria gateway. The self-interest of appellant is in promoting and maximizing the use of the Peoria gateway upon which its operations are dependent.

Pennsylvania Railroad had previously owned Western in partnership with the Burlington and such ownership resulted in a disastrous receivership of Western. Pennsylvania Railroad had no interest in re-acquiring Western until its President learned that interests close to appellant had acquired the Monon and would be in a position to operate an "outer-outer belt" line around Chicago, whereupon he decided to put an end to that "nonsense" (Tr. 1040).[2] This he proceeded to do by negotiations with Wilmington Trust Company, the corporate cotrustee of the McNear estate, holding 82 per cent of Western's stock. Pennsylvania Railroad invited Santa Fe as its partner. Undisputed evidence establishes that the interlocking directorate between Pennsylvania and Wilmington Trust afforded Pennsylvania decisive preference in the negotiations and the purchase.

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[2] Since the record has not yet been printed, these references are to the typewritten transcript of the testimony before the Commission. That transcript has been certified to this Court.

The self-interest of the Pennsylvania Railroad and the Santa Fe is in their long hauls through the St. Louis and Chicago gateways and their objective in acquiring Western was to stifle competition through the Peoria gateway, which provides the only outlet to appellant.

2. The Negotiations.

In June, 1954, shortly after new management took control of the appellant, Mr. Heineman, then Chairman of the Executive Committee of the appellant, opened negotiations with Mr. Gladson, the individual cotrustee of the McNear estate, for the purchase of the stock of Western. Negotiations continued during the balance of 1954. By the end of that year the trustees had indicated a desire to sell, the appellant had indicated a desire to purchase, cash as the medium of payment was agreeable to both parties, and the appellant had made a firm offer. On January 25, 1955 Mr. Bancroft of Wilmington Trust Company wrote Mr. Heineman stating that he had learned that there were others interested in acquiring the stock of Western.

At just about that time a representative of Wilmington Trust Company approached Mr. Symes with respect to the possible interest of Pennsylvania Railroad in purchasing Western. Mr. Symes was interested. As indicated above, the reason for his about-face was publicity given to rumors of a connection between the appellant, Western and the Monon to form an outer-outer belt around Chicago. He flatly opposed any such plan (Tr. 309, 310, 1040).

During March representatives of Wilmington Trust Company ignored the appellant's negotiations and the appellant's expressed willingness to pay the highest price, and dealt with the Santa Fe and Pennsylvania Railroad. On

April 15, 1955, Wilmington Trust Company, acting on behalf of both trustees, entered into letter agreements to sell 26 per cent of the stock of Western to Santa Fe and 26 per cent of the stock to the Pennsylvania Company at a price of $100 per share. The appellant received no prior notice of these agreements and no opportunity to bid a higher price despite its earlier offers.

As soon as the appellant learned of these letter agreements, it took vigorous action in its further efforts to purchase the stock on terms more favorable to the sellers. For a substantial period of time the further offers of the appellant were not even communicated by Wilmington Trust Company to the individual cotrustee. On May 5, 1955, the appellant made a formal written offer to buy all the stock at the basis of $133.33 per share. The duration of that offer was subsequently extended to and including May 26, 1955. On the afternoon of May 26th an officer of the Wilmington Trust Company informed Mr. Gurley, then President of the Santa Fe, that the appellant's offer would be accepted unless a higher offer were received by 5 o'clock. The Santa Fe then made an offer to purchase the stock at $135.00 per share, which offer was immediately accepted.

The agreement of May 26, 1955 was between the trustees and the Santa Fe. It was followed by a later agreement among Santa Fe, Pennsylvania Railroad, and the Pennsylvania Company, whereby Santa Fe agreed to sell half the stock to the Pennsylvania Company.

During the period of these negotiations and contracts, four directors of Wilmington Trust Company were also directors of Pennsylvania Railroad and/or its affiliates or subsidiaries.

3. Proceedings before the Interstate Commerce Commission.

On July 8, 1955, Santa Fe, Pennsylvania Railroad and the Pennsylvania Company filed with the Commission a joint application for authority under section 5(2) of the Interstate Commerce Act, as amended, to acquire control of Western through exercise of the several stock purchase contracts. That application became Finance Docket No. 18991. By order of the Commission dated August 2, 1955, appellant was authorized to intervene and to become a party in opposition to that joint application.

On October 13, 1955, appellant filed with the Commission an application for authority under the same statute to acquire control of Western. Appellant did not have a contract, but proposed that, if its application were approved, it would purchase for cash all the outstanding stock of Western at the same price and on the same terms and conditions proposed by Pennsylvania-Santa Fe. Appellant also requested comparative consideration of the two applications. That application became Finance Docket No. 19086. Santa Fe, Pennsylvania Railroad and the Pennsylvania Company were authorized to intervene in opposition to that application. By order dated December 13, 1955, Division 4 assigned the two applications for consolidated hearing.

Numerous parties intervened in the two dockets. They included the Nickel Plate and the Rock Island, each of which requested authority to be included in the acquisition of the stock of Western on an equal basis with the successful applicant or applicants. The Burlington and the Wabash intervened, expressing no objection to the granting of the Pennsylvania-Santa Fe application provided appropriate conditions were attached for the continued maintenance

of the present routes and channels and the continuance of existing traffic and operating relationships and arrangements; they also asked, however, that, if any railroad other than the Santa Fe or the Pennsylvania Railroad were authorized to acquire an interest in the stock of Western, each of them be included in the transaction to the same extent as any such other railroad. Certain other railroad companies, without further participation, requested the inclusion of certain conditions in the event of an order authorizing control. The States of Minnesota and South Dakota, together with their respective utility regulatory bodies, supported the appellant's application and opposed the Pennsylvania-Santa Fe application. The State of Illinois opposed the appellant's application. Certain other bodies intervened in support of the Pennsylvania-Santa Fe application.

A consolidated hearing was held in Peoria in the period February 1-14, 1956, before an examiner of the Commission. The transcript of the testimony comprises 1,933 pages, and there are 136 hearing exhibits.

The proposed Report of the Examiner, served on or about November 9, 1956, recommended (a) dismissal of the appellant's application, (b) approval of the Pennsylvania-Santa Fe application, and (c) denial of the petitions of the other intervening railroads to participate in the acquisition. There followed exceptions, replies and oral argument before Division 4 of the Commission. On May 31, 1957, Division 4 issued its Report and Order (a) approving and authorizing the Pennsylvania-Santa Fe acquisition, (b) dismissing the appellant's application, and (c) denying the request of the Rock Island and the Nickel Plate for inclusion.

Thereafter, appellant filed a petition for reconsideration by the full Commission of the Report and Order of Division 4, and requested oral argument before the full Commission. The Nickel Plate and the States of Minnesota and South Dakota and their regulatory bodies took like action. Other parties filed replies. The Commission did not hear oral argument. Under date of October 30, 1957, it denied all petitions for reargument and reconsideration and made the Order of Division 4 effective thirty days from the date of service of the Order of the full Commission.

4. The Action in the District Court.

On November 29, 1957, the appellant commenced its action against the United States of America and the Interstate Commerce Commission in the United States District Court for the District of Minnesota, seeking to suspend, enjoin, set aside, and annul the orders of the Interstate Commerce Commission. Thereafter a temporary restraining order issued, a 3-judge court was constituted, various parties were permitted to intervene and file pleadings on both sides of the action, and the action was argued and submitted. On September 16, 1958, the Court filed its order dismissing the appellant's complaint. Subsequently the appellant filed its Notice of Appeal and secured an injunction pending appeal. Two later Notices of Appeal have also been filed, one by the State of Minnesota and the Minnesota Railroad and Warehouse Commission on November 10, 1958 and the other by the State of South Dakota and the Public Utilities Commission of the State of South Dakota on November 12, 1958. Those parties have been intervenors throughout the entire administrative and judicial proceedings, representing the public interest of their

respective jurisdictions and supporting the position of the appellant.

THE QUESTIONS ARE SUBSTANTIAL

These proceedings present a sorry picture of administrative procedure at its worst. Two large railroads decided to cut off potential competition by thwarting a joinder of two small railroads—the appellant and Western—despite the logic of that joinder, despite the contributions it would make to the nation's transportation, and despite prior expressions of approval. They accomplished their initial aim of securing a purchase contract when Wilmington Trust Company, having interlocking directorates with Pennsylvania Railroad, obligingly closed its doors to the appellant. Thereafter the Interstate Commerce Commission whitewashed the transaction; in so doing, it ignored the motives and objectives of the competing applicants, it ignored the nation's antitrust policy, it distorted the standards of the Interstate Commerce Act and the National Transportation Policy, and it wholly failed to make proper, requisite findings. Finally, the District Court abdicated its duty of judicial review and gave a startling example of judicial obeisance to administrative "expertise".

The questions presented by this case urgently require full review by the Supreme Court. They are important to carriers regulated under the Interstate Commerce Act, to persons in and out of the regulated industries who are subject to the antitrust laws, and to all persons whose rights are determined by administrative agencies.

1. The Findings.

Proper findings are required by section 8 of the Administrative Procedure Act, 5 U.S.C. § 1007. Section 10 of that

Act (5 U.S.C. § 1009) requires that the reviewing court shall set aside findings unsupported by substantial evidence and that in making that determination the court shall review the whole record. This Court has made it clear that, "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951).

In the instant case, the appellant adduced substantial and persuasive evidence that its plan conformed to the applicable standards of the Interstate Commerce Act and the National Transportation Policy, and that its plan was entitled to the approval of the Commission in preference to the Pennsylvania-Santa Fe plan. The duty then rested on the Commission to make three classes of findings, viz.: (1) ultimate findings that the appellant's plan was fair and reasonable and consistent with the public interest, and that it better advanced the National Transportation Policy than did the Pennsylvania-Santa Fe plan; (2) basic findings that the appellant's plan would result in substantial transportation economies (which would not be realized in any major degree under the Pennsylvania-Santa Fe plan), that appellant's plan would result in one unified transportation system comprising the present mileage of appellant and Western, thereby, in contrast to the opposing application, developing, coordinating and preserving a valued and essential part of the national transportation system, and serving the needs of our country's commerce and our national defense; and (3) subsidiary and factual findings supporting the basic findings and covering such matters as the dollar amount of annual transportation economies to be anticipated under appellant's plan (approximately $1,800,-

000) as contrasted with the other proposal, the specific advantage of having only one operating yard for the two companies in Peoria, and the specific advantage of having only one management headquarters, as contrasted to the duplication which the Pennsylvania-Santa Fe plan proposed to continue.

Neither in form nor in substance can there be found in the Division 4 report ultimate findings, basic findings and subsidiary and factual findings sufficient to justify the approval of the Pennsylvania-Santa Fe plan and the rejection of appellant's plan. Division 4 did not make the findings indicated in the preceding paragraph. It did not, and on the record it could not, make findings to the contrary.

In *Central of Georgia Railway Company Control*, — I.C.C. — (Finance Docket No. 19159, November 14, 1958), the Commission held that the acquisition of control of a carrier in violation of section 5(4) of the Interstate Commerce Act would not be approved as in the public interest. The dissenting opinion, while agreeing with the recommendation of criminal prosecution, felt nevertheless that, "the public interest would best be served by the operational efficiencies and economies which would result from single control of the Central by the Frisco. The indicated benefits to the public which would flow therefrom outweigh, we believe, the considerations for barring the Frisco from control because of the indicated violations". Since the Commission's most recent pronouncement finds operating economies and improved service to be considerations of such vital import in the public interest, the failure of the Commission in the instant case even to make findings on that subject cannot be justified. This is underscored by the pains that the Commission took to opine that the Santa Fe-Pennsylvania acquisition would yield some operating economies, notwithstanding

the absence of evidence of a single dollar of savings in their proposed "independent" operation of Western.

In the present case the Commission saw in the fact that the acquiring carriers were Western's largest connections, an assurance of the future development of the acquired property. Lurking in the record, however, are certain historical facts which, standing unexplained by either evidence or findings, are inconsistent with that assurance. Western already had a history of ownership by Pennsylvania and Burlington, a large western carrier, both of which had strong interests in competing gateways. The property was permitted to deteriorate and drop into a long receivership from which it was rescued by George McNear, a man of great vision and industry. It was his forceful leadership and aggressive solicitation that built Western into a successful bridge property. The large interchange of traffic with Pennsylvania and Santa Fe, while facilitated by schedule coordination and other cooperation, was nevertheless attributable to the energetic and effective efforts of Western's traffic department. It may well be that the Commission is warranted in expecting the Pennsylvania-Santa Fe acquisition to chart a different course from the long, tragic record preceding the receivership, but the reasons are not revealed. If the number or competition of the gateways or the self-interest of the large carriers or the pattern of traffic has undergone a change in the intervening years, the circumstances and effect of these changes were deserving of consideration or at least mention in the Commission's report.

In at least thirteen instances, the Division 4 report sets forth appellant's position on various necessary facts and issues vital to the determination of the question as to which of the applicants should prevail. In these instances the Com-

mission contented itself with merely a recital of the position appellant presented, by such language as "Minneapolis contends", "Minneapolis estimates", "Minneapolis states", "Minneapolis insists", and the like. Under no possible view can such recitals rise to the dignity of holding, by implication or otherwise, that the Commission either approved or disapproved of these various positions. It was not enough to report that appellant claimed economies aggregating $1,770,945 from the integration of operations with Western, or that it asserted that such economies would inure to the benefit of the shippers and the public through improved service and industrial development. It was incumbent upon the Commission in the application of its expert knowledge to determine and to state in findings whether these economies and public benefits could in fact be achieved. It was not enough to recite appellant's contention that Western is a natural extension of its railroad, or that its interchange with Western at Peoria is proportionately greater in carloads and freight revenues than that of any other carrier appearing in these proceedings, or that Minneapolis proposes to provide new service routes via Western's junctions with connecting carriers for moving traffic in all directions. The absence of findings formulated in the exercise of the Commission's special competence leaves the validity of these assertions and their implications unanswered.

In this case, the District Court's opinion completely ignored the Commission's failure to make findings except in a boilerplate sentence in the penultimate paragraph of the opinion. In so doing, the District Court ignored the requirements of the Administrative Procedure Act and the many cases which have emphasized and re-emphasized the necessity for proper findings by administrative agencies on all important points. *E.g., Chicago, M. St. P. & P. R.*

R. Co. v. Illinois, 355 U.S. 300 (1958); *Carroll Broadcasting Co. v. F.C.C.*, 258 F. 2d 450 (D.C. Cir. 1958); *Boston & Maine R. R. v. United States*, 162 F. Supp. 289 (D. Mass. 1958), appeal dismissed, — U.S. — (November 17, 1958).

In a number of instances where the Commission did make what seemed to be findings, those findings are not supported by substantial evidence upon the record, considered as a whole. Thus, the conclusion that acquisition by Pennsylvania-Santa Fe would not jeopardize a substantial amount of the appellant's present traffic completely lacks support because it ignores not only the appellant's unchallenged accounting studies, but also the successful applicants' own testimony as to solicitation policies. The purchase price was stamped as reasonable by the Commission on the ground that it was negotiated in an arm's length transaction and that appellant was willing to pay as much. Ignored is the fact that appellant's offer was predicated upon economies that would double the income to be derived from the Western property. No consideration was given to the earnings-price ratio that far outstrips the levels established for any railroad on the public exchanges. The Commission's brief in the District Court decries the "speculative test of potential earnings". We had thought it too well settled for argument that "the commercial value of property consists in the expectation of income from it". *Galveston, Harrisburg, etc., Ry. Co. v. Texas*, 210 U.S. 217, 226 (1908); *Consolidated Rock Products Co. v. Du Bois*, 312 U.S. 510, 526 (1941); *Group of Investors v. Milwaukee R. Co.*, 318 U.S. 523, 540 (1943). The Division 4 report fails to explain in terms of value the fact that the contract approved by the Commission calls for a purchase price 35 per cent higher than the one agreed upon by the same "will-

ing buyers" and the same "willing seller", one month earlier. The extent to which considerations unrelated to the public interest—such as the stifling of competition—may have influenced the price enhancement was not considered in the Commission's report.

With respect to these unsupported findings, the Commission and the District Court again ignored the commands of the Administrative Procedure Act and the *Universal Camera* case, and such recent decisions as *Public Service Commission of Utah v. United States*, 356 U.S. —, 2 L. Ed. 2d 886 (1958). For the guidance of administrative agencies and litigants generally, it is imperative that this Court redefine what is required under the substantial evidence rule. See Cooper, *Administrative Law: The "Substantial Evidence" Rule*, 44 A.B.A.J. 945 (Oct. 1958).

Finally, a number of the findings the Commission did make were patently erroneous because contrary to the evidence and, in some instances, contrary to the sworn testimony of officers of the successful applicants. The Commission found that the successful applicants would permit traffic through, and industrial development of, the Peoria gateway in competition with the St. Louis and Chicago gateways, which would provide them with longer hauls, greater revenues and more effective utilization of their expensive facilities in both cities. The President of Pennsylvania Railroad testified that his line gave preference in solicitation first to St. Louis and then to Chicago, without soliciting for the Effner interchange with Western. He added that this solicitation would not be changed, and that is consistent with the long haul, self-interest of his company (Tr. 280-282). The Santa Fe testimony was that Lomax and Chicago would be put on a parity, but unrouted traffic would be moved through Chicago; and the President of

Santa Fe testified that the influence of the originating carrier was of tremendous importance in routing the traffic (Tr. 98, 210, 259). With respect to industrial development the officers of Pennsylvania-Santa Fe testified that they would seek to locate on Western only such industrial concerns as they could not locate on their own respective properties.

The Commission found that the successful applicants would give improved car supply and other operating benefits to Western. Yet the evidence shows that both Santa Fe and Pennsylvania Railroad have suffered substantial car shortages whereas appellant, as the Commission's report concedes, has an enviable record of car supply. The Commission made findings as to the adequacy and speed of appellant's service west of Peoria and the "neutrality" of connections in appellant's proposal. These findings are in direct contradiction to the only evidence on those subjects in the record.

The District Court apparently felt that these matters were ones peculiarly within the province of the Commission. Be that as it may, an administrative determination based on findings which are flatly and demonstrably erroneous cannot be sustained. As Mr. Justice Brandeis observed in *Baltimore & O. R. R. Co. v. United States*, 264 U.S. 258 at 265 (1924):

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."

The superficial plausibility of the Division 4 report in this case cannot withstand analysis. The District Court refused to undertake that analysis. Unless the decision of the

District Court is reviewed by this Court, it will stand for the proposition that the legal requirement of proper findings on all essential points supported by substantial evidence on the record, considered as a whole, can be satisfied by recitals, by failures to make findings, by the making of unsupported findings, and by the making of blatantly wrong findings.

2. The Failure to Accord a Comparative Hearing.

The legal requirement that an administrative agency must grant a "comparative hearing" when presented with two mutually exclusive applications had its origin in *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327 (1945). The specific duty of the agency was summarized as follows in *Johnston Broadcasting Co. v. F.C.C.*, 175 F. 2d 351 at 357 (D.C. Cir. 1949):

> "In respect to comparative decisions, these are the essentials: (1) The bases or reasons for the final conclusion must be clearly stated. (2) That conclusion must be a rational result from the findings of ultimate facts, and those findings must be sufficient in number and substance to support the conclusion. (3) The ultimate facts as found must appear as rational inferences from the findings of basic facts. (4) The findings of the basic facts must be supported by substantial evidence. (5) Findings must be made in respect to every difference, except those which are frivolous or wholly unsubstantial, between the applicants indicated by the evidence and advanced by one of the parties as effective. (6) The final conclusion must be upon a composite consideration of the findings as to the several differences, pro and con each applicant."

The same Court has recently announced that when an administrative agency merely gives lip service to the require-

ment but fails to grant a true comparative hearing, the courts should step in to prescribe the correct action. *Midwestern Gas Transmission Co. v. F.P.C.*, 258 F. 2d 660 (D. C. Cir. 1958). This Court has also held that the Interstate Commerce Commission is not relieved from the duty to evaluate conflicting proposals in the light of the statutory standards or from the duty of articulating in findings the steps it has taken to measure the evidence against those standards. *Schaffer Transportation Co. v. United States*, 355 U. S. 83 (1957).

In the instant case the Commission ordered and held a consolidated hearing. But the consolidated hearing did not provide any true comparative consideration of the opposing applications. Some of the respects in which the Commission erred are as follows:

(1). The National Transportation Policy (49 U.S.C., preceding § 1) declares that the Interstate Commerce Act shall be administered so as to "promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation * * * all to the end of developing, coordinating and preserving a national transportation system * * * adequate to meet the needs of the commerce of the United States, of the Postal Service and of the national defense." The criteria of economic and efficient service were ignored in this case. The appellant's application and its supporting evidence clearly demonstrated operational economies, improved efficiency of operation and the strengthening of two small carriers. The successful application proposed no such advantages in accordance with the Congressional mandate. The Division 4 report notes, without comment, appellant's position that it has no incentive other than to maximize service and traffic through

the Peoria gateway, its only outlet to the east. On the other hand, the successful applicants as a matter of self-interest must, and the President of Pennsylvania Railroad stated under oath that he would, favor the longer more lucrative hauls through the Chicago and St. Louis gateways (Tr. 280-282). The Commission saw no occasion to weigh these economic facts or even the motivation of Pennsylvania-Santa Fe in seeking to acquire Western.

To be meaningful a comparative hearing requires specific findings which set out, compare and weigh the advantages and disadvantages of the competing applications to determine the extent to which each accords with the public interest and the statutory standards. Upon a composite consideration of such comparative findings the Commission would be enabled to reach a conclusion, taking into account the public interest balance of the merits of the competing applications.

In this case, however, the Commission never reached this point of comparing and weighing the competing applications. At the outset the Commission decided that the public interest and statutory policy required "separate and independent operation" of Western. The difficulty with that approach is twofold. First, it is illusory to assume independence of a property wholly owned by two of the largest carriers in the country. Secondly, the adoption of that standard automatically ruled out an application which would give effect to the integration and operating economies expressly contemplated by the National Transportation Policy. We might add that nowhere in the report is there a single finding of fact that justifies the Commission's assumption that the illusory independence of Western would in any way serve the public interest or advance the National Transportation Policy. The closest approach is the thought that the largest

connections ought to own the bridge carrier, but what public benefits might be derived from such competition-stifling approach remain unrevealed.

If, as the Commission concluded, the continuation of the present policies of Western is required in the public interest, the only course open would be to deny all applications for acquisition. Certainly the "separate and independent" status of Western, controlled as it would be by Pennsylvania Railroad and Santa Fe, would not continue undiminished Western's aggressive solicitation in competition with the St. Louis, Chicago and Decatur gateways that are more lucrative to its prospective owners. Stripped of empty phrases this is the realistic meaning of the so-called standard adopted by the Commission, and we respectfully suggest that the Court should have the courage to penetrate the veil and strike down the illusion. The truth is, (a) that the appellant is the only carrier in this proceeding which depends exclusively on the Peoria gateway, and (b) that Pennsylvania Railroad and Santa Fe compete directly not only with Western but with every one of Western's connections.

(2) Particularly in an atmosphere of competitive complexities, no true comparative hearing could be afforded without regard for the underlying motivations of the competing parties and the historical background of the property to be acquired. Neither area of inquiry was pursued by the Commission, and both are obviously vital in a determination of the public interest. Pertinent in this regard is the recent instruction to the Federal Communication Commission in *Massachusetts Bay Telecasters v. F.C.C.*, — F. 2d — (D.C. Cir. July 31, 1958), to determine, "Whether the conduct of any applicant, if not of a disqualifying character, has been such as to reflect adversely upon such ap-

plicant from a comparative standpoint". That is particularly pertinent to our case in which the successful applicants combined an attempted purpose to stifle competition with the utilization of interlocking directorates for special advantage in violation of the Clayton Act.

(3) The Commission applied different standards with respect to the loss or diversion of traffic which might be occasioned by one proposal as against the other. On the one hand, it stated that the appellant's application would be "extremely harmful" to other carriers. It instanced only unsupported, vague fears by the Wabash, a subsidiary of the Pennsylvania Railroad. On the other hand, it dealt with the appellant's detailed evidence of the damage it would suffer if Western were owned by Pennsylvania-Santa Fe in the following language:

> "Of course, if service over the Western is improved under the control of the Santa Fe and the Pennsylvania and traffic can be handled over it more economically and efficiently than under existing routes, there may be some diversion of traffic but such diversion would not jeopardize the maintenance of adequate transportation service by the objecting intervening carriers."

The Commission's conclusions on both points are patently erroneous. At the very least, however, minimum standards of fair play would require that the Commission should test the threatened loss of traffic by the same standards in both instances.

(4) As a final example, the Commission imposed certain conditions (for the continuance of existing traffic connections, etc.) as adequate for the protection of others in its approval of the Pennsylvania-Santa Fe application. Those were standard terms. The appellant offered to ac-

cept exactly the same conditions. If they are adequate for the protection of others in the event of acquisition by the two giant railroads, *a fortiori*, they would be adequate to protect the interests of other railroads in the event of an acquisition by this small appellant. The Commission nowhere explained the disparity of its treatment. Before the District Court, counsel for the Nickel Plate, who favored neither side in this controversy, agreed with appellant that the standard terms would be at least as adequate protection in one instance as in the other.

It is readily apparent that the Commission in this case gave no more than lip service to the requirement for a comparative hearing. That this appellant was harmed by that evasion of the Commission's duty is one reason for this appeal. Of broader importance, however, is the consideration that this agency must not be allowed to evade its duty. If it is successful once, it will do the same thing again. If it succeeds, other agencies will do likewise. The end result can only be a further deterioration of administrative justice. This Court alone can guard against that danger by restating the guiding principles with sufficient frequency so that they cannot be overlooked. This case is a sufficient indication that a restatement of those principles is needed and needed now.

3. The Violation of Section 10 of the Clayton Act.

In relevant part, Section 10 of the Clayton Act (15 U.S.C. § 20) provides:

> "No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate,

> in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission."

This Court has not heretofore had occasion to construe this statute. Neither the Commission nor the District Court seriously attempted so to do. The purchase of Western, which the Commission was asked to, and did, approve, had its roots in a direct unequivocal violation of this statute. Two legal questions confronted the Commission: The first was whether the authority of the Commission, under section 5(11) of the Interstate Commerce Act, to immunize any steps required to consummate the approved transaction inferentially carried authority to condone *prior* antitrust violations. Neither the language of the statute nor the only prior decision on the subject, *In Re Missouri Pacific R. R.*, 13 F. Supp. 888 (E.D. Mo. 1935), which held that the prohibition of the statute was absolute, was noticed in either the Commission report or the District Court opinion. If it is assumed that the Commission did have such inferential authority, the second question is whether there were any circumstances warranting the exercise of its discretion. No showing on that subject was tendered by the successful applicants and no findings appear in the Division 4 report.

The shallowness of the consideration below is revealed

by the Commission's impression that taking the second contract in the name of Pennsylvania's partner and then dividing the Western shares rendered the statute inoperative, and the District Court's intimation that Pennsylvania Railroad could avoid the statute through the simple device of acting through its wholly-owned subsidiary. Public interest demands that the statute be enforced in the fullest Congressional spirit and that transparent devices stamped with approval below be condemned by this Court.

The Commission's brief in the District Court argued that, "the Commission had no authority to decide whether a violation of Section 10 of the Clayton Act had already occurred." Assuming that the Commission were endowed with discretion to grant the immunity or condonation, the brief does not explain how that discretion could be exercised without noticing the violation and considering its effect upon the public interest. That the Commission has had a recent change of heart in this regard appears in *Central of Georgia Railway Company Control*, — I.C.C. — (November 14, 1958). There the Frisco sought approval of acquisition of control of Central of Georgia. The record revealed that the control had previously been acquired without the necessary statutory authorization. As a matter of sound public policy the Commission declined to exercise its asserted discretion under section 5(11) to permit the law violator to retain the benefits of its outlaw action. After noting that a violation of the Act is not necessarily a bar to approval, the Commission said that the "public interest is concerned not only with improvements in transportation service, but also with the maintenance of respect for and the observance of the law." The Commission opinion continued:

> "If Frisco is permitted to retain the fruits of its unlawful conduct, and we sanction such conduct, which we consider to have been in flagrant disregard of the law, others will be encouraged to pursue a like course and to present a *fait accompli* for our approval. Obviously, such is not in accord with the intent of the statute, i.e., that we pass upon 'proposed' acquisitions of control prior to their consummation, including the justness and reasonableness of the terms upon which such control is to be acquired. If the indicated practice were generally followed, the administration of the statute in the public interest would be seriously hindered, if not defeated."

That language applies with equal force and effect to the flagrant violation of section 10 of the Clayton Act, clearly shown by the record in this case and never denied by the successful applicants, the Commission or the District Court. At minimum, if the Commission were in fact authorized by the statute to confer upon the law violator the fruits of its misconduct, its exercise of such extraordinary authority must be supported by something more than a cavalier edict.

An authoritative construction of the statute and definition of the authority of the Commission with respect thereto is of importance to all common carriers engaged in commerce and the persons with whom they must deal.

4. The Violations of Section 1 of the Sherman Act and Section 7 of the Clayton Act.

The Division 4 report recites the size and scope of operations of the Santa Fe and Pennsylvania systems In the light of those facts, without more, it is readily apparent that the acquisition of Western by Pennsylvania-Santa Fe is a clear violation of section 7 of the Clayton Act and of section 1 of the Sherman Act. By any standard of measure-

ment, the power of these two colossi of the railroad industry is already so great that any further extension of their empire—let alone an extension like the one in the present case, which serves the added purpose of providing an additional bridge to link those two empires with each other—violates the wording, the principle and the spirit of these antitrust laws and the very basic antitrust policy of this country. The orders of the Commission and of Division 4, and the report of Division 4, do not mention either section 1 of the Sherman Act or section 7 of the Clayton Act. That failure raises the question of whether the Commission may authorize an acquisition transaction and immunize its participants from the operation of the antitrust laws where the Commission gave no consideration to the antitrust laws and where, absent such authorization, the transaction admittedly would be in violation of the antitrust laws.

We admit that if the Commission followed the standards enunciated in section 5(2)(b) of the Interstate Commerce Act and in the National Transportation Policy and if, on the facts of a particular case, the Commission explicitly found that deference to those standards outweighed the desirability of preserving or enhancing competition and outweighed the respect to be accorded to the antitrust laws of the United States, then the Commission could proceed under section 5(11) of the Interstate Commerce Act and could use its authorization powers so as to grant immunity from prosecution under the antitrust laws. But the Commission is not empowered to grant such immunity without making appropriate findings giving the basis for such action or, at minimum, without laying bare for the reviewing courts both its conclusion and the reasoning by which it reached such conclusion. In the case at bar, the Commission failed to perform that minimum duty.

The record is barren, not only of findings, but even of evidence to warrant a discretionary exemption from the antitrust laws. Mr. Symes, President of Pennsylvania Railroad, initiated the acquisition for the express purpose of blocking the "grandiose plans" for an outer-outer belt line. He wanted none of "this nonsense", which would move traffic expeditiously around Chicago in effective competition with his Chicago, Decatur and St. Louis gateways (Tr. 309, 310, 1040). While not admitting a purpose of thwarting appellant's expansion and competition, the Santa Fe President explained his joinder with Pennsylvania on the basis that "we prefer to own it" (Tr. 179-180). Wherein these disclosures revealed such social benefit or public interest as to entitle the two railroad giants to freedom from compliance with the antitrust laws, neither the Commission nor the lower court undertook to explain. Why stifling competition and thwarting the expansion of a small carrier, why the illegal use of interlocking directorates warrant the Commission, in the discharge of its duty to protect the public interest, to throw robes of immunity around Pennsylvania-Santa Fe cannot be answered by anything in this record.

The District Court purported to give two answers. First, it relied upon the decision of the Supreme Court in *McLean Trucking Co. v. United States*, 321 U.S. 67 (1944). In so doing, however, it ignored the command of the *McLean* case that,

> "Congress, however, neither has made the anti-trust laws wholly inapplicable to the transportation industry nor has authorized the Commission, in passing on a proposed merger, to ignore their policy." (321 U.S. at 86)

Secondly, the District Court stated that the Commission had given due consideration to the effect of the acquisition

on competing carriers and the possible curtailment of competition. That statement, however, cannot be supported because of the following errors by the Commission, most of which have been mentioned above: (1) the Commission attempted to substitute recitals for the findings required of it, (2) the Commission properly stated the rule as to the burden of proof on Pennsylvania-Santa Fe but failed to apply it, (3) the Commission completely ignored the motives and objectives of the Pennsylvania-Santa Fe, (4) the Commission closed its eyes to the inescapable result of the conflicting interests of the various parties in the Peoria gateway, and (5) the Commission arbitrarily applied different standards with respect to the diversion of traffic which would be occasioned by approval of either of the proposals before it. Thus, the Commission could not and did not give proper consideration to the anti-competitive consequences of its determination.

In the court below, the opposing parties all relied on the *McLean* case to support their arguments concerning the duty of the administrative agency in granting immunization from the antitrust laws. It is apparent that some further clarification by this Court is needed both with respect to the immediate question presented here and also with respect to the broader question of the effect of the antitrust laws on regulated industries currently so much mooted in legal periodicals.

The prevailing uncertainty or chaos in this field is adequately indicated by the following quotations:

> (*Report of the Attorney General's National Committee to Study the Antitrust Laws*, p. 270 (1955)):
>
> "In any instance, the weight to be accorded competitive factors in measuring 'public interest' turns, of course, on Congressional intent. At the outset, this

issue is one for agency determination. The agency must make some 'independent conclusion' concerning the Congressionally intended role for competition as well as indicate in any case the effect on 'public interest' of promoting competition.

"Ultimately, however, the agency's interpretation of Congressional design is clearly a proper subject for judicial review. True, the ' "wisdom and experience of * * * [the agency]", not of the courts, must determine whether the proposed consolidation is "consistent with the public interest" '. Equally true, however, it is the Court's 'responsibility to say whether the Commission has been guided by proper consideration in bringing the deposit of its experience * * * to bear * * * in [determining] the public interest.' Where Congress has been silent, the basic policy of our antitrust laws requires the Court's conclusion that competition, at least where all other considerations involved are equal, is in the 'public interest'. In all instances, the courts, in reviewing agency discretion, should recognize that 'administrative authority to grant exemptions from the antitrust laws should be closely confined to those (instances) where the * * * (regulatory) need is clear.' "

(Memorandum submitted December 16, 1957 by the Department of Justice to the Interstate Commerce Commission in *Consolidated Freightways, Inc.—Control*, MC-F-6135):

"In view of the harmful effects an approval herein would have on those interests which are intended to be protected by the underlying policies of the antitrust laws, we respectfully suggest to the Commission that if approval is to be granted, the Commission expressly find that factors, other than competitive, which it is to take into account under the national transportation policy, compel such approval."

(Report of Division 4 of the Interstate Commerce Commission dated February 26, 1958, in *Pacific*

Intermountain Express Co.—Control and Merger-Union Transfer Co., MC-F-6199):

> "In passing upon transactions subject to section 5, it must be borne in mind that applicants have the burden of proving that such transactions will be consistent with the public interest. Among other things, we are required to give consideration to the effect which a proposed transaction will have upon competing carriers and adequate transportation service to the public. In 1950, when Congress amended section 7 of The Clayton Act, it did so to restore its effectiveness in the struggle to maintain competitive conditions in our economy, and an examination of its legislative history discloses a clear intent to assert potential harm to competition as a test of legality under the amended section."

5. The Scope of Review by the District Court.

The opinion of the District Court in this case amounts to an affirmance of the Commission on all points and all grounds. It could hardly have been otherwise in view of the following statement in that opinion:

> "It must be remembered that, within the limits of the jurisdiction conferred upon it, the power of a court or an administrative agency to decide questions is not limited to deciding them correctly."

Admittedly the scope of judicial review of agency action is a puzzling and difficult field. See, Jaffe, *Judicial Review: Question of Law*, 69 Harv. L. Rev. 239 (1955), *Judicial Review: Question of Fact*, 69 Harv. L. Rev. 1020 (1956), *Judicial Review: Constitutional and Jurisdictional Fact*, 70 Harv. L. Rev. 953 (1957).

In the instant case, however, the District Court completely abdicated its function. It did not consider the lack of

findings, the insubstantial support for many of the findings and the direct contradiction of the Commission's findings by sworn testimony of the successful applicants. In fact, appellant did not have the judicial review commanded by section 10(e) of the Administrative Procedure Act. A reading of the District Court's opinion makes it clear that it accepted in totality the report of the Commission and that it felt unauthorized to inquire into the absence of, the sufficiency of, or the record support for, findings. Undisputed facts contrary to the Commission's conclusions, matters of obvious self-interest, and undisputed evidence were all ignored by the District Court apparently on the theory that to consider them would be to invade the sacred ground of the Commission's expert competence.

This point has a significance far transcending the instant controversy. In their brief in the District Court, the United States and the Commission stated:

> "It is significant to note that although the courts have had frequent occasion to consider orders of the Commission under section 5(2) approving carrier unifications, no case has been found in which such an order has been held invalid on the merits."

We suggest that the Commission is not infallible, and that the lower courts have not performed their proper duty. If this Court will not review the instant decision, it is difficult to know when any Commission decision under section 5(2) of the Interstate Commerce Act will ever be subject to effective judicial review.

CONCLUSION

From an analysis of the entire record, it is apparent that the Commission made up its mind at the outset and then distorted both the facts and the law in an effort to justify its preconceived conclusion. In so doing, the commission erred as a matter of law and far exceeded the limits of the discretion conferred upon it by Congress, however broad and vague those limits may be. It is respectfully submitted that the questions presented by this appeal are substantial, that they are of public importance, and that they require that the appeal be heard on the merits.

Respectfully submitted,

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APPENDIX A

United States District Court
District of Minnesota
Fourth Division

4-57-Civ-123

The Minneapolis & St. Louis Ry. Co.,

Plaintiff,

and

New York, Chicago & St. Louis Railroad Co.,

State of South Dakota, and Public Utilities Commission of the State of South Dakota and

State of Minnesota, and Minnesota Railroad & Warehouse Commission,

Intervening Plaintiffs,

vs.

United States of America,

and

Interstate Commerce Commission,

Defendants,

and

The Atchison, Topeka & Santa Fe Ry. Co., The Pennsylvania Railroad Co. and Pennsylvania Company,

The City of Peoria, the City of East Peoria and the Peoria Assoc. of Commerce,

The State of Illinois,

The shippers along the lines of the Toledo, Peoria & Western Railroad Co., City of Bushnell, Illinois, Bushnell Chamber of Commerce; City of Canton, Illinois; Canton Chamber of Commerce; City of LeHarpe, Illinois; LeHarpe Golden Rule Club; Village of Lomax, Illinois; City of Keokuk, Iowa; Keokuk Chamber of Commerce; Keokuk Bridge Commission; the Hubinger Company, Keokuk; City of Warsaw, Illinois; Warsaw Chamber of Commerce; City of Forrest, Illinois; City of Fairbury, Illinois; City of Gridley, Illinois; City of Gilman, Illinois; City of Sheldon, Illinois; City of Watseka, Illinois; City of Eureka, Illinois; Village of Secor, Illinois; City of Washington, Illinois; City of Chenoa, Illinois,

Intervening Defendants.

Memorandum Decision

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Phil Saunders, Attorney General and Herman L. Bode, Assistant Attorney General, Pierre, South Dakota, for intervening plaintiff State of South Dakota, and Public Utilities Commission of the State of South Dakota.

Miles Lord, Attorney General and Harold J. Soderberg, Assistant Attorney General, St. Paul, Minn., for interven-

ing plaintiffs State of Minnesota and Minnesota Railroad & Warehouse Commission.

George E. MacKinnon, U. S. District Attorney, St. Paul, Minn., Victor R. Hansen, Assistant Attorney General, Washington, D. C., James E. Kilday and P. James Underwood, Attorneys, Department of Justice, Washington, D. C. for defendant United States.

Robert W. Ginnane, General Counsel, Washington, D. C., and B. Franklin Taylor, Jr., Assistant General Counsel, Washington, D. C., for defendant Interstate Commerce Commission.

R. S. Outlaw, Starr Thomas, Carl E. Bagge, Chicago, Illinois, for intervening defendant Atchison, Topeka & Santa Fe Railway Company.

Edwin A. Lucas, and Robert H. Bierma, Philadelphia, Pa., for intervening defendants Pennsylvania Railroad Company and Pennsylvania Co. Richards, Jones, Montgomery & Cobb, Minneapolis, Minn. of counsel.

Max J. Lipkin, Peoria, Illinois, for intervening defendant City of Peoria. Fred V. Stiers, East Peoria, Illinois, for intervening defendant City of East Peoria. Verle W. Safford, Peoria, Illinois, for intervening defendant Peoria Association of Commerce.

Latham Castle, Attorney General, Chicago, Illinois for intervening defendant State of Illinois. Harry R. Bagley, Special assistant Attorney General; of counsel.

Robert H. Walker, Keokuk, Iowa, for intervening defendants Communities and Shippers along the lines of the Toledo, Peoria & Western Railroad Company. Boyd, Walker, Huiskamp & Concannon, Keokuk, Iowa, and Cant, Taylor, Haverstock, Beardsley & Gray, Minneapolis, Minn., of counsel.

Before Sanborn, Circuit Judge, and Nordbye and Devitt, District Judges.

Per Curiam.

This is an appeal by the Minneapolis & St. Louis Ry. Co. (Minneapolis) from an order of the Interstate Commerce Commission approving the acquisition of control jointly by the Pennsylvania Company and through the latter, the Pennsylvania Railroad Company (Pennsylvania) and the Atchison, Topeka & Santa Fe Railway Company (Santa Fe) of the Toledo, Peoria & Western Railroad Company (Western) under Section 5(2) of the Interstate Commerce Commission Act (49 U. S. C. A., Sec. 5(2)). Subsequently, the intervening parties were joined.

The report and decision of the Commission's Division 4, dated May 31, 1957, is recorded in 295 I. C. C. 523. The full Commission denied reconsideration and reargument on October 30, 1957. By these orders the Commission granted the application of the Pennsylvania and Santa Fe, subject to the conditions set out in the footnote[1] to

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[1] "1. That under the control of the Santa Fe and the Pennsylvania the Western shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise authorized by us.

"2. The present neutrality of handling traffic inbound and outbound and in overhead service by the Western shall be continued so as to permit equal opportunity for service to and from all lines reaching the rails of that carrier without discrimination as to routing or movement of traffic, and without discrimination in the arrangements of schedules or otherwise.

"3. The present traffic and operating relationships existing between the Western, on the one hand, and all lines connecting with its tracks on the other, shall be continued insofar as such matters are within the control of the Santa Fe or the Pennsylvania;

"4. The Western shall accept, handle, and deliver all cars inbound and outbound and in overhead service, loaded and empty, without discrimination in promptness or frequency of service as between cars destined to or received from competing carriers and irrespective of destination or route of movement.

acquire joint control of the Western, dismissed the application of the Minneapolis & St. Louis Railway Company (Minneapolis) to acquire control of Western through stock ownership, and denied the petitions of New York, Chicago & St. Louis Railroad Company (Nickel Plate) and the Chicago, Rock Island and Pacific Railroad Company (Rock Island) for participation in the stock ownership and control of Western.

Western is approximately 240 miles long. It extends across the northern part of Illinois from Effner on the east through Peoria to Lomax, Illinois, and Keokuk, Iowa, on the west. It connects with the Pennsylvania at Effner, with the Santa Fe at Lomax, with the Rock Island and the Chicago, Burlington & Quincy (Burlington) at Keokuk, with the Minneapolis and Nickel Plate at Peoria. All told, Western has connections for interchange of traffic with 16 railroads. More than two-thirds of its total revenues are derived from overhead or bridge traffic, traffic that is received from one railroad to be delivered to another. Little of its revenue is produced by purely local traffic.

Western has outstanding 90,000 shares of capital stock, 73,800 of which are held by the trustees of the estate of George P. McNear, Guy A. Gladson and Wilmington

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"5. The Santa Fe and or the Pennsylvania shall not do anything to restrain or curtail the right of industries located on the Western to route traffic over any or all existing routes and gateways;

"6. The Santa Fe and Pennsylvania shall refrain from closing any existing route or channel of trade with any carrier party to this proceeding on account of their control of the Western, unless and until otherwise authorized by us; and

"7. Any party or any person having an interest in the subject matter may at any future time make application for such modification of the above-stated conditions, or any of them, as may be required in the public interest, and jurisdiction will be retained to reopen the proceedings on our own motion for the same purpose."

Trust Company. McNear had acquired the property in 1927, after the unsuccessful operation of it by Pennsylvania and Burlington had ended in receivership. Under his ownership and operation the road became highly successful and a valuable property. Western occupied a strategic position by passing, as it did, the congested terminals of Chicago and St. Louis. It seems that much of its success came after the construction of a Western Connection with the Santa Fe at Lomax. For the year ended June 30, 1955, approximately 70% of the cars of interchange traffic and of Western gross revenues were attributable to the Pennsylvania and the Santa Fe. The Burlington and the New York Central Railroad Company ranked third and fourth in the volume of interchange, and Rock Island, Nickel Plate, and Minneapolis followed, in that order.

The trustees of the McNear Estate proposed to dispose of the capital stock of Western for $135 a share. Santa Fe agreed to pay that price after Minneapolis had offered $133. Santa Fe allowed Pennsylvania to have half of the stock, subject, of course, to approval by the I. C. C. It is apparent that Santa Fe and Pennsylvania did not favor acquisition of Western by Minneapolis or participation in ownership and control by Nickel Plate and Rock Island.

Minneapolis, supported by the Minnesota and South Dakota plaintiffs, contends, in effect, that, under the evidence and the applicable law, the Commission could not approve the acquisition of the control of Western by the Pennsylvania and the Santa Fe, and should have approved the application of Minneapolis, which would have resulted in a consolidation with increased efficiency and economy in management.

Minneapolis argues that the orders in suit are invalid for the following reasons: (1) Pennsylvania had violated

Section 10 of the Clayton Act, since it and the Wilmington Trust Company, co-trustee of the McNear estate, had directors in common; (2) the acquisition violates Section 1 of the Sherman Act and Section 7 of the Clayton Act; (3) the Commission failed to accord Minneapolis a true comparative hearing; and (4) the findings of the Commission lack adequate evidentiary support.

The Nickel Plate, which, with the Rock Island, had intervened in the proceedings before the Commission, requested equal participation and ownership of Western with whichever carrier or carriers might be authorized to acquire stock control. Rock Island did not intervene herein. Nickel Plate argues that the Commission failed to make findings on material issues relating to the effect that control by Pennsylvania and Santa Fe would have on competitors and on the general competitive situation in the industry, and that if control of Western is awarded to any carrier to the exclusion of Nickel Plate, the neutrality of Western will be destroyed, to its detriment and that of Nickel Plate.

The applications for the control of Western were filed under 49 U. S. C. A. Section 5(2), which, so far as pertinent, provides:

> "(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—
>
> "(i) * * * for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock * * *
>
> "(b) * * * If the Commission finds that, subject to such terms and conditions and such modifications as it shall find it be just and reasonable, the pro-

posed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: * * *"

Section 5(11) of Title 49 U. S. C. A. contains this provision:

"* * * any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. * * *"

From these statutes, it would appear that, notwithstanding the antitrust laws and all other legal restraints or obstacles, the Interstate Commerce Commission may, if it determines that it is consistent with the public interest and with the transportation policy of the United States, authorize a carrier or carriers to acquire control of another carrier by purchase of its capital stock. Since Congress has empowered the Commission, and not the courts, to determine whether the acquisition of control of one carrier by another or by others is consistent with the public interest, the determination of the Commission may not be set aside

unless it can be said that there is no rational basis for it. Canadian Pacific Railway Co. v. United States, 158 F. Supp. 248, 251, 252 and cases cited.

That this Court would or might have arrived at a different conclusion, had it had the duty and responsibility of deciding the controversy between the applicants, is of no consequence.[2]

It must be remembered that, within the limits of the jurisdiction conferred upon it, the power of a court or an administrative agency to decide questions is not confined to deciding them correctly. Thompson v. Terminal Shares, Inc., 8 Cir., 89 F. 2d 652, 655; Pittsburgh Plate Glass Co. v. National Labor Relations Board, 8 Cir., 113 F. 2d 698, 701.

"A controversy like this always calls for fresh reminder that courts must not substitute their notions of expediency and fairness for those which have guided the agencies to whom the formulation and execution of policy have been entrusted." Railroad Commission of Texas v. Rowan & Nichols Oil Co., 310 U. S. 573, 580-581, 60 S. Ct. 1021, 84 L. Ed. 1368; Pittsburgh Plate Glass v. National Labor Relations Board, supra, 113 F. 2d at 701.

Considering now the contentions of the parties, Minneapolis lays principal stress on the argument that the Pennsylvania and the Wilmington Trust Company, co-trustee of the McNear estate, violated Section 10 of the Clayton Act

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[2] It will be to no purpose to discuss the contentions of Minneapolis that Pennsylvania was primarily motivated in acquiring an interest in Western by a desire to thwart the plans of Minneapolis. The Commission had no authority to direct the trustees to deal with Minneapolis rather than with the other interested purchasers.

since each of them had directors in common.[3] Its position is that while the exemption provision, Section 5(11), quoted above, may be applicable to Section 7 of the Clayton Act, it is not applicable to Section 10.

However, a reading of Section 5(11) would indicate that the authority vested in the Commission is not only broad, but it is explicitly made "exclusive and plenary." The Commission having found that the acquisition of the Santa Fe and Pennsylvania is in the public interest, it would seem to follow that any antitrust restrictions or prohibitions would become inoperative. In passing, it may be pointed out that here the Wilmington Trust Company is functioning in a fiduciary capacity as Trustee in the interest of the beneficiaries of the trust. We do not have a situation where interlocking directors may be enriched by reason of dealings in their securities and thus should be required to sell securities only to a bidder whose "Bid is most favorable to the common carrier." Section 10 should be quoted. It reads, in part:

> "No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its presi-

[3] It should be pointed out that it is the Pennsylvania Company, the wholly-owned subsidiary of Pennsylvania Railroad, which seeks to acquire 50% of Western stock. The Pennsylvania Company is not engaged in railroad operations nor does it operate carrier property. Section 10 refers only to a "common carrier engaged in commerce". While this distinction may not be of controlling importance, it should be mentioned.

dent, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission." 15 U. S. C. A. § 20

A mere reading of this section would indicate that the common directorate which existed between the Wilmington Trust Company and the Pennsylvania Company was not the kind intended by the Congress to be covered by the prohibition. It does not appear to cover the sale of stock held by a trust company to a common carrier. This section apparently was designed to prevent a railroad company from buying securities without receiving competitive bids from prospective sellers. There is no language in Section 10 which pertains to any competitive bidding by the railroad company. In any event, Section 10 is a part of the antitrust laws. See 15 U. S. C. A. § 12. And the immunity granted by Section 5(11) is applicable thereto.

Finally, it should be added that the United States Supreme Court has made it clear that the Interstate Commerce Commission is vested with authority to relieve proposed acquisitions of one railroad by another from the operations of the antitrust laws. For it to do so is consistent with the conditions set out by the Congress in the National Transportation Policy of 1940. In McLean

Trucking Co. v. United States, 321 U. S. 67, 64 S. Ct. 370, 88 L. Ed. 544, the Court said at pp. 84-85:

> "* * * there can be little doubt that the Commission is not to measure proposals for all-rail or all-motor consolidations by the standards of the anti-trust laws. Congress authorized such consolidations because it recognized that in some circumstances they were appropriate for effectuation of the national transportation policy. It was informed that this policy would be furthered by 'encouraging the organization of stronger units' in the motor carrier industry. And in authorizing those consolidations it did not impart the general policies of the anti-trust laws as a measure of their permissibility."

And on p. 87:

> "In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the overall transportation policy. Resolving these considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. Congress left that task to the Commission 'to the end that the wisdom and experience of that Commission may be used not only in connection with this form of transportation, but in its coördination of all other forms.' 79 Cong. Rec. 12207. 'The wisdom and experience of that commission,' not of the courts, must determine whether the proposed consolidation is 'con-

> sistent with the public interest.' (Citing cases). If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported by evidence, it is not our function to upset its order."

While this language was used with reference to consolidation in the motor truck industry, it is applicable here.

However, Minneapolis stresses the alleged stifling competition by the so-called oligopolistic control by two major railroads of a strategic bridge line whose independence heretofore assured Minneapolis access to its most important gateway. It reasons that the mere recital in the findings of the Commission as to the extensive mileage, large revenues, and manifest prosperity of these two great railroad systems, compels the conclusion that the acquisition of Western would violate Section 1 of the Sherman Act and Section 7 of the Clayton Act. Minneapolis contends, therefore, that the Commission must weigh the violation of the anti-trust laws against all other relevant factors and base its conclusion on adequate findings.

At the outset, it may be observed that, merely because these two large railroad systems have acquired a 240-mile railroad under joint control, does not in and of itself justify a finding that there will be an oligopolistic control which stifles competition. It is not the function of the Commission to determine whether the acquisition of Western by these two railroads will violate the anti-trust laws. The Commission has not attempted to do so and can make no definitive decision as to whether or not the contemplated transaction will result in a restraint of trade or a monopoly which is forbidden by law. McLean Trucking Company v. United States, supra, 321 U. S. at 79.

Suffice it to say that the Commission did give due consideration to the effect of the acquisition on competing carriers and the possible curtailment of competition, and weighed such factors as against the broad question of public interest. We recognize that the Commission's expertise is not infallible, but where there is no question as to the Commission's having given consideration to the effect of curtailing competition in the light of the National Transportation Act, and where its conclusions are not without substantial foundation, we cannot substitute our judgment for that of this administrative agency. Whether dire competitive consequences will occur, as predicted by Minneapolis and Nickel Plate by reason of the acquisition approved by the Commission, is a matter to which its attention was directed. It concluded that any adverse competitive results were far outweighed by the safe, adequate and efficient services which would inure to the public as a result of such acquisition.

Minneapolis next urges that its application was not given a true comparative consideration by the Commission. The Commission pointed out that the proceedings before it concerned two applications for control. The two applications were consolidated and submitted on a single record and disposed of in one decision. Apparently the lack of contract by Minneapolis with the trustees did not deprive it of a full and complete hearing before the Commission. As noted above, the Commission considered the advantages and disadvantages of integration of Western with Minneapolis, and with respect thereto it considered and weighed the reasons why the Santa Fe and Pennsylvania proposal was more consistent with public interest. We cannot say that the Commission acted arbitrarily, or that it did not evaluate the two competing proposals in light of

the public interest. The advantages to Minneapolis in adding Western to its railway system seems apparent. No doubt Minneapolis would be materially strengthened by its proposed integration with Western. But obviously the advantages to Minneapolis was only one of the considerations and factors which the Commission had to weigh and evaluate.

The plan which Minneapolis proposes is to abolish Western as an independent carrier, and that plan is strongly opposed, not only by the carriers and other defendants who have intervened herein, but also by many communities and industries in Illinois and Iowa, as well as the employees of Western. The removal of the offices of Western and its key personnel to Minneapolis is strongly protested. The large savings which allegedly were to follow upon an integration of Minneapolis and Western, as asserted by Minneapolis, was weighed and considered by the Commission. Likewise, the alleged economic harm which would ensue to other carriers under Minneapolis' plan to establish coordinated schedules between it and the many other lines which intersect with Western was considered by the Commission. Whether upon integration there would be such a diversion of traffic to Minneapolis which would be harmful to other carriers is a matter that the Court should not attempt to determine. Such questions are peculiarly for the Commission to decide, and we cannot say that the evidence as to such harm is not substantial. It may be noted that, of the $1,770,945 reduction in combined operating expense of Minneapolis and Western if integration took place, $1,327,062 would result from the elimination of some 256 positions now occupied by employees of Western. Whether such economies outweigh the alleged detriment to Western's employees, to its local in-

dustries and communities, and to other carriers, is also a matter which is clearly within the sound judgment of the Commission.

Nickel Plate's principal contention is that the Commission failed to make adequate findings on the general competitive situation, primarily with reference to the eastern territory of the United States. Nickel Plate states that the Commission's failure to analyze the effect on competition when railroads the size of Pennsylvania and Santa Fe take over Western and fail to make specific findings in that regard, is fatal to the validity of its order. However, the Commission was fully cognizant of the competitive situation in the light of the proposed acquisition, but it concluded that the other carriers' interchanging traffic with Western would not be injured. It specifically emphasized the protection which would be afforded carriers exchanging traffic with Western in view of the checks and balances ingrained in a system where the ownership is divided equally between the largest connecting carrier in the East and the largest in the West. If the Commission is sound in its prediction that the connecting and immediate competing carriers of Western will not be injured by the acquisition and that competition generally will not be unduly curtailed, it would not seem necessary for the Commission to discuss the question of any alleged monopolistic threat to the eastern railroads or as to the nation as a whole. None of the so-called eastern railroads have intervened here. Moreover, it may be pointed out that Western is not the only strategic bridge line from the Middlewest to the eastern carriers. There are other carriers that bisect the same east and west area and are in direct competition with Western. Such factors were undoubtedly given due consideration by the Commission. We cannot say that the

Commission's conclusion that the patent self-interest of these two large railroads, with the restrictions imposed upon them in the ownership of Western's operations and an independent railroad tends to insure an operation which will be consistent with the public interest, is erroneous.

The Commission specifically found that "Public interest demands that the present policies of Western in all respects be continued." It concluded that this result would be attained if the two carriers which had contributed the greatest volume of traffic with Western, one from the East and one from the West, should be accorded joint ownership. As stated, it appears that some 70% of Western's interline traffic is exchanged with these two railroads. This constitutes about two-thirds of Western's total traffic. Nickle Plate has not substantiated its position that the Commission acted arbitrarily in denying it the right to participate in the ownership of Western's stock. The Commission concluded that "Any reduction in the ownership interest of the Santa Fe and the Pennsylvania by the inclusion of other carriers in the control of Western would be accompanied by an equivalent reduction in their economic incentive for future development of Western and the territory served by it." That this deduction is a sound appraisal of the situation cannot be characterized as unsupported by the evidence. It is entirely reasonable to expect that the two carriers which are largely responsible for the excellent condition of Western today, will, by sheer self-interest, continue with the same incentive in the future.

The Commission might have granted the application of Minneapolis for sole control and ownership, which was strenuously opposed by all those carriers who wanted Western to remain independent and neutral. The Commission might have authorized the Rock Island and the Nickel

Plate to join the Pennsylvania and the Santa Fe in joint ownership and control of Western. The Commission concluded that the application of Pennsylvania and Santa Fe was consistent with the public interest and should be granted. That, we think, under the evidence and the law, it had power to do; and, even if that conclusion was wrong, it cannot be said to be arbitrary or capricious, and is therefore binding upon this Court.

We have fully considered all of the other arguments and contentions of the parties and conclude that they are, likewise, without merit. The Commission's Order is based on adequate findings supported by substantial evidence in the record before it.

The petitions are dismissed and the temporary restraining order is discharged. A stay of 30 days is granted.

Dated September 16, 1958.

John B. Sanborn,
United States Circuit Judge.
Gunnar H. Nordbye,
United States District Judge.
Edward J. Devitt,
United States District Judge.

APPENDIX B

Interstate Commerce Commission
Finance Docket No. 18991 [1]

Toledo, Peoria & Western Railroad Company Control

Decided May 31, 1957

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1. Acquisition by the Atchison, Topeka & Santa Fe Railway Company and the Pennsylvania Company, and through the latter by the Pennsylvania Railroad Company, of control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock, approved and authorized. Conditions prescribed.

2. Request of the Chicago, Rock Island & Pacific Railroad Company and the New York, Chicago & St. Louis Railroad Company, under section 5(2)(d) of the Interstate Commerce Act, for authority to be included on an equal basis in the acquisition of control, through stock ownership, of the Toledo, Peoria & Western Railroad Company, denied.

3. Application of the Minneapolis & St. Louis Railway Company for authority to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock dismissed.

J. C. Gibson, R. S. Outlaw, Starr Thomas, Carl Bagge, J. B. Reeves, Edwin A. Lucas, John B. Prizer, Robert H. Bierma, and *Thomas O. Hunter,* for applicants in Finance Docket No. 18991.

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[1] This report also embraces Finance Docket No. 19086, Toledo, Peoria & Western Railroad Company Control.

Burton K. Wheeler, Edward K. Wheeler, Richard Musenbrock, Eldon S. Olson, and *Robert G. Seaks* for applicant in Finance Docket No. 19086.

Latham Castle and *Harry R. Begley* for the State of Illinois.

Phil Saunders, Herman L. Bode, Charles A. Carr, and *C. A. Merkle* for the State of South Dakota and the South Dakota Public Utilities Commission.

Miles Lord, Harold J. Soderberg, Oliver A. Ossanna, and *Paul A. Rasmussen* for the State of Minnesota and the Minnesota Railroad & Warehouse Commission.

Bryce L. Hamilton, Howard P. Robinson, and *Martin M. Lucente* for various NcNear interests.

Bruce Dwinell, Eaton Adams, M. L. Cassell, Thomas O. Broker, Eugene S. Davis, Eldon Martin, Harold E. Spencer, Erle J. Zoll, Jr., Edgar Vanneman, Jr., Albert S. Long, Jr., Merrill Shephard, John B. Goodrich, and *John W. Adams* for railroad interveners.

Verle W. Safford, Max J. Lipkin, Fred V. Stiers, Milo Fleming, Don B. Pioletti, Lynn C. Sieberns, Fred Raney Miller, Lyman R. Fort, Leon L. Lamet, Blaine Ramsey: Lawrence B. McNunn, C. V. O'Hern, Jr., Paul C. Cation, John L. Bordes, and *Robert H. Walker* for other interveners.

Clarence M. Mulholland, Richard R. Lyman, and *H. O. Thompson*; for railway labor organizations.

Report of the Commission

Division 4, Commissioners Mitchell, Arpaia, and Winchell

By Division 4:

Exceptions and replies to exceptions were filed to the report proposed by the examiner, and the cases have been argued orally. Exceptions and requested findings not specifically discussed herein or reflected in our findings or conclusions, have been given consideration and found not justified.

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe)[2], the Pennsylvania Company, and The Pennsylvania Railroad Company (Pennsylvania), on July 8, 1955, in Finance Docket No. 18991, applied under section 5(2) of the Interstate Commerce Act, as amended, for authority (1) to the Santa Fe and the Pennsylvania Company to acquire direct control of the Toledo, Peoria & Western Railroad Company (Western), through ownership by each of 50 per cent of the capital stock of the latter; and (2) to Pennsylvania, by virtue of its 100 per cent stock ownership of the Pennsylvania Company, to acquire indirect control of Western.

On October 13, 1955, in Finance Docket No. 19086, The Minneapolis & St. Louis Railway Company (Minneapolis) applied for authority under the same section of the act to acquire control of Western through ownership of its entire capital stock.

A consolidated hearing on both applications was held February 1 to 14, 1956, inclusive, at Peoria, Ill. Prior to, or at the hearing, numerous petitions for leave to inter-

[2] Hereinafter in this report, as throughout the record, the various railroads involved sometimes will be referred to by the abbreviated designations shown in parentheses.

vene were granted. Applicants in Finance Docket No. 18991 intervened in opposition to the Minneapolis application in Finance Docket No. 19086, and the Minneapolis intervened in opposition to the authority sought in Finance Docket No. 18991. Unless otherwise indicated, all points hereinafter mentioned are in the State of Illinois.

Position of intervening railroads—The New York, Chicago and St. Louis Railroad Company (Nickel Plate) and the Chicago, Rock Island and Pacific Railroad Company (Rock Island) each requests authority under section 5(2)(d) of the act to be included in the acquisition of the stock of Western on an equal basis with the successful applicant or applicants. The Chicago, Burlington & Quincy Railroad Company (Burlington), and the Wabash Railroad Company (Wabash), have no objection to the granting of the application of Santa Fe and Pennsylvania, provided appropriate conditions are contained in the order for the continued maintenance of present routes and channels of trade via existing junctions and gateways, and the continuance of all existing traffic and operating relationships and arrangements. In the event any railroad other than the Santa Fe and the Pennsylvania is authorized to acquire an interest in the stock of Western, the Burlington and Wabash ask to be included in the transaction to the same extent as any such other railroad.

The Illinois Central Railroad Company (Illinois Central) the Gulf, Mobile and Ohio Railroad Company (Gulf), and the Chicago and North Western Railway Company (North Western) request that, if either application is granted, appropriate conditions be imposed with respect to the maintenance of all routes and channels of trade via existing gateways.

The Monon Railroad requests that, in the event the application of the Santa Fe and the Pennsylvania is approved, one of the conditions to be attached to such approval includes a requirement that the Pennsylvania negotiate and enter into a contract giving the Monon trackage rights over the Pennsylvania lines between Effner and Reynolds, Ind., approximately 35 miles, upon reasonable terms and conditions, subject to our approval. If such a condition is not included, Monon requests that the application of the Santa Fe and the Pennsylvania be denied.

Other interveners—Various communities, civic organizations and shippers, many of whom are located along the line of Western, intervened in support of the Santa Fe-Pennsylvania application; and the Railway Labor Executive's Association and the Brotherhood of Railroad Trainmen intervened to protect the interests of carrier employees. The States of Minnesota and South Dakota, with their respective Public Utilities Commissions, supported, and the State of Illinois opposed, the application filed on behalf of the Minneapolis.

History, policies, and description of Western—The main line of Western extends from its eastern terminus at Effner on the Illinois-Indiana State line, via Peoria, to the western termini at Keokuk, Iowa, and Lomax, approximately 234 miles. A branch line extends from Hamilton to Warsaw, approximately 5 miles. It has connections for the interchange of traffic with 16 railroads, the principal ones being with the Pennsylvania at Effner, with the Santa Fe at Lomax, and with several carriers at Peoria, a point almost midway between Chicago and St. Louis, Mo. Other points of interchange are maintained at Keokuk, and at Sheldon, Webster, Watseka, Gilman, Forrest, Fairbury, Honegger,

Chenoa, El Paso, Eureka, Washington, Farmdale, Canton, Cuba, Bushnell, Ferris, Elvaston, and Hamilton. The headquarters, shops, and yards of Western are at East Peoria, just across the Illinois River from Peoria.

Western began its modern existence in 1927, when George P. McNear acquired the property after a prolonged ownership by the Pennsylvania and the Burlington, which ended in receivership. *T. P. & W. R. R. Acquisition*, 124 I. C. C. 181. Under the guidance of McNear, Western was built into a fine railroad, and upon his death, in 1947, the present management took over and continued with much success. The policy of Western has been, and now is, to maintain strict neutrality between all connections, and to participate in any haul of traffic no matter how slight. Such policy emphasizes the strategic position of an overhead carrier through Peoria as an alternative route, bypassing the congested terminals of Chicago and St. Louis. Much of the success of Western as a bridge line dates from the construction of a western connection with the Santa Fe at Lomax in 1927, authorized in *T. P. & W. R. R. Construction*, 124 I. C. C. 278. In 1928, the first full year after completion of the Santa Fe-Western Lomax connection, the Western interchanged a total of 29,697 carloads of traffic with the Pennsylvania and 7,264 carloads with the Santa Fe. By 1955, the corresponding figures increased to 58,543 carloads, or 97 per cent, and 34,755 carloads, or 378 per cent, respectively.

Over the years, the Santa Fe and the Pennsylvania have cooperated with Western in coordinating their schedules and services. In 1930, arrangements were made for the establishment of coordinate schedules for the handling of perishables from Santa Fe origin territory, and the Western constructed icing facilities at Peoria to accommodate such traf-

fic. Today, the Santa Fe, Western, and Pennsylvania schedules are set up to provide a fully competitive service over the Western route. On westbound traffic moving between Effner and Kansas City, Mo., the Western-Santa Fe service west of Peoria would be a full day faster than if the traffic were handled by the Minneapolis from Peoria to Nemo, thence by the Santa Fe to Kansas City. Eastbound it would be from 11 to 14 hours faster.

Western traffic and revenues—At present, more than two-thirds of the total revenues of Western are derived from overhead or bridge traffic. Much of the remainder is produced by the handling of interline traffic which originates or terminates along its line. Less than 9 per cent of its revenues is produced from local traffic.

For the year ended June 30, 1955, the latest period for which both car and revenue data were available, the total freight revenue of Western was $6,920,432. Of a total of 105,705 cars of interline traffic handled during the period, 74,772, or 70.7 per cent, were interchanged with the Santa Fe and/or Pennsylvania. Such interchange accounted for $4,404,318 or 69.8 per cent, of Western's gross revenues for that year. The Burlington and the New York Central Railroad Company ranked third and fourth in the volume of interchange with Western, and the Rock Island, Nickel Plate and Minneapolis ranked fifth, sixth and seventh, respectively. The protection of interchange traffic was one of the principal reasons advanced by the applicants, and recognized by us in approving acquisition of control in *Detroit, T. & I. R. Co., Control*, 275 I. C. C. 455.

Capitalization—Western has outstanding 90,000 shares of capital stock of which 73,800 shares, or 82 per cent, are held by the trustees of the McNear estate hereinafter re-

ferred to as the trustees. The remainder is held by the Hanover Bank, by other members of the McNear family, and by the president of Western. The Santa Fe has entered into agreements for the purchase of all the capital stock of Western at a price of $135 a share. Each agreement provides for consummation of the purchase of the stock within a reasonable time after our approval. The purchase price is to be paid upon delivery of the stock at the time of settlement, in cash or by certified cashier's or treasurer's check, and the stock is to be delivered to Santa Fe free and clear of all liens, encumbrances, trusts, or obligations of any kind or nature.

Valuation data—The value of the Western's property for rate-making purposes as reported by division 1 as of June 30, 1917, was $7,121,384. Additions and betterments less retirement from the date of valuation to December 31, 1954, as reported by the carrier, amounted to $5,708,109 for carrier-owned property and $749,974 for noncarrier-owned property.

Negotiations leading to sale of stock—The trustees determined to sell the controlling interest in Western in order to diversify the holdings of the trust estate. In June, 1954, the Minneapolis made the original offer to purchase the shares held by the trustees at a price of approximately $69.50 per share. Subsequently, the purchase price per share was increased to about $80. In the spring of 1955, the Santa Fe and the Pennsylvania actively became interested, and on April 15, 1955, actually obtained commitments from the trustees for 26 per cent of the Western stock, each at a purchase price of $100 per share.[3] A dis-

[3] About that same time, the Rock Island made an offer to the trustees for a similar block of 26 percent of the stock.

pute arose, and apparently still exists, with respect to the validity of such commitments.[4] Thereafter, the Minneapolis made a further offer of $133 a share, but on May 26, 1955, before that offer was accepted, the president of the Santa Fe, acting on behalf of that carrier alone, agreed to purchase all the stock held by the trustees for $135 per share, subject to our approval. Thereafter, separate agreements in like tenor were made with the remaining stockholders of Western.

Agreement between Santa Fe and Pennsylvania—By agreement dated June 28, 1955, the Santa Fe, subject to our approval, agreed to sell to the Pennsylvania Company, a wholly owned subsidiary of Pennsylvania, 50 per cent of the entire outstanding capital stock of Western at an average price of $135 a share. Such purchase is without prejudice to any claims, causes of action, or rights which Pennsylvania may have against the trustees with respect to the transaction of April 15, 1955, involving 23,400 shares of such stock; and in the event Pennslyvania acquires all or any of such shares, the obligation under the contract is to be reduced accordingly.

The parties to the agreement, each with the other, and not for the benefit of others not parties thereto, agree that they will exercise their stock ownership of Western to accomplish the following objectives:

1. Western will continue to be operated as a separate and independent carrier with responsible management located along its lines in order to preserve to shippers and communities the present direct access to its officials.

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[4] Regardless of the outcome of the dispute, it is the intent and purpose of the Santa Fe and the Pennsylvania that each is to own exactly 50 percent of the capital stock of Western.

2. The properties of Western, including line and equipment, will be maintained and improved in keeping with the requirements of a railroad of its character and importance.

3. Western will continue to maintain its own solicitation forces and will be entirely free to solicit traffic in such manner as best to serve the interests of Western.

4. All existing routes and channels of trade via Western will be maintained and kept open without discrimination between connecting lines of railroad.

5. The board of directors of Western shall consist of 11 members, of whom 1 shall be the president of the company, 2 shall be officers of Santa Fe, 2 shall be officers of the Pennsylvania Company, or Pennsylvania, or both, and the remaining 6 shall be prominent citizens not connected with any one of the parties to this agreement but selected by the parties thereto and the subject of mutual agreement between them.

Proposals before the Commission—Four alternatives have been proposed for the disposition of these proceedings on the basis of the public interest involved. They are:

1. Authorization of joint and equal control of Western by the Pennsylvania and the Santa Fe.

2. Authorization of sole control by the Minneapolis.

3. Authorization of either application subject to a condition requiring the inclusion, pursuant to the provisions of section 5(2)(d) of the act, of one or more of the railroad interveners expressing a desire for such inclusion.

4. Denial of both applications, or the dismissal of the Minneapolis application in Finance Docket No. 19086, for the reason that no transaction within the meaning of section 5(2) is presented for our determination.

These proceedings represent a new and more complicated phase in the administration of section 5, since it involves 2 applications for authority to control the same property, and petitions by 4 other carriers for inclusion in the transaction under varying circumstances. We must weigh whether each application is consistent with the public interest, with or without inclusion of other railroads, considering not only other intervening petitioners seeking such inclusion but also the other applicant and nonparticipating railroads as well.

The burden of proof, therefore, has become most heavy for an applicant in a proceeding like this, because it must not only overbalance the claims of those seeking to share in the control but also of those seeking to exclude it from the transaction. As a practical matter we, in such a proceeding as this, must arrive at a standard of public interest and determine which of the various plans of control most nearly approximates it. The applications and petitions for inclusion must be denied unless there are advantages in the public interest.

Santa Fe and Pennsylvania systems—These applicants are two of the largest rail carriers in the United States. Their lines converge at Chicago. The Santa Fe system extends from that point to the Pacific coast. It serves 12 States, ranks first in mileage operated, third in freight and total revenues, fourth in the number of employees, and fifth in freight volume. The Santa Fe is strong in two of the fastest growing sections of the country, namely, the southwest and California, and is favored with the long haul of diversified traffic. Except for 3 years during the 1930's, it paid dividends on its stock each and every year since 1901. During the first 9 months of 1955, as compared with the

similar period of 1954, the tonnage and freight revenues of the Santa Fe increased approximately 11 per cent, and its net income increased 22.4 per cent. About 64 per cent of its freight revenues was derived from the transportation of manufactured products originating on its lines.

Except for the New England States, system lines of the Pennsylvania and its subsidiaries blanket the east. As owner of the Wabash, such lines extend westwardly to Des Moines, Iowa, Omaha, Nebr., and Kansas City. Although the Pennsylvania controls the Wabash through ownership of practically all its capital stock, the latter is independently operated with its own management and operating departments.

Pennsylvania operates in 13 States and the District of Columbia. It ranks first among class I rail carriers in the matter of investment, freight traffic, total freight revenues, or by practically any standard used to indicate size and volume of business handled. It has paid a stock dividend each year since 1847. In 1954, the freight revenues of the Pennsylvania, together with its independently operated subsidiaries, amounted to 11.9 per cent of the freight revenues of all class I rail carriers, and 170.6 per cent of the freight revenues of the next largest aggregate combination, the New York Central system. During the first 9 months of 1955, as compared with the similar period of 1954, the Pennsylvania enjoyed substantial increases of 19 per cent in freight tonnage, 12 per cent in revenues, and 171.7 per cent in net income. A little more than one-half of its freight revenues is derived from the transportation of manufactured products originated on its lines. In this respect it is the largest originator of rail traffic in the country.

Minneapolis—The Minneapolis operates approximately 1,400 miles of railroad lines in 4 States, the principal

route extending from Minneapolis, Minn., through Oskaloosa, Iowa, to Peoria. It also operates lines between Minneapolis, through Winthrop, Minn., to Aberdeen and Leola, S. Dak.; from Winthrop, through Tara, Iowa to Des Moines and beyond; and from Albert Lea, Minn., through Corwith, Iowa, to Fort Dodge, Iowa. Its lines do not reach the important gateways of Chicago, St. Louis, or Kansas City. At Peoria, the Minneapolis maintains direct connections for the interchange of traffic with Western, the Peoria & Pekin Union Railway, the Rock Island, and the Peoria Terminal. A complete description of the Minneapolis is contained in *Associated Rys. Co. Acquisition and Securties*, 228 I. C. C. 277. It serves 57 communities in Minnesota and 17 cities and towns in South Dakota.

Since 1936, Minneapolis has spent more than $84 million out of operating revenues on physical rehabilitation of its property. This expenditure has made Minneapolis a modern and efficient operating plant providing exceptionally good service to the public. It is completely dieselized and owns well conditioned rolling stock in adequate supply to accommodate and handle, in a safe and expeditious manner, an increase of at least 25 per cent in the volume of tonnage now available to it.

Minneapolis is predominantly an east-west railroad, bypassing the congested Chicago area. It is largely dependent upon agriculture and related products, and has not proportionately benefited from the tremendous increase in manufacturers' and consumers' goods in recent years. In 1954, agriculture represented 41.2 per cent of the Minneapolis' originated tonnage, 25.9 per cent of its total tonnage, and 30.4 per cent of its total freight revenues. Products of animals, mines and forests, together with farm products, aggregated 80.6 per cent of its originated tonnage

and 52.4 per cent of its revenues. Without doubt, Minneapolis is a substantial railroad rendering good service to the shippers and communities on its lines. It constituted one of the bright spots in providing freight cars for the 1955 grain movement.

For the period 1936-55, the Minneapolis' average annual gross operating revenues were $15,845,000, and its current annual railway operating revenues approximate $20,000,000. For the first 9 months of 1955, as compared with the similar period of 1954, the freight tonnage and revenues of Minneapolis rose by only a few percentage points, and its net income increased 5.6 per cent. On the basis of investment, Minneapolis ranked sixtieth in size among the 127 class I railroads in the country in 1955. It ranks approximately the same with respect to other comparisons usually considered in determining the relative importance and size of railroads generally. It is now reasonably prosperous, with a financial and physical picture that has been steadily improving over the past few years. Minneapolis has paid dividends regularly since 1943. Its capitalization is not burdened with outstanding preferred stock, and the relatively small amount of unfunded long-term debt will not mature until 1967.

During the 4 years 1950-53, 67 per cent of Minneapolis' aggregate loaded tonnage consisted of traffic originated or terminated on, or local to its lines, and 33 per cent constituted overhead or bridge traffic. In the same period, the Minneapolis' interchange with Western at Peoria averaged 12,995 revenue carloads per year which constituted an average of 5.9 per cent of the Minneapolis' total revenue loads and accounted for 8.1 per cent of its total annual freight revenues. In 1954, approximately one-half of the Minneapolis-Western Peoria interchanged represented Min-

neapolis bridge traffic handled in conjunction with the Santa Fe to and from Nemo.

Nickel Plate and Rock Island—These two interveners are grouped together because their respective interests are identical. Each desires a proportionate share of the capital stock of Western irrespective of which pending application is approved; and in the event the applicant or applicants are unwilling to accept, as a condition to approval of their application, participation on an equal basis of ownership by the Nickel Plate and the Rock Island, the latter are ready and anxious to undertake the purchase of the stock for their own accounts. They believe that the true independence and neutrality of Western best can be assured and intended only if the stock-control transaction is thrown open to all interested connections desiring to participate.

Nickel Plate is the sixth largest railroad in size in eastern territory. It serves directly the gateways of Chicago, Peoria, and St. Louis. Nickel Plate is dependent upon the Western for access to western lines, particularly the Santa Fe, via the Peoria gateway, and Western is Nickel Plate's largest single connection at Peoria. Statistics of record indicate that the Western interchange represents 26 per cent of all the traffic handled in Nickel Plate trains to and from Peoria.

The Rock Island operates 7,895 miles of lines in 14 States, extending generally from Chicago, St. Louis, and Memphis, Tenn., on the east, to Tucumcari, N. Mex., and Denver, Colo., on the west. Its line to Peoria branches off the Chicago-Denver main line at Bureau. In 1954, Rock Island's operating revenues totaled more than $187,000,000, and it earned $28.84 per share of preferred stock and $10.96 per share of common stock.

Wabash and Burlington—As indicated heretofore, the Wabash and the Burlington have no objection to the granting of the application of the Santa Fe and the Pennsylvania, provided the usual conditions for the maintenance of joint rates and through routes are imposed. But, if any carrier other than the Santa Fe and the Pennsylvania is authorized to acquire control or an interest in Western, then the Burlington and the Wabash desire to participate in such control to the same extent.

Since 1859, Wabash has operated under trackage rights over Western's line between Elvaston and Hamilton. At the latter point these two carriers operate a jointly-owned track which connects the Western main line with the municipal bridge across the Mississippi River used by both to serve Keokuk. The Wabash also operates over the main line of Western between Forrest and Fairbury to get to and from its branch line serving Streator. The contractual relationships between Wabash and Western include provisions for the maintenance and operation of stations and interlocking facilities. The current contract contains a 1 year cancellation provision, and it is vitally important to the Wabash, and the shipping public served by its Streator branch, that control of Western will not be acquired by a carrier or carriers detrimental to the interests of the Wabash. Loss of the trackage rights now enjoyed by the Wabash over the Western would require consideration of the abandonment of both the Streator branch and the Keokuk branch north of Meredosia. In 1955, the Wabash interchanged a total of 3,438 carloads of revenue freight with Western at 5 different junction points, the most important of which, from the standpoint of volume, was Forrest.

Minneapolis' proposals—The Minneapolis is opposed to joint or multiple ownership of Western. It seeks to ac-

quire exclusive control in order to increase the operating efficiency of its plant, diversify its traffic base, establish new service routes, provide suitable land for the location of industries on its lines, enhance its financial stability, effect substantial economies through elimination of duplicate facilities, and render an improved transportation service to the public. The Minneapolis is willing to enter into agreements similar to those now existing between the stockholders of Western, on the one hand, and Santa Fe, on the other. In payment for such stock, the Minneapolis would issue $12,000,000 of first-mortgage sinking-fund bonds, bearing interest at the rate of approximately 4¼ per cent per annum, maturing 30 years from the date of issue, with equal annual sinking-fund payments of $480,000, commencing in the sixth year. The remaining $150,000 of the purchase price would be paid in cash from funds available in its treasury.

The proposal of Minneapolis unequivocally contemplates the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works. Only the corporate existence of Western would remain. For all practical purposes Western would be integrated, consolidated and merged into the Minneapolis for ownership, management, and operation. Western's headquarters and general offices would be moved from the present location at Peoria to the City of Minneapolis, and all policies and directions for the operation of the joint properties would emanate from that point. An estimated 256 positions, most of them on Western, would be affected by the plan. Of the 24 executive positions on Western at the present time, only a trainmaster and a roadmaster would be retained for direct supervision of Western's trackage.

Only the Minneapolis and its supporting interveners, the States of Minnesota and South Dakota, advocate the disappearance of Western as a separate and independent operating carrier. All the other parties to these proceedings, including the railroad interveners, the communities served by Western, and the shippers who appeared as witnesses, insist that the separate and independent operation of Western under its present local management is a public necessity. In fact, all the communities on the line of Western between Peoria and the western termini are fearful that under the Minneapolis' control the western portion of the line will be abandoned because of the competition that line furnishes the line owned by the Minneapolis between Peoria and Nemo. While at one time officials of the Minneapolis considered such an eventuality, the instant record conclusively demonstrates that abandonment of any portion of Western is not included in the present plans of the Minneapolis in seeking control. The latter is willing to accept a condition to that effect.

The Minneapolis contends that its acquisition of control of Western not only will give the Minneapolis direct interchange connections with the Nickel Plate, Illinois Terminal and Burlington at Peoria, but will also provide additional direct interchange points east of Peoria with the Pennsylvania at Effner, the Gulf at Chenoa, the Illinois Central at Gilman and El Paso, the Chicago & Eastern Illinois at Watseka, the New York Central at Sheldon, the Wabash at Forrest, the Nickel Plate at Farmdale, and the Chicago, Milwaukee, St. Paul & Pacific at Webster. Under unified operations, the Minneapolis proposes to establish coordinated schedules between it, the Western, and the connecting carriers, providing new service routes via these additional junctions for moving traffic in all directions.

The record shows that such a policy would be extremely harmful to other carriers. For example, of a total of 21,041 cars interchanged between the Wabash and the Minneapolis at Des Moines and Albia, Iowa, in 1955, 7,364 cars were destined to or from points in Illinois and points east thereof. Under the Minneapolis' unified-operation theory, a new service route via Forrest would be established for such traffic which would imperil, or at least diminish, the Wabash's participation therein, and possibly could result in the abandonment of the latter's Des Moines branch. Other intervening carrier connections similarly would be adversely affected by the Minneapolis' proposal. The Minneapolis contends that such carriers can be amply protected by appropriate conditions with respect to through routes and joint rates to be attached to the order approving its control of Western.

The Minneapolis further contends that Western is a natural extension of its railroad; that its interchange with Western at Peoria is proportionately greater in carloads and freight revenues than any other carrier interested in these proceedings; that no one can operate Western to greater advantage or more economically than the Minneapolis; and that its failure to acquire control of Western would materially curtail the expansion of Minneapolis' service and the full use and development of the Peoria gateway. Acquisition of control of Western would permit the Minneapolis to abandon its yard at Peoria and use the yard of Western, thereby eliminating a switching operation at that point and reducing interchanges to 1 yard instead of the 2 now required.

The Minneapolis estimates that economies totaling $1,770,945 can be achieved jointly by it and the Western

through elimination of duplicate facilities and traffic agencies, more efficient use of work forces, plant and power, and mechanical accounting. Most of the savings would be effected at the expense of Western's employees. The Minneapolis states that it will seek to minimize any adverse effect upon employees, because it has a number of workers on the payroll who are in the upper age brackets, and as these people are automatically retired, room will be made for the absorption of Western's employees to be released or displaced. The Minneapolis states that the economies which would result from its operation of Western would redound not only to the benefit of these two small carriers, but would also redound to the benefit of shippers and the public generally through improved service, thus encouraging the development of the combined territories served and the location of new industries along their lines.

Other benefits and advantages claimed by the Minneapolis in the matter of adequate car supply and the coordinated service which would result if Western were controlled by the Minneapolis are of record, but in view of our findings herein with respect to the disposition of its application, the details thereof need not be specifically described. The Minneapolis insists that it alone has no conflict of interest with Western, or the Peoria gateway, and no incentive other than to maximize the traffic and service that would be rendered over the combined lines. Conversely, it contends that all other carriers interested in the acquisition of all or a portion of the control of Western have their main lines, interests, and investments in direct competition with Western and the Peoria gateway. Hence, acquisition of Western by any other interested carriers would sharply decrease competition, not only in that it would be the acquisition of Western by its competitors, but also in that it would

materially decrease the ability of the Minneapolis to compete with such other carriers.

Competition and diversion of traffic—The Santa Fe and the Pennsylvania are complementary to each other insofar as they work through their connections with the Western. The Rock Island and the Santa Fe are in competition; the Nickel Plate competes with the Pennsylvania and Wabash; and Minneapolis is in competition with the Rock Island and other parties. All the carriers endeavoring to participate in its control are in competition with Western. Santa Fe's and Pennsylvania's routes via the Chicago gateway compete with Western's routes through the Peoria gateway. The Nickel Plate competes with the eastern half of Western, and the Rock Island competes with the western half. The Wabash, the Burlington, and the Minneapolis also compete with Western.

The important thing is not whether there is possibility of competition, but whether there is probability of existing or potential competition being diminished or strangled by the Western under the control of the Santa Fe and the Pennsylvania. Under such control, Western would have an increased opportunity to secure traffic now moving via other gateways. While the Santa Fe and the Pennsylvania ordinarily solicit traffic for their long hauls, they have not worked against Western, and have offered only passive resistance against Lomax and Effner, respectively, in recognition of the benefits they would receive from the Western route. Considering the greater expense of operating through a large congested terminal, Santa Fe and Pennsylvania are just about as well off financially when handling traffic via Western as they would be on the long haul through Chicago. If the Santa Fe obtains a half interest in Western, it

intends to place Lomax on a parity with Chicago from a solicitation standpoint, and as the other half owner, the Pennsylvania will recognize Effner as one of its principal interchanges along with Chicago and St. Louis. While the Pennsylvania will continue to solicit its long haul to St. Louis, Effner and Chicago will be on a parity. Of course, if service over the Western is improved under the control of the Santa Fe and the Pennsylvania, and traffic can be handled over it more economically and efficiently than over existing routes, there may be some diversion of traffic, but such diversion would not jeopardize the maintenance of adequate transportation service by the objecting intervening carriers.

As for solicitation, the record shows that all but a very small part of the nation's traffic is routed by the shipper, and that many factors, the most important of which is service, influence such routing. Generally, the shipper gives the originating carrier a long haul, or at least a line haul, but junction points are seldom included in the routing. Shippers also desire to maintain friendly relations with as many railroads as possible and, for that reason, there is a tendency to divide the traffic among several railroads. Shippers like to favor small railroads with a part of their traffic, and will use the line of a particular carrier because of a friendly relationship with that railroad's solicitors. Normally, an industry feels a definite obligation to the originating carrier. The industry seeks rate and routing information from that line, places rate problems before it, looks to it for car supply, and relies upon it for tracings and diversions. These factors are operating today and are reflected in the present division of traffic among all of Western's connections, and since no change in service is contemplated

with Western under the control of the Santa Fe and the Pennsylvania, the volume of traffic handled by the protesting intervening carriers should not be materially affected. The self-interests of the Santa Fe and the Pennsylvania provide further assurance that Western's present solicitation and service policies will be continued. Those policies have been responsible for the success of Western in the past, and the best way for the Santa Fe and the Pennsylvania to insure a substantial return on their investments to be made herein is to see that the Western management is left free to continue them.

The Minneapolis contends that with Santa Fe and the Pennsylvania in control of Western $7,000,000 of its traffic would be vulnerable to diversion, of which it thought $1,100,000 was certain of loss. This last figure was obtained by dividing the traffic into 12 categories and applying a percentage to the gross revenue derived from each category. The record does not disclose the basis of the percentages used.

The Minneapolis estimates that 75 per cent of its traffic moving between Peoria and Nemo will be diverted to the Western by the combined influence of the Santa Fe and the Pennsylvania as originating and terminating carriers. It contends that this will be accentuated by the placing of Lomax on a parity with Chicago. We are of the opinion that the placing of Lomax and Chicago on the same level for the solicitation of traffic would have little effect on the Nemo-Peoria traffic of the Minneapolis. The Santa Fe has solicited that traffic for its long haul to or from Chicago. The Western has solicited it via Lomax, and all other carriers connecting with the Santa Fe west of Chicago have solicited it. Notwithstanding this intense competition, the Minneapolis has been able to handle the traffic.

It is evident that the Peoria-Nemo traffic secured by the Minneapolis is traffic which does not move on a competitive service basis. The record shows that the Minneapolis does not co-ordinate schedules with the Santa Fe at Nemo, nor has it been making its connections with the Western and the Nickel Plate at Peoria on eastbound traffic. In 1953, the Minneapolis canceled its guaranteed schedules on perishable traffic moving through Nemo in conjunction with the Nickel Plate at Peoria. The large volume of traffic presently moving via the Western route is evidence of the superior connecting service it provides.

Shippers desiring to favor the Santa Fe now route their traffic via the Santa Fe's long haul to Chicago. The diversion of this traffic to Lomax as a result of placing it on a parity with Chicago would have no effect on the Minneapolis, because the Minneapolis does not share in the haul on this traffic today. Shippers using the Santa Fe, who prefer the Peoria gateway for service reasons, presently route their traffic via the Western at Lomax because of the inferior service via Nemo. The only traffic moving via the Minneapolis is traffic on which shippers desire to give it a haul, and the Santa Fe's parity policy would not affect the continuation of such desires to favor the Minneapolis with a portion of their traffic. Consequently, there would be little or no effect upon the traffic now moving between Nemo and Peoria. On the other hand, the Pennsylvania's policy of placing Effner on a parity with Chicago would divert a portion of traffic now moving through Chicago to Effner and the Peoria gateway, thus giving the Minneapolis an opportunity to solicit the haul to and from its connection with the Western at Peoria.

The Minneapolis estimates that it would lose 50 per cent of the traffic moving through Peoria and the Kansas City

and Omaha gateways, which it now bridges between Peoria and junction points other than Nemo. It states that such traffic would be subject to diversion over the Pennsylvania-Western-Santa Fe route. The present routing of this traffic reflects the influence of the other western carriers which compete with the Santa Fe and which, to a large extent, are responsible for its movement. The fact that the other western carriers and the Minneapolis overcame the solicitation of the Santa Fe and the Western, which afford a more direct service route, indicates that other factors beyond the control of the Santa Fe influenced the routing of this traffic. Partial ownership of the Western will not alter the degree of the Santa Fe's solicitation influence and will not affect the basis on which this traffic presently moves. This business would not be lost so long as the Minneapolis and the connections handling it continue the same effective solicitation effort that is being exerted today, and the service via the Minneapolis through Peoria is not further impaired. The same solicitation situation exists with respect to the traffic originated and terminated by the Minneapolis at Peoria, a portion of which, it is claimed, would be diverted if the Santa Fe-Pennsylvania application were approved.

The Rock Island contends that its traffic vulnerable to diversion with Western under the control of the Santa Fe-Pennsylvania, primarily through the position of the Santa Fe, would amount to an estimated $2,984,309, more than $1,000,000 of which represented traffic originated or terminated at Rock Island points competitive with the Santa Fe and interchanged with the Western at Keokuk. The nature of this interchange traffic is such that the possibility of its diversion to the Santa Fe is remote, particularly in

view of the fact that much of it originated or terminated at industries served exclusively by the Rock Island.

Almost $1,500,000 of the alleged loss claimed by the Rock Island through diversion was derived from traffic which moved into and out of Peoria from and to Chicago and Joliet as competitive origins, destinations, or junctions. The small volume of traffic interchanged between the Western and the Santa Fe at Eureka, as reflected by data of record, indicates that the Santa Fe is not a factor in the movement of traffic between Chicago and Peoria via the Western. The Western's route from Peoria to Chicago is via main-line connections with the Wabash at Forrest, the Chicago & Eastern Illinois at Watseka, and the Illinois Central at Gilman. Thus, it appears unlikely that the Santa Fe's partial ownership of the Western could enhance its competitive position as to traffic for which the Santa Fe maintains no competitive route.

Neither will the Santa Fe's partial ownership of the Western affect the diversion of traffic moving via the Rock Island between Peoria and points competitive with the Santa Fe in the west. The lack of Santa Fe influence as to this traffic is evidenced by the fact that it has unsuccessfully solicited it. The Rock Island, with direct service at Peoria, enjoys the paramount influence as to this traffic, since it affords shippers at Peoria its services as an originating or terminating carrier. The Western is not afforded such influence, because it maintains direct service to very few industries at Peoria.

With Western under the control of the Santa Fe-Pennsylvania, the Nickel Plate estimates a loss of traffic amounting to approximately $2,200,000, consisting of traffic interchanged with the Santa Fe at Chicago, and with the

Western at Peoria. The Santa Fe contends that its policy of placing Lomax on a parity with Chicago will have no effect upon this traffic, because the Nickel Plate is able to solicit it both at Chicago and at Peoria. The divisions accruing to the Nickel Plate at Peoria exceed those at Chicago, and on transcontinental business are equal to those at St. Louis. Thus, it is argued by the Santa Fe that the placing of Lomax and Chicago on a parity will have the effect of increasing the revenues of the Nickel Plate.

The greatest portion of the Nickel Plate's interchange traffic with the Western is bridged via the Western to or from the Santa Fe at Lomax. In 1954, the Nickel Plate interchanged a total of 14,497 cars with Western, of which the Santa Fe participated in the movement of 11,221 cars. Most of the Nickel Plate's traffic bridged from Lomax via the Western is perishable moving, in superior service, to points on the Nickel Plate and its connections. It provides the Santa Fe with a long haul to Lomax on traffic which otherwise might move via St. Louis. If the Western's connection with the Nickel Plate were not maintained as a service route, this traffic would be routed to the Nickel Plate at St. Louis, short-hauling the Santa Fe at Kansas City. Thus, the self-interest of the Santa Fe would assure the continuance of good service to the Nickel Plate at Peoria and prevent preferential solicitation by the Western for the Pennsylvania at Effner. As stated above, the Western, being dependent upon the traffic of its connecting lines for successful operations, must continue its present policy of working closely with all its connections or lose the traffic it now interchanges with them. It is evident that such loss would be of no benefit to the Santa Fe-Pennsylvania as owners of the Western. We are convinced that the benefits to be derived from the operation of West-

ern under the control of the Santa Fe and the Pennsylvania as proposed will be in furtherance of the over-all national transportation policy declared by the Congress, and its consummation will not unduly curtail competition in connection with the other carriers. *Compare McLean Trucking Co. v. U. S.*, 321 U. S. 67.

Passenger service—The Rock Island also has a major concern in that it has made commitments in passenger operations to and from Peoria, and has only recently inaugurated a new train between Peoria and Chicago. The Rock Island fears that with the Santa Fe in 50 per cent control of Western, its Peoria passenger business is in jeopardy, and, at the hearing, suggested that the Santa Fe and the Pennsylvania stipulate to a condition that no passenger service would be operated on the Western without application to us for approval. The record shows that the Santa Fe and the Pennsylvania do not contemplate providing passenger-train service on Western, and they have not held out any hopes for such service to the people in the area which it serves. Through passenger service via the Santa Fe and the Western could be established at any time without Santa Fe's control of Western. Passenger service is not an issue in this proceeding and the imposition of a condition such as that suggested by the Rock Island is not necessary.

Trackage rights—As stated heretofore, Monon Railroad requests trackage rights over the Pennsylvania if the latter is authorized to participate on an equal basis with Santa Fe in the control of Western. To the extent that the development of the Peoria route draws traffic from the Chicago gateway, Monon contends that it may lose some of the traffic it now handles through that gateway in common

with other carriers similarly situated. Monon further contends that a connection with the Western at Effner would make it possible for Monon to recover such traffic and place it on an equality with its more powerful competitors in the solicitation of business as between the Chicago and Peoria routes. At the hearing a witness for the Monon stated its position in the premises, but made no effort to describe with any particularity the traffic which might be lost, the carriers over whose lines it moves, its volume, or the areas of origin and destination.

Ordinarily we are without authority to compel one railroad to grant trackage rights over its line to another carrier. See *Baltimore & O. R. Co. Operation*, 261 I. C. C. 535, and *Alabama, T. & N. R. Corp. Construction*, 124 I. C. C. 114. We are of the opinion that the potential loss of traffic by the Monon via the Chicago gateway as a result of our approval of the Santa Fe-Pennsylvania application is too nebulous to warrant the imposition of a condition granting that carrier trackage rights extending its operations for approximately 35 miles into new territory without proof of public convenience and necessity. Accordingly, the request for such a condition is denied.

Prescribed conditions—The Santa Fe and the Pennsylvania are committed to the maintenance of all existing routes and channels of trade via Western without discrimination. Their announced policy toward Western's other connections is expressed in specific conditions which they have agreed to accept as a part of any order approving their application. Those conditions are as follows:

1. That under the control of Santa Fe and Pennsylvania, Western shall maintain and keep open all routes

and channels of trade via existing junctions and gateways, unless and until otherwise authorized by us;

2. The present neutrality of handling traffic inbound and outbound and in overhead service by Western shall be continued so as to permit equal opportunity for service to and from all lines reaching the rails of that carrier without discrimination as to routing or movement of traffic, and without discrimination in the arrangements of schedules or otherwise;

3. The present traffic and operating relationships existing between Western, on the one hand, and all lines connecting with its tracks, on the other, shall be continued insofar as such matters are within the control of the Santa Fe or the Pennsylvania;

4. Western shall accept, handle, and deliver all cars inbound and outbound and in overhead service, loaded and empty, without discrimination in promptness or frequency of service as between cars destined to or received from competing carriers and irrespective of destination or route of movement;

5. Santa Fe and/or Pennsylvania shall not do anything to restrain or curtail the right of industries located on Western to route traffic over any or all existing routes and gateways;

6. Santa Fe and Pennsylvania shall refrain from closing any existing route or channel of trade with any carrier party to this proceeding on account of their control of Western, unless and until otherwise authorized by us; and

7. Any party or any person having an interest in the subject matter may at any future time make application for such modification of the above-stated conditions, or any

of them, as may be required in the public interest, and jurisdiction will be retained to reopen the proceeding on our own motion for the same purpose.

The foregoing conditions are broad enough to protect the interests of all lines connecting with Western, and are similar to the conditions imposed in *Detroit, T. & I. R. Co. Control, supra, Savannah & A. Ry. Co. Control,* 282 I. C. C. 39, and *Pacific Coast R. R. Co. Control,* 282 I. C. C. 600, in each of which the same arguments against the effectiveness of such conditions were advanced. The foregoing conditions will be included, by reference, in our order granting the authority herein sought by the Santa Fe and the Pennsylvania.

Purchase price—The Minneapolis contends that the purchase price of $135 per share offered by Santa Fe is neither just nor reasonable, because the consideration for a portion of that amount is in settlement of the dispute pending between the trustees and the Santa Fe as an outgrowth of the validity of the April 15, 1955, letter in which the trustees agreed to dispose of 26 per cent of the stock of Western each to the Santa Fe and the Pennsylvania. The Minneapolis states that its offer to purchase Western's stock at $135 a share is just and reasonable in view of the substantial economies, increased efficiency, improved service, and other benefits which would flow from Minneapolis' control of Western. The stock of Western, being closely held, is not listed on any exchange, but its market value was established on the basis of agreement between a willing seller and a willing buyer. The price proposed to be paid by the Santa Fe and the Pennsylvania is the same as that offered by the railroads requesting inclusion. The reason-

ableness of the purchase price is also indicated by the excellent physical and financial condition of Western, its good earnings and operating record, the value of its properties as fixed by us for rate-making purposes, its progressive and able management, and its strategic location which adds to its value as a long-term investment. If $135 per share is the proper price for the Minneapolis to pay, it is fair and reasonable as to the Santa Fe and the Pennsylvania.

State representations—The States of Minnesota and South Dakota, along with their respective Public Service Commissions, intervened in support of the Minneapolis application. They fear that with Western under the control of the Santa Fe and the Pennsylvania, the Peoria route of the Minneapolis will deteriorate to the extent that its low density lines in Minnesota and South Dakota will be in danger of abandonment. On the other hand, the State of Illinois opposes the application of the Minneapolis because of the possibility that the portion of Western's line west of Peoria may be abandoned, and the further reason that such control would have a devastating effect upon the economy of the city of Peoria and the State of Illinois generally. Of course, there can be no abandonment of any line of railroad without the issuance by us of a certificate of public convenience and necessity permitting such abandonment. So far as the instant record is concerned, no abandonments are presently contemplated.

Wabash control case—In *Wabash R. Co. Control*, 247 I. C. C. 365 and 252 I. C. C. 319, the Pennsylvania and the Pennsylvania Company were authorized to acquire control of the Wabash through ownership of its capital stock subject to conditions, among others, that the Penn-

sylvania maintain, or cause to be maintained, joint rates, joint routes, interchange points, and channels of trade through gateways of the Wabash then existing, until and unless otherwise authorized by us.

Both the Minneapolis and the Nickel Plate contend that, since the Wabash now has a substantial interchange with the Pennsylvania at Logansport, Ind., and that route will not be placed on a parity with Western's route via Effner, Pennsylvania's proposal to favor Western over Wabash will effectively alter the joint rates and joint routes in contravention of the conditions under which the Pennsylvania was permitted to acquire control of the Wabash. They state that the *Wabash Control case* must be reopened and reexamined to determine whether the joint control of Western by the Pennsylvania would be consistent with the public interest and the interest of the Wabash.

The Wabash has not raised the issue. With the imposition of the usual conditions as to the maintenance of existing through routes and channels of trade it supports the Santa Fe-Pennsylvania application. We are unable to find that the granting of that application with the conditions previously stated attached, will lead to violation of the conditions imposed in the *Wabash Control case* or prejudice their effectiveness. While the plan to place Effner on a parity with Chicago, as previously mentioned, will increase the flow of traffic through Effner, such increase will consist of traffic now moving via Pennsylvania through Chicago in which the Wabash does not at present participate. Furthermore, the Pennsylvania in the past has favored Western's route through Effner rather than the Wabash route through Logansport and there will be no change in this policy.

Clayton Act antitrust violation—The Minneapolis contends that approval of the Santa Fe-Pennsylvania application for authority to acquire control of Western would be in violation of section 10 of the Clayton Act because of the existence of interlocking directors between the Pennsylvania and its subsidiaries, on the one hand, and the Wilmington Trust, a trustee of the McNear estate, on the other. Section 5(11) of the act provides that "the authority conferred by this section shall be exclusive and plenary" and we have on several occasions pointed out that approval of a transaction consistent with the public interest under section 5 renders inoperative any prohibition of Federal, State, or municipal legislation, including the Clayton Act. Furthermore, the issue before us does not involve a purchase by the Pennsylvania from the Wilmington Trust. The Santa Fe is the only purchaser of the stock from the trustees and had no commitments to sell any of it to any other railroad. Before offering to sell a portion of the stock to Pennsylvania several other joint control possibilities were considered and rejected. Under the circumstances, the contention of the Minneapolis in this respect is untenable.

Employees—Counsel for railway labor organizations exacted commitments from all carriers involved herein to abide by the provisions of the Washington Job Protection Agreement of 1936, and our order herein will be conditioned upon compliance with such provisions. The employees unanimously favor the granting of the Santa Fe-Pennsylvania application.

Conclusion—We cannot decide these cases to the satisfaction of all participants. Our duty is to determine the pending matters on the basis of what is consistent with the public interest. It is universally conceded on the record

that Western now is a well managed, independently operated railroad furnishing a valuable rail transportation service to the public. Most of the interested parties, including all the shipping witnesses, municipal authorities, and commercial associations testifying on the subject, favored the continuation of Western in its present status, but the stockholders desire to sell, and without doubt they have that right, so the only question for determination is whether the sale of the stock to the carrier selected by them and the distribution to be made of it thereafter are consistent with the public interest. We have recognized that it is in the public interest for control of a carrier to pass from noncarrier interests, which no longer desire it, to carrier auspices. *Savannah & A. Ry. Co.-Control, supra,* and the cases therein cited.

The Santa Fe and the Pennsylvania assert that they are the logical carriers to acquire control of Western, because they are its principal connections. Situated as it is between the Santa Fe at Lomax on the west and the Pennsylvania at Effner on the east, Western receives its long haul and provides a vital direct link essential to the type of through service which is becoming increasingly important not only to the shipping public but to the railroads as well. Fast, strong, and reliable through transportation service is necessary in order for the railroads adequately to compete with the other modes of modern transportation, and Western, as a direct east-west line, supplies the short-line connection for providing this through service with a minimum of delay.

Public interest demands that the present policies of Western in all respects be continued. Any reduction in the ownership interests of the Santa Fe and the Pennsylvania by the inclusion of other carriers in the control of Western

would be accompanied by an equivalent reduction in their economic incentive for the future development of Western and the territory served by it. The case of *Illinois-Missouri Terminal Railway Company et al. Purchase, Etc.*, Finance Docket No. 18752, 295 I. C. C. —, (not printed in full), decided April 2, 1956, relied upon so heavily by the carriers seeking to be included in these proceedings, is distinguishable in that the invitation to participate in the control of the Illinois-Missouri was extended to each and every railroad connecting with that carrier, and all the participants were in agreement as to the manner by which ownership was to be effected and operations were to be conducted. Such universal agreement is not present in the instant applications. No greater protection could be afforded to carriers interchanging traffic with Western than to have ownership divided equally between the largest connecting carrier in the east and the largest one in the west. Under this built-in system of checks and balances, it is inconceivable for the Santa Fe to permit impairment of service or discriminatory solicitation with respect to eastern connections, or the Pennsylvania with respect to western ones. The contract of June 28, 1955, between the Santa Fe and the Pennsylvania pertaining to the objectives to be accomplished under their joint control, together with the conditions imposed with respect to the maintenance of all existing routes and channels of trade of Western without discrimination, is adequate to protect the latter's other connections. Only 3 of Western's 16 rail connections oppose the joint control of the Santa Fe and the Pennsylvania.

With the backing of the Santa Fe and the Pennsylvania, there are excellent prospects for locating new industries on Western which will substantially increase the traffic originating and terminating on its line. Western has large acre-

ages of potential industrial property in the Peoria area, and at other points along its line, and with the combined efforts of the industrial development departments of the Santa Fe and the Pennsylvania, such property development may be expected without undue delay.

Several nationally prominent traffic executives of large industrial concerns, which annually route a substantial volume of traffic via Western, testified in support of Santa Fe and Pennsylvania joint ownership. They based their support upon the fact that the Santa Fe and the Pennsylvania are presently rendering excellent service in conjunction with Western and that ownership by them would constitute their best assurance of continued good service via the combined Santa Fe-Western-Pennsylvania route, as well as via each of the other connections of Western.

Virtually every one of the shippers and community witnesses along the line stressed the importance of maintaining Western as a separate and independent carrier. They are anxious that Western's present management be retained and favored the plan for local representation on the board of directors. They stressed the desirability of maintaining the existing plant and facilities in the Peoria area, and the desirability of retaining Western's headquarters at Peoria in order to continue the present easy access to management which is of inestimable value to shippers. Each of the city officials and representatives of chambers of commerce of the communities served by Western recognized the advantage of Santa Fe-Pennsylvania ownership as an economic stimulus to the industrial development of their communities. They were joined by business interests which recognized that such industrial development would result in expanding markets.

The Santa Fe and the Pennsylvania representatives on the board of Western will advise and assist Western on matters involving the technique of railroad management and the realization of economies in operation. Western also can expect to realize advantages in connection with its purchases, if it is controlled by two roads which purchase in such large volume as the Santa Fe and the Pennsylvania.

Under joint control by the Santa Fe and the Pennsylvania the supply of freight cars available to Western would be materially increased. The Santa Fe and the Pennsylvania would see to it that the car ownership obligations of Western were met in full, either by having Western increase its car ownership or by increasing their own ownership sufficiently to take care of Western.

Disposition of the applications—We have before us two applications requesting authority to acquire control of the same carrier. The first filed in point of time reflects a transaction capable of being consummated upon our approval. The second would require further steps before the plan could be consummated. Under no circumstances could it be consummated unless the first is denied. The Minneapolis has no enforceable contract for the purchase of Western's stock and there is no guarantee that, if the application of the Santa Fe and the Pennsylvania is denied, the trustees automatically would turn to the Minneapolis as the only remaining prospective purchaser. Furthermore, even if the Minneapolis could prevail upon the trustees to sell their interest in Western, there still would remain a substantial minority of stock in the hands of other holders which the Minneapolis has no assurance that it could acquire. On the present record, it would not be in the public interest to have a minority block of Western stock outstanding in the hands of others.

The Minneapolis relies upon our decisions in *Beaver, M. & E. R. Co. Control*, 158 I. C. C. 219 and 170 I. C. C. 556, as authority for entertaining its application herein. That case involved an application by the Rock Island to acquire control of the Beaver, Meade, & Englewood Railroad Company through the purchase of capital stock and certain other securities. The Missouri-Kansas-Texas Railroad Company intervened in opposition to the Rock Island application and subsequently filed its own application for the same authority. The intervener had no contract with the stockholders or the owners of the securities, both stock and securities being involved in the sale, but offered to pay the same cash price therefor as offered by the Rock Island. After a joint hearing, as here, we authorized, as in the public interest, the Missouri-Kansas-Texas to acquire the control requested. In determining consistency with the public interest and the national transportation policy we are not shackled in a case like this by the first application filed, if there is presented for our consideration at the same time a different proposal which but for the situation created by the first application might easily be accomplished. The public interest is the prime consideration, and in making that determination we must have regard for all relevant factors.

Consistent with the foregoing, we have carefully considered the evidence and arguments presented relating to both the applications before us and conclude upon the basis of the whole record, and as reflected by this report, that the application of the Santa Fe and the Pennsylvania should be granted subject to the conditions previously alluded to herein. With our approval of that application, the possibility of the Minneapolis acquiring the Western's

stock is eliminated and its application becomes moot. Accordingly, the application of the Minneapolis will be dismissed.

We also have considered the request of certain connecting carriers that they be included in the transaction on an equal basis with the successful applicant or applicants and conclude that this would not be in the public interest. Such requests will be denied.

The transaction proposed by the Santa Fe and the Pennsylvania does not contemplate a guaranty or assumption of the payment of dividends or fixed charges, and there will be no increase in total fixed charges.

Findings—We find, subject to the conditions for the protection of railway employees and the maintenance of existing routes and channels of trade referred to herein, that acquisition by The Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Company, and through the latter by The Pennsylvania Railroad Company; of control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock, in equal amounts, as described herein, is a transaction within the scope of section 5(2) of the Interstate Commerce Act, as amended; that the terms and conditions proposed are just and reasonable; and that the transaction will be consistent with the public interest.

We further find that the application of The Minneapolis & St. Louis Railway Company for authority to acquire control of the Toledo, Peoria & Western Railroad Company, through ownership of capital stock, should be dismissed.

An appropriate order will be entered effective 35 days from the date of service hereof.

Order

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 31st day of May, A. D. 1957.

Finance Docket No. 18991
Toledo, Peoria & Western Railroad Company Control

Finance Docket No. 19086
Toledo, Peoria & Western Railroad Company Control

Investigation of the matters and things involved in these proceedings having been made, a hearing having been held, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That, subject to the conditions for the protection of railway employees and the maintenance of existing routes and channels of trade referred to in said report, acquisition by The Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Company, and through the latter by The Pennsylvania Railroad Company, of control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock, in equal amounts, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized;

It is further ordered, That the request of the Chicago, Rock Island and Pacific Railroad Company and The New York, Chicago and St. Louis Railroad Company, under section 5(2)(d) of the act, for authority to be included on an equal basis in the acquisition of control, through stock

ownership, of the Toledo, Peoria & Western Railroad Company be, and it is hereby, denied;

It is further ordered, That the application of The Minneapolis & St. Louis Railway Company for authority to acquire control of the Toledo, Peoria & Western Railroad Company, through ownership of capital stock, be, and it is hereby, dismissed;

And it is further ordered, That this order shall take effect and be in force 35 days from the date of service hereof.

By the Commission, division 4.

HAROLD D. McCOY,
Secretary.

(SEAL)

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 30th day of October, A. D. 1957.

Finance Docket No. 18991
Toledo, Peoria & Western Railroad Company Control

Finance Docket No. 19086
Toledo, Peoria & Western Railroad Company Control

It appearing, That by report and order in the above-entitled proceedings, dated May 31, 1957, the Commission, by division 4, authorized, subject to certain protective conditions, The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Company, and through the latter The Pennsylvania Railroad Company to acquire control of the Toledo, Peoria & Western Railroad Company

through ownership of capital stock, dismissed the application of the Minneapolis & St. Louis Railway Company for authority to acquire control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock, and denied the request of the Chicago, Rock Island and Pacific Railroad Company and the New York, Chicago and St. Louis Railroad Company for authority to be included on an equal basis in the acquisition by the Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Company and through the latter The Pennsylvania Railroad Company of control of the Toledo, Peoria & Western Railroad Company;

It further appearing, That on and after July 24, 1957, the Minneapolis & St. Louis Railway Company, the State of South Dakota, the Chicago, Rock Island and Pacific Railroad Company, and the New York, Chicago and St. Louis Railroad Company filed petitions for reargument and reconsideration of said report and order;

It further appearing, That upon the filing of said petitions and pursuant to section 17(8) of the Interstate Commerce Act the aforesaid order was stayed pending disposition of the matter;

It further appearing, That on August 20 and 21, 1957, The Atchison, Topeka and Santa Fe Railway Company and The Pennsylvania Railroad Company, certain chambers of commerce and communities, and certain municipalities and shippers along the lines of the Toledo, Peoria & Western Railroad Company, the City of East Peoria, and the City of Peoria, filed replies to the aforesaid petitions;

It further appearing, That on and after August 19, 1957, the Chicago, Rock Island and Pacific Railroad Company and the New York, Chicago & St. Louis Railroad Com-

pany, the Railway Labor Executives' Association, and the State of Illinois filed replies to the aforesaid petition of the Minneapolis & St. Louis Railway Company;

It further appearing, That on September 23, 1957, the State of Minnesota and Minnesota Railroad and Warehouse Commission filed a petition for leave to file a petition for reconsideration and concurrently therewith submitted to the Commission a petition for reconsideration;

And it further appearing, Upon consideration of the record herein, and the contentions set forth in said petitions for reargument and reconsideration (including the petition of the State of Minnesota and Minnesota Railroad and Warehouse Commission) and replies thereto, that there has been presented no error of fact or law with respect to the matters complained of by the petitioners, and that no showing has been made warranting reconsideration or further hearing;

It is ordered, That the petition filed by the State of Minnesota and Minnesota Railroad and Warehouse Commission for leave to file a petition for reconsideration be, and it is hereby granted; and that said petition for reconsideration submitted by the State of Minnesota and Minnesota Railroad and Warehouse Commission be, and it is hereby, accepted for filing;

It is further ordered, That the petitions for reargument and reconsideration be, and they are hereby, denied;

And it is further ordered, That said order dated May 31, 1957, be, and it is hereby, made effective 30 days from the date of service of this order.

By the Commission.

HAROLD D. McCOY,
Secretary.

(SEAL)

APPENDIX C

Section 1 of the Sherman Act, as amended (15 U.S.C. § 1):

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on con-

viction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 7 of the Clayton Act, as amended (15 U.S.C. § 18):

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole of any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the forma-

tion of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79 of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Secretary, or Board.

Section 10 of the Clayton Act, as amended (15 U.S.C. § 20):

No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding, or shall do any act to prevent free and fair competition among the bidders or those desiring to bid, shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall, within thirty days after making the same, file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions, it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section, it shall be fined not exceeding $25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation, or who shall have aided or abetted in such violation, shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000 or confined in jail not exceeding one year, or both, in the discretion of the court.

National Transportation Policy (49 U.S.C. preceding § 1):

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial

regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 5(2) of the Interstate Commerce Act, as amended (49 U.S.C. § 5(2))

(2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to

acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 305(e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order appr ving

and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order, unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(d) The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph (2) except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Commission that such increase would not be contrary to public interest.

(f) As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Section 5(11) of the Interstate Commerce Act, as amended (49 U.S.C. § 5(11)):

The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority, and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this

section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. [redacted] 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,

Appellant,

against

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 552.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,

Appellant,

against

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM.

The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company, and Pennsylvania Company, appellees in the above entitled cause, move that the judgment of the District Court be affirmed on the ground that the questions presented on this appeal are so unsubstantial as not to need further argument.

STATEMENT OF THE CASE.

This is not a difficult case. Appellant's presentation of it in its Jurisdictional Statement, in addition to being intemperate, is neither fair nor accurate.

A comprehensive recital of the facts is contained in the Report of the Interstate Commerce Commission printed as Appendix B to the Jurisdictional Statement[1] (pp. 55 *et seq.*). *Toledo, Peoria & Western R. Co., Control*, 295 I. C. C. 523 (1957). But for present purposes the essential facts may be concisely stated.

Appellee, The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), on May 26, 1955, contracted, subject to the approval of the Interstate Commerce Commission, to buy from the holders thereof all of the outstanding stock of the Toledo, Peoria & Western Railroad Company (Western.) Subsequently it agreed, also subject to Commission approval, to sell 50 per cent of the Western stock to appellee, Pennsylvania Company, a wholly-owned subsidiary of appellee, The Pennsylvania Railroad Company (Pennsylvania).

At the same time, appellant wanted to purchase all of the Western stock. However, the holders thereof agreed to sell to Santa Fe.

Thereafter, appellees filed a joint application seeking Commission approval under Section 5 (2) of the Interstate Commerce Act for Santa Fe and Pennsylvania Company each to acquire and hold 50 per cent of the Western stock.

1. Numbers in parentheses preceded by "J. S." refer to pages of appellant's jurisdictional statement; those preceded by "Tr." refer to the transcript before the Commission; those preceded by "H." refer to exhibits received by the Commission.

Appellant filed a similar application seeking Commission approval of its proposal.

The two applications were considered at a consolidated hearing before a Commission examiner at Peoria, Illinois. The hearing was an extended one, from February 1 to 14, 1956. Numerous witnesses were heard and many exhibits received in evidence. Several other railroads intervened at that hearing for various reasons not now important because they have not contested the decision of the court below and are not before this Court.

The examiner issued a proposed report recommending approval of the Santa Fe-Pennsylvania acquisition and rejection of appellant's application.

Thereafter, upon exceptions and replies to exceptions to the proposed report, the case was argued orally before Division 4 of the Commission (Commissioners Mitchell, Arpaia, and Winchell). Division 4 issued a comprehensive report approving the application of Santa Fe-Pennsylvania and rejecting that filed by appellant.

The Commission was confronted, for present purposes, with two diametrically opposed plans. That of Santa Fe-Pennsylvania contemplated the continued existence and operation of Western as a separate carrier under its local management. It was supported by many interveners, including the cities and towns served by Western from one end of the line to the other,[2] leading civic and business organizations, shippers located in the area served by Western, and The Railway Labor Executives Association (representing Western's employees). Other shippers, both local and off-line, appeared and testified in support of the Santa Fe-Pennsylvania application.

2 Communities which intervened were, Keokuk, Iowa, and Warsaw, LaHarpe, Lomax, Bushnell, Canton, Peoria, East Peoria, Eureka, Secor, Gridley, Chenoa, Fairbury, Forrest, Gilman, Watseka and Sheldon, Illinois.

Appellant's application, on the other hand, proposed the extinguishment of Western as a separate and independently operated railroad, for it sought to integrate Western into appellant's railroad for ownership, management, and operation. Appellant's proposal was supported only by the states of Minnesota and South Dakota. It was strongly opposed by the State of Illinois. No shippers or local community interests lent their support.

In approving the Santa Fe-Pennsylvania application, the Commission found that "public interest demands that the present policies of Western in all respects be continued." (J. S. 89.) Those policies would only be continued under the Santa Fe-Pennsylvania plan and for that reason appellant's proposal was rejected. *Minneapolis & St. L. Ry. Co.* v. *United States*, 165 F. Supp. 893 (D. Minn. 1958). The Commission expressly found that the policies contemplated by appellant "would be extremely harmful to other carriers" (J. S. 73), and that most of the economies proposed by appellant "would be effected at the expense of Western's employees." (J. S. 74.)

The full Commission denied the reconsideration and reargument sought by appellant, terminating what appellant describes as "a sorry picture of administrative procedure at its worst." (J. S. 13.)

Appellant, as was its right under 28 U. S. C. § 1336, then appealed to a three-judge court.

The court below received comprehensive briefs and heard extended oral argument. It found that the Commission's proceedings complied with applicable law in all respects and concluded that: "The Commission's Order is based on adequate findings supported by substantial evidence in the record before it." Appellant's complaint was, accordingly, dismissed. The court, appellant charges, "abdicated its duty of judicial review and gave a startling example of judicial obeisance to administrative 'expertise'." (J. S. 13.)

In this Court, appellant attempts to present substantially the same questions resolved against it after full consideration and deliberation by the court below.

QUESTIONS PRESENTED.

Appellant's statement of "Questions Presented" is manifestly no more than an outline of argument. Put correctly, the questions presented—such as they are—would more nearly read as follows:

1. Is the order of the Interstate Commerce Commission here involved supported by adequate findings?

2. Are the findings of the Commission supported by sufficient evidence?

3. Was appellant granted the comparative hearing fairly required under the circumstances of this case?

4. Do any of the considerations involved in Section 1 of the Sherman Act and Sections 7 and 10 of the Clayton Act require judicial rejection of the order of the Commission here involved?

5. Was appellant accorded an adequate review by the District Court?

ARGUMENT.

1. THE FINDINGS ARE ADEQUATE AND APPELLANT WAS ACCORDED A COMPARATIVE HEARING.

Appellant's attack on the adequacy of the Commission's findings is closely related to its contention that it was denied a comparative hearing. As there is some duplication in these arguments, both will be discussed here. Questions raised as to the evidentiary support for the findings will be discussed in the next subdivision of this argument.

Appellant begins by citing the substantial evidence rule (*Universal Camera Corp.* v. *N. L. R. B.*, 340 U. S. 474, 488 (1951)); asserts that it "adduced substantial and persuasive evidence" that its plan conformed to applicable statutory standards; and concludes that the Commission was therefore under a "duty" to make ultimate, basic and subsidiary findings in favor of its application (J. S. 14). In presenting this argument appellant misconceives the function of the reviewing court. The court's function is not to retry the case on the merits or to review the evidence to determine what findings should have been made, *i. e.*, to substitute its judgment for that of the Commission on the broad question of the "public interest", which is committed to the Commission by Section 5(2) of the Interstate Commerce Act (49 U. S. C., § 5(2); J. S. 104-107). The court's function is to determine whether the Commission acted within its statutory authority, whether the findings actually made are adequate to support the ultimate conclusion and whether the challenged findings are supported by substantial evidence.

3. Thus in *McLean Trucking Co.* v. *United States*, 321 U. S. 67 (1944), this Court said:

"'The wisdom and experience of that commission,' not of the

This fundamental misconception as to the scope of judicial review apparently has much to do with appellant's charge that the court below abdicated its function.

Adequacy of the Findings.

Appellant says the Commission did not, and could not, make adequate findings to support its decision in favor of Santa Fe and Pennsylvania (J.S. 15); but it does not review the findings actually made. Such a review will demonstrate the lack of substance in the charge that they are inadequate.

The Commission was confronted with two radically different proposals for the future operation of Western's line. Santa Fe and Pennsylvania proposed the continued operation of Western as a separate carrier under its present local management and its present service and traffic policies. Appellant's proposal for integrating Western's line into its own operations necessarily involved the disappearance of Western as a separate and neutral connection for the other 15 carriers with which it presently connects.

In choosing between the two competing applicants, the Commission adopted a standard of public interest which reflected the unique part Western now plays in the nation's transportation system. The key finding was that the "Public interest demands that the present policies of the

courts, must determine whether the proposed consolidation is 'consistent with the public interest.' Cf. *Interstate Commerce Commission v. Illinois Central R. Co.*, 215 U. S. 452; *Pennsylvania Co. v. United States*, 236 U. S. 351; *United States v. Chicago Heights Trucking Co.*, 310 U. S. 344; *Parcell v. United States*, 315 U. S. 381. If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported by evidence, it is not our function to upset its order." (321 U. S. at pp. 87-88.) And see *United States v. Pierce Auto Freight Lines*, 327 U. S. 515, 535-536 (1946); *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474 at 488 (1951).

Western in all respects be continued" (J. S. 89 and see 65). The Santa Fe-Pennsylvania application was granted because it met this standard and was found to be otherwise consistent with the public interest and in furtherance of the National Transportation Policy (J. S. 82, 93-94). Appellant's application did not meet this standard and was dismissed (J. S. 93-94).

The basis for the finding that public interest demands continued operation of Western under its present policies appears in a number of findings throughout the report. Western's policy is to maintain strict neutrality between all its connections, thus emphasizing its strategic location as an overhead carrier through Peoria, as an alternative route, bypassing the congested terminals of Chicago and St. Louis (J. S. 60). As a result, more than two-thirds of its revenues are derived from overhead or bridge traffic (J. S. 61). "Situated as it is between the Santa Fe at Lomax on the west and the Pennsylvania at Effner on the east, the Western receives its long haul and provides a vital direct link essential to the type of through service which is becoming increasingly important not only to the shipping public but to the railroads as well. Fast, strong, and reliable through transportation service is necessary in order for the railroads adequately to compete with the other modes of modern transportation, and the Western, as a direct east-west line, supplies the short-line connection for providing this through service with a minimum of delay" (J. S. 89).[4]

The finding that public interest demands the continued operation of Western under its present policies reflects the

4 In another recent case, *Illinois-Missouri Terminal Ry. Co., Purchase*, I. C. C. Finance Docket No. 18752, the Commission recognized Western's "particularly important position in the Nation's transportation system" as a "valuable link for transcontinental shipments * * *." (Sheets 43-44 of mimeographed report, dated April 2, 1956.

interests of all parts of the public most directly concerned: off-line shippers using Western as a bridge line for through traffic; the communities along Western's line and local shippers 'who regard the present ready' access to local management as of inestimable value; the other railroad interveners; and Western's employees (J. S. 72, 88, 91). Briefly summarizing the interests of these various parts of the public, the Commission said:

> "Only the Minneapolis and its supporting interveners, the States of Minnesota and South Dakota, advocate the disappearance of the Western as a separate and independent operating carrier. All the other parties to these proceedings, including the railroad interveners, the communities served by the Western, and the shippers who appeared as witnesses, insist that the separate and independent operation of the Western under its present local management is a public necessity." (J. S. 72.)

The basis for approval of the Santa Fe-Pennsylvania application in the light of the above standard of public interest is shown clearly by the findings in the Commission's report. Under their proposal Western would continue to function as a separate carrier under its present local management and under the traffic and service policies which have contributed so much to its success (J. S. 63-64). This plan reflects the natural community of interest resulting from the geographical location of Western as an important link between the Santa Fe on the west and the Pennsylvania on the east in providing fast through service via the Peoria gateway (J. S. 89).[5] Thus Western receives its long haul on traffic interchanged with

5. The importance of this route was convincingly demonstrated by the greatly increased use of Santa Fe and Pennsylvania's connecting services in World War II. Between 1939 and the peak war year, 1944, Western's total traffic increased 62 per cent; its overhead or bridge traffic increased 91 per cent; and its interchange with Santa Fe increased 142 per cent and with Pennsylvania, 105 per cent (H-5, pp. 11-12).

Santa Fe and Pennsylvania, while its interchange with most of its other connections, including appellant, is in the Peoria area at the center of its line (J. S. 89). Much of Western's success as a bridge line dates from the construction of Western's connection with the Santa Fe at Lomax in 1927. Since that time Santa Fe and Pennsylvania have cooperated with Western in coordinating their schedules and services to provide a fully competitive service over Western's route (J. S. 60-61, 91). Service, as the Commission found, is the most important factor affecting the routing of traffic (J. S. 76). As a result, Santa Fe and Pennsylvania account for about 70 per cent of Western's interline traffic and revenues (J. S. 61).

The Commission noted the strong shipper support for the Santa Fe-Pennsylvania application based on this long record of cooperation with Western, as well as the support by the communities along Western's line and by Western's employees (J. S. 88, 91). And the Commission recognized that the self-interest of Santa Fe and Pennsylvania would provide assurance for the continuance of Western's present solicitation and service policies in the future (J. S. 75, 81). The Commission thoroughly analyzed the effect of the acquisition on competing carriers and concluded that there would be no undue curtailment of competition (J. S. 75-82).

The Commission found other advantages in Santa Fe-Pennsylvania control. These included increased traffic for Western under the joint applicants' plan to place Effner and Lomax, where they connect with Western, on a solicitation parity with Chicago; stimulation of industrial development in the area served by Western; technical assistance in the realization of economies in operation; advantages in purchasing; and the assurance of a more adequate supply of freight cars for Western (J. S. 75-76; 78, 90-91, 92).

Turning now to appellant's proposal, the Commission's findings clearly show the basis for its rejection. The Commission found that:

> "The proposal of Minneapolis unequivocally contemplates the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works. Only the corporate existence of Western would remain. For all practical purposes Western would be integrated, consolidated and merged into the Minneapolis for ownership, management, and operation. Western's headquarters and general offices would be moved from the present location at Peoria to the city of Minneapolis, and all policies and directions for the operation of the joint properties would emanate from that point. * * *" (J. S. 71-72).

This is directly contrary to the "standard of public interest" as determined by the Commission. Separate operation of Western is essential if it is to continue to perform its primary function as an east-west bridge line working closely with all its connections. The Commission also found that appellant's plan contemplated the diversion of traffic from Western's other connections, rather than continuance of the policy of working closely with them (J. S. 72-73). While it recognized that substantial economies could be effected under appellant's plan, it found that most of the savings would be "at the expense of the Western's employees" (J. S. 74).

In the light of these findings the District Court properly concluded that it could not substitute its judgment for that of the Commission on the broad policy question of the public interest. These findings reflect full consideration of all elements of the public interest involved—the interests of shippers, both local and off-line, using the services of Western and its connections, of the communities served by Western, of Western's employees

and of the 16 connecting railroads which interchange traffic with Western. And the decision to preserve Western's important function in the nation's transportation system as a separately operated bridge railroad linking the east and the west and working closely with all its connections squares with the objective of the National Transportation Policy to foster sound economic conditions in transportation and among the several carriers, "all to the end of developing, coordinating, and preserving a national transportation system * * * adequate to meet the needs of the commerce of the United States, of the Postal Service and of the national defense" (49 U. S. C. preceding § 1; J. S. 103-104).

Comparative Hearing.

Appellant contends that it was denied a comparative hearing because the Commission failed to make specific findings as to every difference between the two competing applications, citing *Johnston Broadcasting Co.* v. *F. C. C.*, 175 F. 2d 351, 357 (D. C. Cir. 1949). (J. S. 21-22). But the *Johnston* case dealt with two mutually exclusive applications to do the same thing—to operate a new broadcasting station—and an item by item comparison was appropriate to determine which applicant was better qualified. Here the Commission was confronted with two radically different proposals for the future operation of an existing railroad. An item by item comparison was, therefore, impracticable. The controlling question in evaluating the two competing applications was what function Western could best serve in the national transportation system. A similar approach to a somewhat similar problem by the Federal Communications Commission was upheld by this Court in *F. C. C.* v. *Allentown Broadcasting Co.*, 349 U. S. 358, 361-63 (1955).

Appellant contends that the Commission was required to make specific findings as to every detail of its proposal

(J. S. 16-17), but this would have served no useful purpose. As the District Court recognized the detailed description of appellant's proposal with all its claimed advantages makes it entirely clear that these were given consideration (J. S. 50-52, 70-75). Specific findings as to each detail were unnecessary because the entire plan to absorb Western into appellant's railroad was found to be contrary to the controlling public interest in the continuance of Western's present policies as a separately operated bridge carrier working closely with all its connections.

Appellant says the Commission's decision is contrary to the National Transportation Policy because it ignores the criteria of economic and efficient service and that the Commission was under a duty to find the "dollar amount" of the proposed economies (J. S. 22, 14).[6] Economies, however, are only one of the criteria to be considered in acquisition cases. *Virginian Ry. Co. Control*, 117 I. C. C. 67, 75 (1926). Both the National Transportation Policy and Section 5(2)(c) of the Interstate Commerce Act require that the interests of employees, as well as other factors, be considered. Here, the Commission clearly recognized that substantial economies could be realized under appellant's proposal but found that "most of the savings would be effected at the expense of Western's employees" (J. S. 74). In this case the interest of Western's employees in the retention of their jobs happily coincided with the interest of the shipping public, the communities served by Western and Western's other rail connections in its continued operation as a separate carrier under its local management.

6. As a matter of fact, the record would not support a specific finding as to the "dollar amount." It was insisted by appellant's counsel that the record clearly show "that the maximum savings are one thing and the actual program is something else" (Tr. 1315). Appellant's president, who testified as to the program, was unable to indicate how it would actually be worked out, saying that "it would be pretty difficult to go beyond what I have tried to outline and the manner in which we would do this thing until we knew what the situation was" (Tr. 159).

Appellant attacks the concept of separate and independent operation under the control of Santa Fe and Pennsylvania (J. S. 23). But the concept is not new. The Commission has recognized in other cases that separate operation of a controlled carrier under its own local management is an effective factor in preserving existing traffic relationships with connecting lines, and insuring continued neutrality in service.[7] Such separate operation of Western is essential if it is to continue to perform its primary function as an east-west bridge line working closely with all its connections. This was recognized by the Commission as far back as 1924, when it imposed a condition requiring separate operation of the Clinchfield Railway, which was also a bridge line connecting with a number of other railroads. *Clinchfield Ry. Co. Lease*, 90 I. C. C. 112, 132, 133 (1924).

Appellant asserts that the Commission ignored the motivations of Santa Fe and Pennsylvania (J. S. 24). On the contrary, the Commission recognized their perfectly legitimate interest in acquiring control of Western and their self-interest in continuing its present policies (J. S. 61, 75, 81).

Western's line is merely a continuation of Pennsylvania's line from Logansport, Indiana, to Effner and is the sole reason for the existence of the latter. Extending across Illinois between the Pennsylvania on the east and Santa Fe on the west, Western interchanges 70 per cent of its interline traffic and two-thirds of its total traffic with these two roads. It is undisputed that for over

7. *Wabash R. Co. Control*, 247 I. C. C. 365, 370-71 (1941); *Wheeling & L. E. Ry.*, 267 I. C. C. 163, 176 (1946); *Niagara Junction R. Co. Control*, 267 I. C. C. 649, 661, 663 (1947); *D. T. & I. R. Co. Control*, 275 I. C. C. 455, 490, 491-92 (1950); *Pacific Coast R. Co. Control*, 282 I. C. C. 600, 607 (1951).

30 years Santa Fe, Western and Pennsylvania have co operated in coordinating their schedules and service to build up this traffic. It is quite natural, therefore, that Santa Fe and Pennsylvania were interested in continuing this mutually beneficial relationship with Western through the acquisition of the latter's stock when it was put up for sale.

Appellant attempts to raise the ghost of Western's bankruptcy more than 40 years ago under Pennsylvania-Burlington control (J. S. 16); but as subsequent developments have proven, what Western lacked then was an effective connection at the western end of its line to complement the Pennsylvania on the east. The Burlington, with an important line directly into Peoria, had no incentive to support the western part of Western's line. The need for an effective connection on the west was met when the interchange with Santa Fe at Lomax was constructed in 1927. As pointed out in the case authorizing that interchange, "the proposed construction will aid in sustaining that part of the applicant's railroad west of Peoria" (*Construction by T. P. & W.*, 124 I. C. C. 278, 279 (1927)). The soundness of this prediction has been amply demonstrated by the successful growth of Western's traffic in cooperation with Santa Fe and Pennsylvania in the more than 30 years since the construction of the Lomax interchange (J. S. 60-61, 91).[8]

8. Santa Fe has a particularly strong interest in Western's route through Peoria because it does not reach either the Peoria or St. Louis gateways, while its western competitors, the Rock Island and Burlington, serve the Chicago, Peoria and St. Louis gateways directly. The Commission found that the movement of traffic via Western enables Santa Fe to obtain a long haul through Lomax on traffic which might otherwise move via St. Louis; in which event, Santa Fe could receive no haul east of Kansas City and might lose the traffic entirely (J. S. 81). This was recognized in the proceeding involving construction of the interchange at Lomax in 1927, where it was pointed out that "the route to be afforded by the proposed connecting track will permit of longer hauls to [Western] and the Santa Fe." *Construction by T. P. & W., supra*, 124 I. C. C. at 279.

The Commission did not apply different standards to the claims of traffic diversion, as appellant charges (J. S. 25). The facts were different. Not only the Wabash but the Nickel Plate and Rock Island offered evidence as to the effect of appellant's plan on their traffic (Tr. 1500, 1835). Appellant's own traffic vice-president testified that by integrating Western's line into its service, appellant would obtain "new traffic" by diverting it from the Rock Island, Milwaukee, North Western and Burlington (Tr. 1307, 1304, 1305), and by short-hauling the Gulf, Mobile & Ohio, the Chicago & Eastern Illinois, the Illinois Central and the Wabash (Tr. 1303, 1275-76, 1281-82). Appellant would "actively solicit" this traffic to divert it from these lines, all of which are connections of Western (Tr. 1284, 1306). This would be a far cry from Western's present policy of working closely with all its connections.

Referring to its own claims of diversion, appellant says the Commission "dealt with appellant's detailed evidence of the damage it would suffer if Western were owned by Pennsylvania-Santa Fe in the following language" and then proceeds to quote one sentence from the report discussing diversion in general terms (J. S. 25). This statement is somewhat lacking in candor. The Commission devoted five full paragraphs of its report to a specific analysis of appellant's "detailed evidence" of diversion (J. S. 77-79).

Appellant argues further that the Commission found the standard routing conditions, generally prescribed in such cases, would be sufficient to protect the other carriers in the event of a Santa Fe-Pennsylvania acquisition and that they should, therefore, be equally sufficient to protect the other carriers in the event of acquisition by appellant (J. S. 25-

26). This argument ignores the fact that the Commission did not rely solely on the prescribed routing conditions to support its finding, but also on the plan for separate operation of Western under its present policies as embodied in the contract between Santa Fe and Pennsylvania and on the checks and balances inherent in control of Western by an eastern and a western carrier (J. S. 90; and see page 27, *infra*).

Appellant's application was fully considered in the light of the public interest and the particular circumstances of the case; and it was, in no sense, denied a comparative hearing.

2. THE FINDINGS ARE SUPPORTED BY THE EVIDENCE:

Appellant's treatment of its contention that certain findings are not supported by substantial evidence is both sketchy and inaccurate (J. S. 18-21). None of the findings attacked are clearly identified by reference to the report, and what purports to be a paraphrase is often a distortion of the finding actually made. There is no analysis or even reference to all the evidence bearing on the particular findings attacked. Primary reliance is placed on general assertions and on statements taken out of context in an attempt to "manufacture" a supposed conflict.

Thus appellant says the finding that acquisition by Santa Fe and Pennsylvania will not jeopardize its traffic ignores appellant's "unchallenged" accounting studies and the testimony of the successful applicants as to their solicitation policies (J. S. 18). Far from ignoring them, the Commission analyzed in detail each category of appellant's "studies" of alleged diversion along with the evidence as

to solicitation policies and concluded there would be no substantial diversion (J. S. 77-79).

Appellant says the Commission justified the reasonableness of the purchase price for Western's stock on the ground that it was negotiated at arm's length and that appellant was willing to pay as much (J. S. 18); but fails to mention that these were only two of the several factors relied on by the Commission. Appellant says that it was willing to pay $135 per share only because of the economies under its plan for sole control of Western, but fails to advise this Court that it offered to pay $135 per share for a partial interest in Western if any other carrier were authorized to acquire control.[9]

Appellant implies that potential earning capacity was ignored, but the report shows that the Commission considered such factors as Western's earnings record, its excellent physical and financial condition, the valuation of its property for rate-making purposes, its progressive and able management and its strategic location which adds to its value as a long-term investment (J. S. 85-86). While it is true that comparisons of price-earnings ratios were not made, there was no evidence thereof in the record.

Appellant argues that the finding that Santa Fe and Pennsylvania would "permit" traffic through Peoria in competition with Chicago and St. Louis is unsupported by substantial evidence and contrary to the testimony of their presidents (J. S. 19-20). The use of the term "permit"—it was not used by the Commission—ignores the unchallenged finding that all but a very small part of the nation's traffic is routed by the skipper and that service is the most important factor influencing such routing (J. S. 76). We

9. See appellants' petition for reconsideration before the Commission, pp. 49, 50. The fact is that not only the Santa Fe, Pennsylvania and appellant, but four other railroads seeking participation in control under varying circumstances expressed their willingness to pay $135 per share.

have already pointed out that the cooperation of Santa Fe and Pennsylvania with Western for over 30 years in providing fast through service via the Peoria gateway has played a major part in the development of Western's traffic (*supra*, p. 10). As to solicitation policy, the record shows and the Commission found that as owners of Western, Santa Fe will place Lomax on a parity with Chicago, and Pennsylvania, while continuing to solicit its long haul to St. Louis, will place Effner on a parity with Chicago, thus increasing the volume of traffic available for solicitation through Peoria (Tr. 221-22, 243, 378, 416, 1889-90; J. S. 75-76, 78). The testimony on this point by the president of Pennsylvania, when read in its entirety (see Tr. 337-38 as well as 281-82), fully supports the finding as does the testimony of its traffic vice-president (Tr. 378, 416). There is no conflict between this finding and the testimony of Santa Fe's president.[10] As the traffic manager of a large Pacific Coast shipper testified, Santa Fe has in recent years "tended to lean toward Lomax gateway about as freely as they do the Chicago gateway" (Tr. 793).

Appellant next attacks the finding that with the backing of Santa Fe and Pennsylvania and the assistance of their industrial departments, there are excellent prospects for locating new industries on Western's line (J. S. 90-91). But the record is replete with testimony that the ownership of Western by these two strong connections (Tr. 227, 485, 491, 524, 630, 642, 690, 715-16, 734-35, 915, 929, 941, 485, 491, 524, 630, 642, 690, 715-16, 734-35, 915, 929, 941, 952) and the assistance of their industrial staffs (Tr. 358-59, 364-65, 465, 643, 950) would provide an economic stimulus to industrial development along Western's line. Appellant says officers of Santa Fe and Pennsylvania testified that

10. In passing, it should be noted that Santa Fe's president did not, in fact, testify about the influence of the originating carrier. The only transcript reference to his testimony cited by appellant in this connection (Tr. 98 cited at J. S. 20) supports the finding as to the parity policy.

they would prefer to locate industries on their own lines, but the testimony of the officers referred to shows that both Santa Fe and Pennsylvania will have an incentive to assist in locating industries on Western. Santa Fe, because of its late entry into Chicago, is lacking in industrial property, in that area and Pennsylvania, too, is short of industrial sites in Illinois (Tr. 225-26, 378-79).

Appellant attacks the finding with respect to car supply because Santa Fe and Pennsylvania were short of cars in 1955 (J. S. 20). Of course, all roads suffer from lack of cars during periods of general car shortage,[11] but that does not detract from the Commission's finding which was that Santa Fe and Pennsylvania would increase the supply of cars available to Western by seeing to it that Western's car ownership obligations were met in full either by having Western increase its car ownership or by increasing their own ownership sufficiently to take care of Western (J. S. 92). This is supported by the record (Tr. 50-51).

Equally insubstantial is the assertion that the findings regarding appellant's service west of Peoria and its proposed policy toward Western's connections contradict the only evidence in the record (J. S. 20). As to service the record shows (Tr. 1886, H-121) and the Commission found (J. S. 64, 78) that when appellant's line is used as an intermediate carrier between Western at Peoria and the Santa Fe at Nemo, the service is much lower than when traffic is interchanged directly at Lomax between Western and Santa Fe. As to appellant's policy, we have already discussed its plan to divert traffic from Western's other connections if it were authorized to acquire Western (*supra*, p. 16). Obviously this would not be "neutrality". For that matter, under appellant's plan to operate Western

11. Appellant's reports to the Association of American Railroads showed that it was short of cars for most of the year 1955 (H-120; Tr. 1327) and its president admitted that its car ownership was not up to A. A. R. recommendations (Tr. 1192).

as a part of its own line, there would be no "Western" to maintain a policy of neutrality. Appellant's line, now just one of Western's 16 connections, would automatically be favored.

The questions presented on this appeal show no need for a redefinition of the substantial evidence rule, as appellant suggests. The findings attacked are supported not only by substantial evidence, but by the weight of the evidence.

3. SECTION 10 OF THE CLAYTON ACT IS NOT A BAR TO THE PROPOSED ACQUISITION.

Appellant says Section 10 of the Clayton Act has not been construed by this Court (J. S. 27). The answer is, as the District Court recognized, that a definitive construction of Section 10 is unnecessary (J. S. 47). The Commission has authorized Santa Fe and Pennsylvania to acquire joint control of Western by purchase of its stock. If, as appellant contends, such purchase by Pennsylvania Company is prohibited by Section 10 of the Clayton Act because there are directors common to its parent, The Pennsylvania Railroad Company, and Wilmington Trust Company, which holds title to the bulk of the stock as one of the co-trustees of the McNear estate, Pennsylvania Company is expressly relieved from that prohibition by Section 5(11) of the Interstate Commerce Act.[12]

Appellant, ignoring the fact that no stock has as yet been purchased, says the purchase of Western "had its roots" in a "direct unequivocal" violation of Section 10 and contends that the Commission lacks power to "con-

12. Section 5(11) provides that the Commission's authority is "exclusive and plenary" and that all parties to a transaction so authorized are "relieved from the operation of the antitrust laws and of all other restraints, limitations and prohibitions of law, Federal, State or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved" (49 U. S. C. §5(11); J. S. 108-109).

done" such a violation (J. S. 27). The short answer is that the authority of the Commission is "exclusive and plenary" and that the controlling consideration under Section 5 is the public interest in an adequate transportation system. Since the Commission has determined that the proposed acquisition is in the public interest, Section 5(11) removes any bars to its consummation.

Moreover, there is nothing to condone. Section 10 is not applicable to the facts of the present case. There is no conflict between the Commission's policy under Section 5(2), as reflected in its approval of the Santa Fe-Pennsylvania application, and the policy of Section 10 of the Clayton Act. Section 10 provides, in so far as here pertinent, that no common carrier "shall have any dealings in securities" to the amount of more than $50,000 in any one year with another corporation with which it has officers or directors in common, except upon competitive bidding (15 U. S. C. § 20; J. S. 102-03). Its legislative history shows that the evil Congress intended to forbid was the exploitation of a carrier through improvident dealings in securities with another corporation in which its officers or directors were interested (51 Cong. Rec. 15943 (1914)). *Cf. Re Missouri Pacific R. Co.*, 13 F. Supp. 888 at 892-93 (E. D. Mo. 1935).

Here there have been no "dealings in securities."[13] Pennsylvania Company has purchased no securities from the Wilmington Trust. Prior to the transaction here involved Pennsylvania Company obtained a letter commitment from the trustees for purchase of 26 per cent of Western's stock, but this was later repudiated by the

13. Moreover, as the District Court pointed out, the Wilmington Trust was not acting for itself, but was functioning in a fiduciary capacity as one of the two co-trustees of the McNear estate and in the interest of the beneficiaries of the trust. Thus the situation was not one where the common directors could be enriched (J. S. 46).

trustees when appellant made a higher offer. Then Santa Fe, acting entirely in its own interest, topped appellant's offer and entered into a contract to purchase all the stock held by the trustees. It also contracted to purchase the shares of all the other holders of Western's stock. Finally, Santa Fe entered into a contract with Pennsylvania and Pennsylvania Company providing that the latter should acquire 50 per cent of the stock Santa Fe had contracted to purchase.[14]

Both contracts were expressly conditioned on approval of the transaction by the Commission and the instant application was accordingly filed. In approving the proposed acquisition, the Commission, pursuant to the requirements of Section 5(2), expressly found that the price to be paid for Western's stock was reasonable (J. S. 85-86). With such a finding, the possibility of the purchasing carrier's being milked, either directly or indirectly, by payment of an exorbitant purchase price to a corporation with which it has directors in common is eliminated and the objective of Section 10 of the Clayton Act has been met.

Appellant misses the point entirely when it cites *Central of Georgia Ry. Co. Control*, I. C. C. (Nov. 14, 1938). There the Frisco Railroad had already acquired control of the Central by stock purchase prior to seeking the approval of the Commission as required by Section 5(2) of the Interstate Commerce Act. The Commission denied the application on the ground that:

14. Appellant contends that Santa Fe was acting for Pennsylvania as well as for itself when it contracted to purchase the stock from the trustees, but the Commission specifically found that: "the Santa Fe is the only purchaser of the stock from the trustees and had no commitments to sell any of it to any other railroad. Before offering to sell a portion of the stock to Pennsylvania, several other joint control possibilities were considered and rejected" (J. S. 88). This finding is fully supported by all the testimony of record (Tr. 18, 65-69, 106-112; for corroboration, see II-83). It was given full credence by the hearing examiner (Proposed Report, sheet 26).

> "If Frisco is permitted to retain the fruits of its unlawful conduct, and we sanction such conduct, which we consider to have been in flagrant disregard of the law, others will be encouraged to pursue a like course and to present a *fait accompli* for our approval. Obviously, such is not in accord with the intent of the statute, *i. e.*, that we pass upon 'proposed' acquisitions of control prior to their consummation, including the justness and reasonableness of the terms upon which such control is to be acquired. If the indicated practice were generally followed, the administration of the statute in the public interest would be seriously hindered, if not defeated."

The present case is entirely different. No stock has as yet been acquired. There is no *fait accompli*, approval of which would undermine the administration of the statute. The proposed acquisition has been submitted to and approved by the Commission in advance of consummation. The Commission has found the proposed acquisition to be in the public interest. It has passed on the terms of the transaction and has expressly found the purchase price to be reasonable. In doing so it has also provided full protection against the evil which Section 10 of the Clayton Act was designed to prevent—exploitation of the purchasing carrier through payment of an excessive purchase price for the stock.

4. THE COMMISSION GAVE APPROPRIATE CONSIDERATION TO THE COMPETITIVE EFFECTS OF THE PROPOSED ACQUISITION.

In its argument with respect to Section 1 of the Sherman Act and Section 7 of the Clayton Act appellant refuses to come to grips with either the holding of this Court in *McLean Trucking Co. v. United States*, 321 U. S. 67 (1944), or with the Commission's detailed findings as to the effect of the proposed acquisition on the competitive situation (J. S. 29-34).

In the *McLean* case, this Court held that the "basic determinants" of Commission action in proceedings under Section 5(2) of the Interstate Commerce Act must be the policies expressed in that Act and in the National Transportation Policy (321 U. S. at 79-80). Proposals under Section 5(2) are not to be measured by the general policies of the anti-trust laws; otherwise the provisions of Section 5(11) granting immunity from the anti-trust laws to transactions approved by the Commission would be meaningless (321 U. S. at 85-86). The policy of the anti-trust laws is not to be ignored, however; and it is, therefore, the duty of the Commission to consider the scope and effect of the curtailment of competition which will result from the proposed transaction along with its advantages in the light of the over-all transportation policy (321 U. S. at 86-87).

This is exactly what the Commission did, as the Court below pointed out (J. S. 50). The Commission found that:

> "* * * [T]he benefits to be derived from the operation of the Western under the control of the Santa Fe and the Pennsylvania as proposed will be in furtherance of the overall national transportation policy declared by the Congress, and its consummation will not unduly curtail competition in connection with the other carriers. Compare *McLean Trucking Co. v. United States*, 321 U. S. 67." (J. S. 81-82.)

This finding is supported by numerous subsidiary findings already discussed relating to the public advantages in the control of Western by Santa Fe and Pennsylvania, the benefits they receive from Western's line, and their past relationship with Western, including the part they have played in the development of interchange traffic which now accounts for about 70 per cent of Western's total interline traffic (*supra*, p. 10). A major part of the report deals specifically with the competitive effects of the proposed acquisition on other carriers (J. S. 75-82,

83-85, 90). After a general discussion of the factors affecting the routing of traffic, the Commission carefully analyzed the claims of traffic diversion and concluded that the proposed acquisition would not unduly curtail competition (J. S. 76-77, 77-81, 81-82).

This conclusion is firmly grounded in the economic self-interest of the Santa Fe and Pennsylvania. In the first place, as the report states, Western's success has been built on its present service and solicitation policies; and the best way for Santa Fe and Pennsylvania to assure a substantial return on their investment in Western is to see that Western's management is left free to continue them (J. S. 77).

Next—from the standpoint of service—the Commission emphasized the fact that Western's line is not the only route between the east and the west.[15] The Commission pointed out that if Western were to render poor service to its other connections, it would lose their interchange traffic entirely without any benefit to Santa Fe or Pennsylvania (J. S. 81). A number of large shippers testified that if Western rendered poor service to these other connections, the traffic would go to other available routes which do not include either Santa Fe or Pennsylvania (Tr. 596, 597, 599, 661-63, 690, 773-74).

But the most important factor protecting Western's other connections is the built-in system of checks and balances, which was described by the Commission as follows:

> "* * * No greater protection could be afforded to carriers interchanging traffic with Western than to have ownership divided equally between the largest connecting carrier in the east and the largest one in the west. Under this built-in system of checks and

15. In fact, Western's line is only one of a number of routes through the Peoria gateway. In addition, there are any number of available routes through Chicago and St. Louis which do not include either Pennsylvania or Santa Fe. Tr. 569-70.

> balances, it is inconceivable for the Santa Fe to permit impairment of service or discriminatory solicitation with respect to eastern connections, or the Pennsylvania with respect to western ones * * *." (J. S. 90.)

Thus the Commission's finding that the proposed acquisition would "not unduly curtail competition" is based on practical considerations reflecting the realities of competition in the transportation field.[16] Appellant's argument assumes that the findings are inadequate because they do not deal with the competitive situation in terms of the anti-trust laws. Appellant asserts, without any support authority, that the proposed acquisition would "admittedly" violate the anti-trust laws,[17] and points out that the Commission "did not mention either Section 1 of the Sherman Act or Section 7 of the Clayton Act" (J. S. 30). But the

16. The "built-in system of checks and balances" works in two ways: First, Pennsylvania as an eastern road receives valuable traffic via Western from the latter's connections on the west, such as the Rock Island, Burlington and appellant's line. Santa Fe likewise receives important traffic via Western from eastern roads, such as Nickel Plate and the New York Central. Neither would want Western to be operated in such a way as to lose that traffic (Tr. 53, 365-66, 377).

Second, it is a well-known fact that railroads serving the east-west gateways cannot afford to favor one connection to the detriment of others. This was conceded by appellant's freight traffic manager (Tr. 1215) and is reflected in the policy of the Nickel Plate (Tr. 1503-04). It was recognized by the Commission in *Chicago, Burlington & Quincy R. Co. Control*, 271 I. C. C. 63, 154 (1948).

It would be "suicidal" for Santa Fe and Pennsylvania to join in any attempt to divert traffic from Western's other connections to Santa Fe-Western-Pennsylvania routing. If they attempted this, Santa Fe would antagonize all its other eastern connections and Pennsylvania would antagonize all its other western connections, including not only the lines with which each bridges traffic over Western, but also their connections at other east-west gateways which do not connect with Western (Tr. 223-24, 243).

17. The statement (J. S. 30) that the acquisition would link "two empires," *i.e.*, the Pennsylvania and Santa Fe, overlooks the finding as to the effect of the checks and balances inherent in control by an eastern and a western railroad.

McLean case makes it clear that this is not required. The Commission's report, which was sustained in that case, did not discuss the competitive situation in terms of the anti-trust laws and made no reference to the Sherman or Clayton Acts (*Associated Transport, Inc.—Control and Consolidation*, 38 M. C. C. 137 (1942)). In that case, just as in the present case, the Commission discussed the competitive situation in practical and concrete terms reflecting the evidence of record and its "past experience with transportation operations and analogous transactions." (321 U. S. at 89.)

5. APPELLANT WAS ACCORDED AN ADEQUATE REVIEW BY THE DISTRICT COURT.

The charge that the District Court abdicated its function is without merit (J. S. 34-35). A reading of the opinion below will show that the court carefully considered the questions raised, followed accepted standards of review, and merely refused to substitute its judgment for that of the Commission on matters committed by law to the latter.

CONCLUSION.

We submit that the foregoing arguments show that the District Court ruled correctly on the questions sought to be presented on this appeal, and that the questions are so unsubstantial as not to need further argument. Accordingly, the motion to affirm should be granted.

Respectfully submitted,

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December 30, 1958.

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Office Supreme Court, U.S.

MOTION TO

AFFIRM ON BEHALF

OF THE STATE OF

ILLINOIS

NO 12

FILE COPY

Office-Supreme Court
FILED
DEC 31

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. [redacted] 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,

Appellant,

against

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM
ON BEHALF OF THE STATE OF ILLINOIS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 552.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,

Appellant,

against

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM.

The State of Illinois, appellee in the above-entitled case, pursuant to Rule 16, paragraph 1(c) of the Revised Rules of the Supreme Court, respectfully moves to affirm on the ground that the decision of the court below is wholly correct, in accord with all relevant authority and that the questions raised by the Appellant are so unsubstantial as not to require further argument.

STATEMENT.

This controversy, while directly involving the judicial review of an order of the Interstate Commerce Commission, basically concerns the question of the acquisition by the Pennsylvania and Santa Fe of the stock of Western[1] under the statutory standards of Sec. 5 of the Interstate Commerce Act (49 U.S.C. Sec. 5). That section requires that any acquisition "be consistent with the public interest." While initially there were four alternatives presented to the Interstate Commerce Commission,[2] the issue has now been narrowed to two, namely: (1) does the public interest lie in preserving Western's existing transportation function as a bridge-line through the Peoria Gateway by stock ownership by Western's two largest connecting lines, or (2) does the public interest lie in making the future operation of Western a part of appellant's railroad and substantially altering Western's present operation and transportation function?

The State of Illinois has a substantial interest in this proceeding. Western lies almost entirely within Illinois. Its executive office, yards and shops are located in Illinois. Western's employees reside in Illinois. Although Western is primarily a bridge-line, it provides an essential transportation service upon which the communities along its line

1. The interested railroads will be referred to hereinafter as follows: Toledo, Peoria and Western Railroad Company as Western, The Pennsylvania Railroad Company as Pennsylvania, and The Atchison, Topeka and Santa Fe Railway Company as Santa Fe.

2. These alternatives are described at page 64 of the Jurisdictional Statement. They included: (1) joint control by Santa Fe-Pennsylvania, (2) sole control by appellant, (3) multiple ownership, and (4) denial of both applications or dismissal of appellant's applications.

are completely dependent.[3] Its function as a bridge-line provides the communities along its line a type of service which would otherwise not be economically justified. This is particularly true as to the line west of Peoria.

The interests of the States of South Dakota and Minnesota involved in this proceeding are, at best, remote and indirect. They are based upon the unwarranted assumption that appellant's traffic would be diverted under Santa Fe and Pennsylvania's control of Western and upon the equally unwarranted assumption that appellant's absorption of Western would result in a consequential benefit to them. Unlike the conditional nature of these interests, the interests of the State of Illinois are directly and immediately affected by the admitted loss of existing benefits inherent in appellant's absorption of Western into its operations. Such losses are involved in the alteration of Western's existing transportation function, the abandonment of Western's executive offices, yards and shops at Peoria, and the effectuation of substantial reductions in personnel and cutbacks in spending within the State of Illinois.

Illinois has a direct interest in the economy of the area of Central Illinois served by Western. That interest is manifest in the continued agricultural and industrial development of that area, in the economy of the City of Peoria and the Peoria area, the continued present and further development of railroad service to the communities along Western's line, the development of Peoria as a major rail

3. All of the communities along the line of Western intervened in the proceedings before the Interstate Commerce Commission and the United States District Court in support of Santa Fe-Pennsylvania control. These communities are: the City of Peoria, the City of East Peoria, the City of Bushnell, the City of Canton, the City of LaHarpe, the Village of Lomax, the City of Warsaw, the City of Forrest, the City of Fairbury, the City of Gridley, the City of Gilman, the City of Sheldon, the City of Watseka, the City of Eureka, the Village of Secor, the City of Washington and the City of Chenoa.

gateway, and finally but of major consequence in Western's employees. Each of these interests are directly related to the preservation of Western's existing transportation function and its continued development as a bridge-line in transcontinental traffic. The disadvantages inuring to each of these points of interest by altering Western's existing transportation function under appellant's proposal is apparent and provided the basis for the State of Illinois' participation in this proceeding before the Interstate Commerce Commission, the District Court and now the State's participation in this appeal.

In dealing with the questions put by appellant, the State of Illinois will confine its argument to only the questions which relate to the interest of the State.

ARGUMENT.

I.

THE ADEQUACY AND SUBSTANTIALITY OF THE FINDINGS.

A. The Adequacy of the Findings.

First: Appellant argues that its absorption of Western and the consequent realization of operating economies and the institution of improved service via the combined property "entitled" it to the Commission's approval in preference to the Santa Fe-Pennsylvania plan which proposed no large-scale economies or changes in service. Thus only appellant's plan is said to have "conformed" to Section 5 of the Interstate Commerce Act and the National Transportation Policy. What appellant is saying, in effect, is that under the governing standards of Section 5 and the objectives of the National Transportation Policy, the Commission is required to approve a proposal involving substantial economies and "improved" service regardless of the consequences of such proposals and irrespective of the merits of another proposal which does not involve the achievement of large scale economies or new service. This is simply not so.

Appellant's argument ignores both the fact that the application of the standards of Section 5 may vary with the circumstances of each proceeding, and that the several objectives of the National Transportation Policy may, in their application to any proceeding, be mutually exclusive. The argument, furthermore, ignores that the Commission expressly found that the changes in service proposed by appellant would be "extremely harmful" to other carriers'

4. Juris. St., pp. 72-73.

and that the economies which might be achieved would be effected at the expense of Western's employees.[5] Both of these findings illustrate that, in evaluating a proposal such as this, the scope of the Commission's discretion under Section 5 is broader than appellant suggests. Section 5(2)(c) of the Interstate Commerce Act, specifically directs the Commission to give weight to the effect of a proposal upon the interests of the carrier employees affected.[6] Such consideration is directed to the merits of the proposals since labor is part of the "whole public" included in the concept of the public interest under Sec. 5.[7] The State of Illinois has a special interest in the 256 families who would be displaced through Western's absorption by appellant, and Illinois' participation in the proceeding before the Commission reflects this concern. The Commission weighed the possible economies against the interests of Western's employees and concluded that the employees' interests, the interests of the communities, shippers and other parts of the public affected by the proposal outweighed the possible achievement of economies under the circumstances presented in this proceeding.

In evaluating a proposal such as this, the Commission is further directed under Section 5(2)(c) to give weight to the effect of the transaction upon adequate transportation service to the public. In the application of this standard,

5. Juris. St., pp. 73-74.

6. It should be noted that the Railway Labor Executive Association intervened in the proceeding before the Commission in support of Santa Fe-Pennsylvania control of Western on the ground that the interests of labor would be fully recognized under such control.

7. In *Florida East Coast Railway Company Reorganization*, 267 I. C. C. 295 (1947) at page 325, the Commission said: "In cases heretofore decided, we have stated that the public interest embraces the whole public and the public as a whole, and that the interests of employees in changes of management, ownership, or operation of companies by which they are employed are of public as well as private interest."

the Commission also found that the value of the new service routes proposed by appellant via the combined operation would be outweighed by the adverse effect which the institution of such routes would have upon other carriers and the ability of such carriers to continue to provide adequate transportation service to the public. This consideration also underlies the Commission's basic finding that the public interest requires that Western's existing transportation function be retained. Sec. 5, on its face, and its application by the Commission in this proceeding, in accordance with the National Transportation Policy, indicates clearly that the "public interest" is not limited to the effectuation of economies and new service regardless of the consequences of such proposals.

Second: Appellant argues that there were no ultimate, basic or factual findings contained in the Commission's report sufficient to justify approval of the Santa Fe-Pennsylvania proposal or rejection of appellant's plan. An objective analysis of the report, however, indicates that findings were made as to all of the material issues, that such findings are sufficient to satisfy the requirements of Section 8(b) of the Administrative Procedure Act, 5 U. S. C. Sec. 1007, and that the findings reveal the "essential basis" of the Commission's decision in a manner which adequately lends the decision to effective judicial review. *Luckenbach S. S. Co., Inc.* v. *United States*, 122 F. Supp. 824, 827 (D. C. S. D. N. Y., 1954); *Capital Transit Co.* v. *United States*, 97 F. Supp. 614, 621 (D. C. D. C., 1951); *Alabama G. S. R. Co.* v. *United States*, 340 U. S. 216, 227-28 (1951).

The ultimate finding is contained in the Commission's conclusion that the Santa Fe-Pennsylvania proposal to preserve Western's existing transportation function was "consistent with the public interest," (the statutory standard of Sec. 5(2)) and that the benefits to be derived

from the operation of Western under Santa Fe-Pennsylvania's proposal would be "in furtherance of the overall National Transportation Policy declared by the Congress."[9] The basic finding was that the public interest required that Western's existing transportation function "in all respects" be preserved.[10]

The need for retaining Western's existing transportation function as expressed in the basic finding, in turn, rests upon the following subsidiary evidentiary findings: (1) that Western occupies a geographically strategic position;[11] (2) that Western performs a strategic function as an overhead carrier operating through the alternative Peoria Gateway, bypassing the congested terminals of Chicago and St. Louis;[12] (3) that Western's function as an overhead carrier and its existing traffic policies of (a) maintaining strict neutrality between its sixteen connecting lines and (b) attempting to participate in a haul of traffic no matter how slight, are a natural result of and are directly related to Western's strategic geographic position and account for Western's success;[13] (4) that, as a consequence of Western's strategic position, the function which it serves, and its traffic policies, Western has assumed national importance in the Nation's railroad system as a "vital direct link" supplying the "short-line connection" as to east west traffic;[14] (5) that Western's existing function and its traffic policies thus make available Western's natural advantages to the maximum number of its connecting railroads;[15] and that (6) the retention of Western's ex-

9. Juris. St., pp. 81-82
10. Juris. St., p. 89.
11. Juris. St., p. 60.
12. Juris. St., p. 60.
13. Juris. St., p. 60.
14. Juris. St., p. 89.
15. Juris. St., p. 89.

isting transportation function and the preservation of its existing policies have significant consequences both to the railroad industry as well as the public generally.[16] The Commission found furthermore, that, with the exception of appellant and the States of South Dakota and Minnesota, its conclusion that the retention of Western's existing function was essential to the public interest was shared by all of the parties to the proceeding, including all of the railroad intervenors, all of the communities served by Western and all of the shippers who appeared in the proceeding as witnesses.[17] These ultimate, basic and evidentiary findings are all directly related to the standards contained in Sec. 5 and to the objectives of the National Transportation Policy.

Having before it two proposals, only one of which was predicated upon the retention of Western's existing transportation function, it would have been unnecessary for the Commission to make any additional evidentiary findings other than to give expression to the fact that the appellant's plan "unequivocally" contemplated the abandonment of Western's existing transportation function, and that the Santa Fe Pennsylvania plan coincided with the basic finding and otherwise complied with the public interest.[18] The Commission went a great deal further in making findings, however, and dealt with both proposals on the merits. These findings will be discussed in the reply to the second question put by appellant relative to the alleged failure of the Interstate Commerce Commission to accord a comparative hearing.

16. Juris. St., p. 89
17. Juris. St., p. 72
18. Juris. St., p. 71

B. Substantiality of the Evidence.

Third: Appellant argues that the findings which were made are not supported by substantial evidence. In attempting to obtain a judicial re-evaluation of the weight to be accorded the evidence relating to these findings, appellant distorts both the nature of the findings and the record. In an effort to manufacture conflicts between the findings and the record, appellant uses statements of the officers of Santa Fe and Pennsylvania which are taken out of context in which they appear and, in effect, puts in issue the credibility of those officials.

One of the findings attacked by appellant is that industrial development along Western's line will be furthered as a consequence of Santa Fe-Pennsylvania's control. Another attacked finding which is closely related to industrial development is that under Santa Fe-Pennsylvania's control, Western would have an increased opportunity to secure traffic now moving via other gateways. The State of Illinois has a substantial interest in each of these objectives. The development of the Peoria Gateway and the stimulus to further industrial development along Western's line inherent in Santa Fe and Pennsylvania's control of Western provide the principal bases upon which the municipalities and business associations[19] along Western's line unanimously predicated their support for the Santa Fe-Pennsylvania proposal. The witnesses representing each of these interests recognized that the very fact of Santa Fe and Pennsylvania's owner

19. The municipalities affected by this proceeding are named in the footnote at page 3, *supra*. In addition to the municipalities along Western's line, various civic and business associations also intervened in support of Santa Fe and Pennsylvania's control of Western. They included the Peoria Association of Commerce and Industry, the Peoria Junior Chamber of Commerce, Bushnell Chamber of Commerce, Canton Chamber of Commerce, LaHarpe Golden Rule Club, Keokuk Chamber of Commerce and Warsaw Chamber of Commerce. No mention is made of these interests in the Jurisdictional Statement.

ship of Western would itself provide a strong inducement for the location of new industries in the area it serves (R. 485, 491, 524, 630, 642, 690, 715-16, 734-35, 915, 929, 941, 952). The achievement of this objective, therefore, is not dependent upon anything which either the Santa Fe or Pennsylvania might do in connection with the location of specific industries along Western.

Appellant, moreover, distorts both the finding and the record regarding industrial development by suggesting that a conflict exists between the finding and the testimony of the officials of Pennsylvania-Santa Fe that they would locate on Western only such industries as they could not locate on their own lines. The Commission's finding does not suggest that either Santa Fe or Pennsylvania will treat Western on a parity with their own lines in the location of industries.[20] The finding merely reflects the fact that the industrial development departments of both roads will assist Western in locating industries on its line. This is based in part upon the fact that both Santa Fe and Pennsylvania are short of available industrial sites in Illinois. There is substantial evidence to support this finding (R. 358, 378-79, 49, 225-26, 227, 364-65).

Appellant's argument regarding the finding concerning the development of the Peoria Gateway under Santa Fe and Pennsylvania's control of Western involves a similar distortion of both the record and the findings. Appellant's statement of the finding is completely distorted in that it assumes that the movement of traffic over Western's route is detrimental to the interests of Santa Fe and Pennsylvania. The Commission made no such finding. The Commission did find that, based upon (1) both Santa Fe and Pennsylvania's past solicitation policies of working closely with Western,[21] (2) the mutu-

20. Juris. St., pp. 90-91.
21. Juris. St., p. 75.

ality of interests among Santa Fe, Pennsylvania and West ern in the Peoria Gateway,[22] (3) the cooperation accorde Western in coordinating schedules and services,[23] and (4 the economies of Santa Fe and Pennsylvania's control,[2 Western would have an increased opportunity to secur traffic moving via other gateways.[25] In addition to this the detailed discussion of the competitive consequences o Santa Fe and Pennsylvania's control of Western full supports this finding and provides adequate assuranc that Santa Fe and Pennsylvania would not and could no stifle competition via the Peoria Gateway.[26]

II.

THE FAILURE OF THE INTERSTATE COMMERCE COM MISSION TO ACCORD A COMPARATIVE HEARING.

Appellant argues that the Commission failed to "com paratively" consider its proposal for its acquisition o Western. This question is really a restatement of th first question put by appellant relative to the adequac of the findings. As shown in the reply to that question, th Commission made adequate ultimate and basic finding which were supported by evidentiary findings. All of thes findings established that the public interest required the re tention of Western's existing transportation function. Be cause of the nature of the two proposals, it was unnecessar for the Commission to make any additional findings excep to reflect the fact that appellant's proposal was inconsisten with the achievement of this objective while the Santa Fe-Pennsylvania's proposal was in accord with it an was otherwise consistent with the public interest.

22. Juris. St., p. 75.
23. Juris. St., p. 60.
24. Juris. St., p. 75.
25. Juris. St., p. 75.
26. Juris. St., pp. 75-82.

Appellant's and Santa Fe-Pennsylvania's proposals were wholly dissimilar in their nature. This proceeding was, therefore, quite unlike the case upon which appellant relies, involving multiple mutually exclusive applicants in a licensing proceeding before the Federal Communications Commission, where the scope of the variance on the merits of the proposals is exceedingly narrow. In proceedings of that nature, it may be necessary for the administrative body to make extensive findings on the merits of the proposals in order to provide a basis for effective judicial review. Such a need for findings on the merits of the proposals does not exist in a proceeding such as this where (1) the objective sought to be attained by the administrative body is arrived at wholly apart from the specific context of any one of the proposals, (2) the basis for arriving at the objective is expressed in adequate findings, (3) the objective falls within the scope of the governing legislative standards, and (4) when the objective is related to the specific context of the several alternative proposals before the administrative body, only one of the proposals is consistent with the attainment of that objective.

As hereinbefore pointed out, the Commission made adequate findings to support the ultimate objective that the transaction which it approved was "consistent with the public interest." However, not only were the findings on the merits of the Santa Fe-Pennsylvania proposal set out but the Commission made findings on the merits of appellant's proposal. Appellant affirmatively predicated its case upon the achievement of economies which allegedly would result from its absorption of Western, and upon the establishment of new service routes via the combined properties. The Commission made specific findings on the merits of both of these proposals. It found that the economies would be achieved at the expense of labor[27]

27. Juris. St., pp. 73-74.

and that the proposed new service would be harmful to other carriers.[28] The extensive consideration accorded appellant's affirmative proposals is reflected in the detailed analysis of its plan for control contained in the report.[29] Appellant also predicated its proposal, in part, upon the alleged diversion of its traffic under Santa Fe and Pennsylvania's control of Western. This too was adequately considered by the Commission as is evident by the detailed findings contained in the report.[30]

Thus it is apparent from the findings that the Commission fully considered the merits of both proposals in arriving at its conclusion concerning the public interest.

CONCLUSION.

The motion to affirm should be granted. The grounds upon which the District Court's decision rests are fully sustained on appeal.

Respectfully submitted,

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28. Juris. St., pp. 72-73.
29. Juris. St., pp. 70-75.
30. Juris. St., pp. 75-79.

NOTICE TO MECHANICS

BY HALF OR QUARTERTIZES

AND SHIPPERS ALONG THE LINE

OF TOLEDO, PEORIA & WESTERN

RAILROAD COMPANY

NO 1

FILE COPY IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. [redacted] 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,
APPELLANT,

VS.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION ET AL.,
APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM ON BEHALF OF MUNICIPALITIES AND SHIPPERS ALONG THE LINES OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 552.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, APPELLANT,

VS.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION ET AL., APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM ON BEHALF OF MUNICIPALITIES AND SHIPPERS ALONG THE LINES OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY.

These intervening appellees,[1] pursuant to Rule 16, paragraph 1(c) of the Revised Rules of the Supreme Court,

[1] The City of Peoria, Illinois, the City of East Peoria, Illinois, the Peoria Association of Commerce, the City of Bushnell, Illinois, the Bushnell Chamber of Commerce, the City of Canton, Illinois, the Canton Chamber of Commerce, the City of LaHarpe, Illinois, the LaHarpe Golden Rule Club, the Village of Lemax, Illinois, the City of Keokuk, Iowa, the Keokuk Chamber of Commerce, the Keokuk Bridge Commission, the City of Warsaw, Illinois, the Warsaw Chamber of Commerce, the City of Forrest, Illinois, the City of Fairbury, Illinois, the City of Gridley, Illinois, the City of Gilman, Illinois, the City of Sheldon, Illinois, the City of Watseka, Illinois, the City of Eureka, Illinois, the Village of Secor, Illinois, the City of Washington, Illinois, and the City of Chenoa, Illinois. All of said appellees will hereinafter be referred to as "these intervening appellees".

move that the judgment of the United States District Court for the District of Minnesota be affirmed on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

STATEMENT OF THE CASE.

1. Intervening Appellees Identified:

This motion is submitted jointly on behalf of the 18 municipalities, the 6 civic and business associations and the Keokuk Bridge Commission of Keokuk, Iowa, which are referred to by appellant in its description of the proceedings before the Commission as "certain other bodies" which intervened in support of Santa Fe and Pennsylvania's control of Western.[2] Collectively, these intervening appellees represent virtually every municipal, civic, business and shipping interest along the lines of the Toledo, Peoria & Western Railroad Company.[3]

2. Interests of Intervening Appellees:

Because of appellant's inadequate characterization of the scope of the interests represented by these intervening appellees, it would appear desirable to define these interests. The interest of these intervening appellees in this proceeding evolves out of the concern which they share for the economic and commercial welfare of the area in Central Illinois served by Western, of which the City of Peoria is the commercial and industrial center. Specifically, the interests of these intervening appellees include

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2 Jurisdictional Statement, p. 11

3 Hereafter called Western. The Atchison, Topeka and Santa Fe Railway Company will be referred to herein as Santa Fe and the Pennsylvania Railroad Company will be referred to as Pennsylvania.

(1) their interest in preserving and developing adequate transportation service in this area, (2) their interest in maintaining and extending the total transportation plant available in the Peoria area, (3) their interest in the welfare of the employees in the transportation industry in this area,[4] (4) their interest in the continued further industrial development of the Peoria area and in the area along the line of Western, the achievement of which objective is so closely related to transportation, including (a) the location of new industry, (b) expansion of existing plant and (c) diversification of industrial lines, and (5) their broad interest in the economic stability of the area generally which is so vitally affected by a basic industry such as transportation.

3. Position of Intervening Appellees:

These intervening appellees intervened in Interstate Commerce Commission Finance Docket 18991 in support of the application of Santa Fe and Pennsylvania for joint control of Western.[5] They intervened in Interstate Commerce Commission Finance Docket 19086 in opposition to appellant's application for control of Western. These intervening appellees opposed at the hearing, upon brief, exceptions and oral argument before the Commission and on appeal to the District Court, appellant's proposal and the request of certain railroads for multiple ownership.

4. It should be noted that the Railway Labor Executives Association intervened in support of joint control by Santa Fe and Pennsylvania on the ground that the interests of Western's employees would be given full recognition under their proposal.

5. Direct participation in control was sought by the New York, Chicago & St. Louis Railroad Company and the Chicago, Rock Island & Pacific Railroad Company; also, Chicago, Burlington & Quincy Railroad Company and Wabash Railroad Company applied for participation in control in the event the Commission extended control to the two former railroads.

4. Basis for Position:

These parties supported the application of Santa Fe and Pennsylvania for joint control of Western on the following grounds:

1. It will insure continued separate operation of Western under its present management with its executive offices and terminal facilities located in the Peoria area;

2. It will preserve intact all of the positive benefits accruing to these communities by the continued maintenance and preservation of Western's basic function as an important link in transcontinental traffic;

3. It will best assure the continued growth and development of Peoria as a railroad gateway;

4. It will best assure the continued growth and development of Western;

5. Such control and the benefits which will inevitably flow as a consequence of ownership by Santa Fe and Pennsylvania will provide the greatest single impetus which this area could receive to an expanding economy by the further industrial development of the Peoria area as well as the entire area served by Western.

These parties opposed appellant's application for control of Western on the following grounds:

1. Such control would forever foreclose to the Peoria area the realization of the positive benefits described above which would flow as a consequence of the joint control by Santa Fe and Pennsylvania and the continued development of Western as a major link in transcontinental rail traffic;

2. Such control admittedly would visit serious economic consequences upon these communities and

particularly the Peoria area by a permanent loss of an annual payroll of over one and one quarter million dollars and a loss of employment affecting 256 families;

3. Such control would result in a substantial reduction of the total transportation plant and facilities available to the Peoria area by major abandonments of yards, shops and offices;

4. Such control, with the curtailment of existing transportation plant and personnel and particularly the shift in orientation of Western's function as a major link in transcontinental traffic, would make the Peoria area and the area served by Western less attractive as a site for plant expansion and for the location of new industry.

5. Significance of Participation by the Parties Herein:

The complete unanimity of opinion by those most vitally affected by a change in Western's control is a highly significant factor in this proceeding. Appellant cannot dismiss the importance of this fact in its reply, by contending that the interests of the parties herein reflect the typical chamber of commerce reaction to a business merger which may be disadvantageous to a community. Too broad a range of interests, both geographic and economic, are involved herein. The Commission, in defining the concept of the public interest under Section 5(2) has stated that "consideration must be given to the public affected by the transaction and the effect of the proposal upon all parts of the public which would be so affected". *C., B. & Q. Railroad Control*, 271 I.C.C. 63, at p. 146 (1948); *Detroit Toledo & Ironton R. Co. Control*, 275 I.C.C. 455, 488 (1950). These intervening appellees constitute that part of the public which is most directly affected by the transaction.

ARGUMENT.

The questions involved in this proceeding include matters lying peculiarly within the domain of transportation law with which these intervening appellees are not prepared to deal. We will leave, therefore, to counsel for the government, Santa Fe and Pennsylvania those matters which might be more competently treated by them. One area wherein these intervening appellees do, with some degree of justification, feel a sense of special competency lies in the questions which have been raised concerning the alleged invalidity of the Commission's order on the ground that no benefits to the public interest contemplated by the Interstate Commerce Act or the National Transportation Policy will flow from the proposed acquisition by Santa Fe and Pennsylvania of Western, and in the alleged invalidity of the findings respecting the specific benefits to the public interest which will inure from such control. For it is precisely in this respect that the parties herein, the cities, shippers and business associations along the lines of Western, have a special interest in the outcome of this proceeding. This is the very basis upon which these intervening appellees predicated their support of Santa Fe-Pennsylvania control and justified their opposition to appellant's control. Our reply to the Jurisdictional Statement will, therefore, be limited to these issues.

I.

The Lack of Substance As to the Questions Put by Appellant Regarding the Adequacy of the Findings.

Appellant misconceives the function of judicial review of an administrative decision when it suggests that it would

be "entitled" to the Commission's decision because of the grounds upon which appellant rested its proposal." This fundamental misconception of the function of the District Court underlies its entire Jurisdictional Statement. It has been clearly established that the reviewing court must review the decision on the basis of the grounds upon which it rests and not upon any other or alternative grounds or standards in inquiring into the adequacy of the findings. If substantial evidence supports such findings, the court cannot substitute its own judgment even where it may not have made a similar decision. *I. C. C. v. Union Pacific R. R. Co.*, 222 U.S. 541 (1912).

The purpose of providing adequate findings is to afford a basis for the exercise of judicial review. In order for the court to discharge its function, it is only necessary that the "essential basis" of the administrative decision be set out in order that the factual and legal basis upon which it has proceeded is "amply clear". *Capital Transit Co. v. U. S.*, 97 F. Supp. 614, 621 (D.C.C. 1951). In testing the adequacy of the findings upon the basis of the grounds upon which the decision rests, it seems abundantly clear that no reasonable question can be said to exist with respect to the adequacy of the findings relative to the basis upon which the Commission approved the Santa Fe and Pennsylvania's plan and rejected appellant's proposal.

The findings upon which the decision rests are related both to the standards of Section 5 and the National Transportation Policy. Appellant's proposal was thus rejected on the ground (1) that it contravened the public interest in the continued retention of Western's existing policies,[7] (2) that it contravened the interests of labor under Section

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6. Jurisdictional Statement, p. 14.

7. Commission's Report, Jurisdictional Statement, p. 71.

5(2)(c),[8] and (3) that its traffic policies would harm other carriers[9] and thus be opposed to the consideration the Commission must accord this factor under Section 5 (2)(c).[10] This is consistent with the interests of appellees, the shippers, municipalities and business associations along Western's line. It was also consistent with the interests of labor, the other railroad intervenors, and the off-line shippers who use Western as a link in transcontinental traffic. No purpose would be served by a detailed outline of the Commission's findings upon which approval of Santa Fe and Pennsylvania control was predicated. These findings underlie the entire report.

II.

The Lack of Substance As to the Question Put by Appellant Regarding the Failure of the Interstate Commerce Commission to Accord Appellant a Comparative Hearing.

A fair reading of the Commission's report in its entirety indicates clearly the lack of substance in appellant's argument that it was not accorded a comparative hearing.[10] Appellant ignores what the Commission did as reflected in its report and undertakes to attack the subjective mental processes by which the decision was reached. Thus, appellant argues that the Commission reached its ultimate conclusion "at the outset" without a comparative consideration of appellant's proposal.[11] Appellant then inconsistently argues that in its evaluation of the two proposals, the Commission applied "different standards".[12]

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8. Commission's Report, Jurisdictional Statement, p. 74.
9. Commission's Report, Jurisdictional Statement, p. 73.
10. Jurisdictional Statement, pp. 21-26.
11. Jurisdictional Statement, p. 23.
12. Jurisdictional Statement, p. 25.

These intervening appellees cannot reply to such an argument based as it is upon the subjective mental processes of the Commission. These intervening appellees can only deal with the objective standards reflected in the report. By these objective standards, it is clear that (1) the Commission preliminarily defined its function to include a comparative evaluation of both applications on the merits,[13] (2) the Commission did, in fact, fully discuss and evaluate all of the principal aspects of appellant's proposal on its merits,[14] and (3) that the Commission made specific findings on the merits of appellant's proposal.[15]

The Commission initially undertook to define its function in this proceeding to include a comparative evaluation of both applications in order to arrive at a decision as to which of the alternatives before it was most consistent with the public interest.[16] The Commission's function was defined as follows: (1) to arrive at a standard of public interest; (2) in arriving at a standard of the public interest, to analyze each application in relation to the other, as well as to the other interests; and (3) then determine which of the alternative plans of control most nearly approximates that standard.

Having first defined its function to include a comparative consideration of appellant's proposal, the Commission then proceeded to evaluate all of the aspects of appellant's proposal. The report shows that, in arriving at a standard of the public interest, the benefits and detriments of both applications were thoroughly considered.

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13. Commission's Report, Jurisdictional Statement, p. 65.
14. Commission's Report, Jurisdictional Statement, pp. 70-75.
15. Commission's Report, Jurisdictional Statement, pp. 70-75.
16. Commission's Report, Jurisdictional Statement, p. 65.

This is evident by the extended discussion of appellant's proposal which followed. Appellant, nevertheless, asserts that the Commission ignored the "critieria of economies and efficient service" which have been deemed to relate to Section 5 and the National Transportation Policy. Since the Commission reached a decision that a consolidation or unification of Western was not in the public interest, it was unnecessary for the Commission to find that these considerations, upon which appellant relies, constituted the determinative elements of the public interest involved in this proceeding. To assert, as appellant has, that these objectives constitute the exclusive criteria of Section 5 and the National Transportation Policy is to foreclose the possibility of the Commission's approval of an acquisition of control under Section 5 of any proposal which does not contemplate a merger on unification.

The fact is, however, that the Commission made specific findings in this proceeding that the two criteria which were relied upon by appellant would, under the circumstances of this proceeding, be opposed to the public interest. Thus, the Commission found that most of the estimated economies would be secured at the expense of Western's employees.[17] The Commission found, furthermore, that the service policies which would be adopted under unified operations would be "extremely harmful to other carriers".[18]

17. Commission's Report, Jurisdictional Statement, pp. 73-74.

18. Commission's Report, Jurisdictional Statement, pp. 72-73.

III.

The Lack of Substance As to the Questions Put by Appellant Regarding the Substantiality of the Evidence As to the Findings.

A. Increased Car Supply.

The interests represented by these intervening appellees, the communities and shippers along Western's line, have a substantial interest in Western's car supply. Appellant argues that the finding that Santa Fe and Pennsylvania control of Western would result in an increased car supply for Western is not supported by the evidence because Santa Fe and Pennsylvania have experienced car shortages.[19] Appellant has experienced similar periods of car shortage (Tr. p. 1327). The problem of periodic periods of car shortages, however, is national in scope and is wholly unrelated to this finding. The record on this point is clear. In the first place, it was established that Santa Fe and Pennsylvania would increase Western's car supply by bringing Western's car-ownership to a proper level to accommodate the anticipated increase in originated traffic resulting from increased industrial development along Western's line (Tr. pp. 879-80).[20] Secondly, as joint owners of Western, Santa Fe and Pennsylvania would make a greater number of their own cars available to Western and in a period of car shortage, Western's shippers would be treated on a parity with their own shippers in car distribution (Tr. pp. 50-51, 505, 536, 680-81, 879, 889).

19. Jurisdictional Statement, p. 20.

20. References to the transcript are to the typewritten transcript which has been certified to this Court.

B. Economies and Operating Benefits Accruing to Western.

Appellant urges that the finding that certain operating benefits would inure to Western under Santa Fe and Pennsylvania's control is unsupported by the evidence.[21] The Commission's finding in this regard points to the advantages accruing to Western, such as economies in purchasing, advice and assistance in techniques of railroad management and the realization of economies in operation.[22] The basis for them rests on the obvious advantages inherent in the control by two large, well-staffed roads. These benefits would, moreover, accrue to the advantage of the communities and shippers along Western's line.

C. Industrial Development.

Appellant argues that the finding that Santa Fe and Pennsylvania would "permit" industrial development along Western is not supported by substantial evidence.[23] The finding, however, goes beyond the manner in which it is characterized by appellant. The finding reflects the fact that control of Western by Santa Fe and Pennsylvania will stimulate industrial development along Western's line.[24] This is based upon substantial evidence in the record establishing that the very fact that these two large roads, connecting in the east and west, would each have a substantial economic interest in Western, would itself serve to stimulate industrialization along its line (Tr. pp. 485, 491, 524, 630, 642, 690, 715-16, 734-35, 915, 929, 941, 952).

Appellant suggests that the finding is inconsistent with Santa Fe and Pennsylvania's competitive interests in the

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21. Jurisdictional Statement, p. 20.

22. Commission's Report, Jurisdictional Statement, p. 92.

23. Jurisdictional Statement, p. 19.

24. Commission's Report, Jurisdictional Statement, pp. 90-91.

area along their own lines.[25] This ignores the fact that the finding is based upon evidence that, because of Santa Fe's late entry into Chicago, it is lacking in industrial property in that area and that Pennsylvania is short of industrial sites in Illinois (Tr. pp. 225-26, 358, 378-79). Appellant argues that the finding conflicts with the testimony of Santa Fe and Pennsylvania's officers that they would locate on Western only those industries which they could not locate on their own lines.[26] This is not an accurate statement of the record and even if it were, it is not inconsistent with the Commission's finding since merely the consulting services of Santa Fe and Pennsylvania's industrial development departments would be of material assistance to Western (Tr. pp. 465, 643, 950).

Directly related to this finding is the fact that Western's existing status as a bridge-line handling east-west traffic along its entire line "is the greatest single underwriting influence" for continued good service to the communities along Western's line and, particularly, along the segment of its line West of Peoria (Tr. p. 51). In 1927, when the application was filed to connect with the Santa Fe at Lomax, it was pointed out that the proposed construction would aid in sustaining that part of the line west of Peoria. *Construction* by *TP&W R. R.*, 124 I.C.C. 278, 279 (1927). The retention of Western's existing function, therefore, is directly related to the industrial development of the communities along its line.

Each of the municipalities, civic and business associations and shippers along Western's line represented by the appellees offered extensive evidence which provided the basis for this finding. The unanimity of opinion of the

25. Jurisdictional Statement, p. 19.

26. Jurisdictional Statement, p. 20.

organizations concerned with the industrial development of these communities regarding this question suggests that there must exist some basis in fact for this conclusion.

D. Santa Fe and Pennsylvania Parity Solicitation Policies.

Appellant's characterization of the findings involved in this point are deceptive and are designed to raise a doubt concerning them.[27] Appellant appears[28] to be raising a question as to the substantiality of the findings regarding Santa Fe and Pennsylvania's parity solicitation policies in its statement of the questions presented.[29] Appellant's statements of the findings with respect to this policy are misleading in that they equate St. Louis and Chicago with the parity policy. The Commission, however, found that Santa Fe would place Lomax on a parity with Chicago from a solicitation standpoint and that Pennsylvania, while continuing to solicit for its long-haul to St. Louis, would place Effner on a parity with Chicago.[30] This is substantially different from the implication created by appellant in its statement of the findings contained in the argument and in the statement of the questions presented.

"The basis for these findings rests upon both the existing traffic policies of Santa Fe and Pennsylvania with respect to Western and the economics of the relationship existing between Western and both Santa Fe and Pennsyl-

27 Jurisdictional Statement, pp. 4, 19.

28 These intervening appellees say "proper" because appellant's treatment of this finding in its argument relates to the issue of suppression of competition via the Peoria Gateway, which it advanced in the proceedings before the Commission.

29 Jurisdictional Statement, p. 4.

30 Commission's Report, Jurisdictional Statement, pp. 75-76.

vania as joint owners of Western. The Commission found that, while Santa Fe and Pennsylvania ordinarily solicit traffic for their long-hauls, neither of them have worked against Western in recognition of the benefits they receive from Western's route.[31] The Commission found, furthermore, that as joint owners of Western, both Santa Fe and Pennsylvania are just about as well off financially[32] when handling traffic via Western as via a long-haul through Chicago.[33] The interests of Santa Fe and Western and Pennsylvania and Western thus coincide in the movement of traffic via Western. Santa Fe has a particularly strong interest in Western's route through Peoria because it enables the Santa Fe to obtain a long-haul through Lomax on traffic which it would otherwise handle only west of Kansas City or might not handle at all (Tr. pp. 99-100, 215, 220). The Commission found, finally, that, as a consequence of these policies, Western would have an increased opportunity to secure traffic now moving via other gateways.[34]

Appellant finally attempts to manufacture a conflict between the parity solicitation findings and the testimony of the officers of Santa Fe and Pennsylvania,[35] but the record fully supports the findings (Tr. pp. 49, 221-22, 337-38, 378).

31 Commission's Report, Jurisdictional Statement, p. 75

32 This finding is directly contrary to the assumption underlying appellant's statement of the parity solicitation finding at page 19 of the Jurisdictional Statement

33 Commission's Report, Jurisdictional Statement, p. 75

34 Commission's Report, Jurisdictional Statement, p. 75

35 Jurisdictional Statement p. 19

CONCLUSION.

The District Court in holding that the Commission's order was valid was clearly right. It is submitted by these intervening appellees that it is manifest that the questions raised by the appellant on which the decision in this cause depends are so unsubstantial as not to need further argument, and the motion to affirm should be granted.

Respectfully submitted,

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Bushnell, Illinois,

Canton Chamber of Commerce,
Canton, Illinois,

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City of Canton, Illinois,

City of Chenoa, Illinois,

City of East Peoria, Illinois,

City of Eureka, Illinois,

City of Fairbury, Illinois,

City of Forrest, Illinois,

City of Gilman, Illinois,

City of Gridley, Illinois,

City of Keokuk, Iowa,

City of La Harpe, Illinois,

City of Peoria, Illinois,

City of Sheldon, Illinois,

City of Warsaw, Illinois,

City of Washington, Illinois,

City of Watseka, Illinois,

Keokuk Chamber of Commerce,
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Keokuk Bridge Commission,
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La Harpe Golden Rule Club,
La Harpe, Illinois,

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Village of Lomax, Illinois,

Village of Secor, Illinois,

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In the
Supreme Court of the United States

OCTOBER TERM, 1958

NO. [redacted] 27

The State of South Dakota and the Public Utilities Commission of the State of South Dakota,

Appellants,

vs.

United States of America and Interstate Commerce Commission, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

JURISDICTIONAL STATEMENT

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In the

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OCTOBER TERM, 1958

NO. ———

The State of South Dakota and the Public Utilities Commission of the State of South Dakota,

Appellants,

vs.

United States of America and Interstate Commerce Commission, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

JURISDICTIONAL STATEMENT

This appeal is taken from the final order of the United States District Court for the District of Minnesota, entered September 16, 1958, dismissing several complaints, including the complaint of these appellants as intervening plaintiffs below, and refusing to vacate an order of Division 4 of the Interstate Commerce Commission issued May 31, 1957, and an order of the Interstate Commerce Commission issued October 30, 1957. The Commission orders authorized The

Atchison, Topeka and Santa Fe Railway Company, the Pennsylvania Company and The Pennsylvania Railroad Company to acquire control, through stock ownership, of the Toledo, Peoria & Western Railroad Company, and dismissed the competing application for acquisition by The Minneapolis & St. Louis Railway Company.[1]

Minneapolis has taken an earlier appeal from the same final order of the District Court, and has already served and filed its Jurisdictional Statement. That appeal bears Docket No. 552. In order to avoid burdening the Supreme Court, the present appellants will rely upon the statement of the Opinions Below, the Jurisdiction and the Statutes Involved contained in the Minneapolis Jurisdictional Statement, and the copies of the opinions and statutes set forth as appendices to that Jurisdictional Statement.

THE QUESTIONS PRESENTED

The Notice of Appeal filed by the present appellants presented five questions, which are substantially similar to those set forth in the Jurisdictional Statement of Minneapolis. All five questions are believed to present substantial and important issues requiring full hearing and consideration by this Court. For present purposes, however, it is desired to present only two questions which are of immediate and urgent concern to these appellants.

1. The Interstate Commerce Commission acted arbitrarily, capriciously and erroneously in disregard-

[1] Hereafter, as in the proceedings below, The Minneapolis & St. Louis Railway Company will be referred to as "Minneapolis", the Toledo, Peoria & Western Railroad Company as "Western", and The Atchison, Topeka and Santa Fe Railway Company as "Santa Fe".

ing the effect which the Pennsylvania-Santa Fe acquisition would have in causing curtailment and termination of service on the branch lines of Minneapolis in South Dakota. The Commission's decision ignoring that effect is not based on findings supported by substantial evidence, as required by section 8 of the Administrative Procedure Act, 5 U.S.C. § 1007, and has no rational basis.

2. In authorizing the Pennsylvania-Santa Fe acquisition, the Interstate Commerce Commission failed to give proper weight and consideration to the adverse competitive effect thereof on Minneapolis and to the antitrust policy and purposes of section 1 of the Sherman Act, 15 U.S.C. § 1, and section 7 of the Clayton Act, 15 U.S.C. § 18.

STATEMENT OF THE CASE

The background of this case and the prior proceedings are sufficiently described in the Statement of the Case of Minneapolis.

The State of South Dakota and the Public Utilities Commission of the State of South Dakota have participated throughout, both before the Interstate Commerce Commission and in the District Court. These appellants have done so in order to protect the public interest of South Dakota in adequate rail transportation and to assure the integrity of the marginal branch lines of Minneapolis serving South Dakota and the several railroad stations located along such lines. Absence of competitive rail lines serving much of the area renders imperative continuance of the established rail service by Minneapolis.

The Minneapolis branch line entering South Dakota extends approximately 154 miles into the northeastern part of the state. It is an important link of rail transportation in the state, serving six counties and fifteen cities and towns and the trade territory adjacent thereto. This area in South Dakota consists of 6,685 square miles of farm land, all under cultivation, with an annual average production of over $92,000,000 of agricultural commodities. Over a period of 27 years, an average of 136,581 tons of traffic originated on the South Dakota segment of Minneapolis and 92,363 tons of freight terminated thereon. That segment of rail transportation is a part of the less remunerative mileage operated by Minneapolis. Continuance of rail service on this segment is dependent upon the results of operations over the system as a whole.

Witness Swanson testified (Tr. 1,183):

> "We have analyzed this traffic and have come to the conclusion that based upon 1954 figures we would suffer an annual loss of approximately $1,110,000 in the event the application of the Pennsylvania and Santa Fe were granted.
>
> "All of this business I have described as being vulnerable to loss to the M & St. L. is very desirable traffic. It not only pays its way but lends substantial support to our entire system. *Without it our low density lines in South Dakota*, Western Minnesota, and Western Iowa *could not survive.*" (emphasis supplied)

The factual accounting basis for Mr. Swanson's estimate was in evidence and was not challenged. His testimony was corroborated by that of other witnesses, including Dr. Edmund A. Nightingale, of the University of Minnesota, an independent, unquestioned au-

thority on transportation and railroad traffic. None of the testimony was controverted.

The Interstate Commerce Commission had only this to say:

> "*State representations* — The States of Minnesota and South Dakota, along with their respective Public Service Commissions, intervened in support of the Minneapolis application. They fear that with Western under the control of the Santa Fe and the Pennsylvania, the Peoria route of the Minneapolis will deteriorate to the extent that its low density lines in Minnesota and South Dakota will be in danger of abandonment. * * * Of course, there can be no abandonment of any line of railroad without the issuance by us of a certificate of public convenience and necessity permitting such abandonment. So far as the instant record is concerned, no abandonments are presently contemplated." (Appendix B to Minneapolis Jurisdictional Statement, p. 86)

The District Court did even less. It did not even refer to the contentions of these appellants except to state that they supported the Minneapolis.

The Notice of Appeal of the present appellants was filed November 12, 1958.

THE QUESTIONS ARE SUBSTANTIAL

The two questions dealt with herein are, to a substantial extent, interrelated and dependent. In essence, the Interstate Commerce Commission both ignored the factors which are of primary importance to these appellants and should be controlling, and applied wholly different standards in testing the results of the separate competing applications. The District Court, in turn, simply by-passed the Commission's

errors of omission and commission and failed to perform, in any sense, its duty of judicial review.

1. *The Disregard of the Branch Lines in South Dakota.*

The National Transportation Policy (49 U.S.C. preceding § 1) requires the Interstate Comerce Commission "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation." Section 5(2) of the Interstate Commerce Act (49 U.S.C. § 5(2)) commands the Commission to approve applications for control of a carrier only when the proposed transaction "will be consistent with the public interest", and orders the Commission to give weight to the effect of the proposed transaction upon adequate transportation service to the public. The meaning of the basic statutory criterion has been expressed as follows by Chief Justice Hughes in *New York Central Securities Corp.* v. *United States*, 287 U.S. 12, 25 (1932):

> "* * * the term 'public interest' * * * is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities * * *"

In the instant case the evidence before the Commission established beyond question that the Minneapolis is solely dependent upon the Peoria gateway for its life blood, whereas the Pennsylvania-Santa Fe combine has no comparable interest in the Peoria gateway; that ownership of Western by the Minneapolis would foster economy and efficiency, whereas ownership by the Pennsylvania-Santa Fe combine would promote neither economy nor efficiency; that

ownership by the Minneapolis would promote adequate transportation service, whereas ownership by the Pennsylvania-Santa Fe combine would do nothing toward that end. The State of South Dakota has a vital interest in strengthening the Minneapolis to preserve the adequacy of its transportation service on the branch lines in this state. The appellants have an equally vital interest in seeing that the Minneapolis is not weakened, because the inevitable result of any such weakening will be felt first on the marginal branch lines in South Dakota.

The record is replete with uncontroverted evidence of the vulnerability of the traffic presently carried by Minneapolis. Much of that highly competitive traffic is certain to be diverted by the powerful solicitation efforts of the Pennsylvania-Santa Fe combine. The Commission recognized that there might be some diversion of traffic, but concluded, "* * * such diversion would not jeopardize the maintenance of adequate transportation service by the objecting intervening carriers." (Appendix B to Minneapolis Jurisdictional Statement, p. 76). That conclusion is empty, unexplained, unsupported and erroneous.

As indicated above, the Commission also brushed off the contentions of these appellants by stating that, "no abandonments are presently contemplated." It is clear, however, that one of the first effects of drying up the Minneapolis traffic will be an application, at some future date, for abandonment of service on the marginal branch lines in South Dakota. These appellants are interested in preventive medicine now, not curative medicine in the future. A diminution of the Minneapolis revenues must be prevented now so

that no reason can be given in the future for abandonment of the trackage in South Dakota. If the revenues are allowed to diminish and in consequence the branch lines in South Dakota become a burden on interstate commerce, it will then be the duty of the Commission to authorize the abandonment of those lines. That result was totally disregarded by the Commission in the instant case.

The Commission's shocking pre-judgment of this case is laid bare by the double standard it employed. The effect of the Pennsylvania-Santa Fe acquisition of the Minneapolis was simply brushed aside and the future abandonments it would necessitate were deemed unimportant. On the other hand, when considering the effect of an acquisition of Western by the Minneapolis, the Commission state:

> "Under the Minneapolis' unified-operation theory a new service route via Forrest would be established for such traffic which would imperil, or at least diminish, the Wabash's participation therein, and possibly could result in the abandonment of the latter's Des Moines branch." (Appendix B to Minneapolis Jurisdictional Statement, p. 73)

The Wabash, of course, is a large railroad and a subsidiary of the giant Pennsylvania. The record contains no support for the Commission's solicitude on its behalf. The contrast between the treatment accorded the competing proposals make a travesty of administrative justice.

A number of communities along the Western supported the Pennsylvania-Santa Fe application. Their intervention, however, was merely a result of a brief, intensive public relations campaign by the wealthy

Santa Fe. In truth those communities would benefit from a Minneapolis acquisition and probably would suffer from a Pennsylvania-Santa-Fe acquisition. Certain labor groups also supported the Pennsylvania-Santa Fe application. They also could not suffer from a Minneapolis acquisition they are protected by the Minneapolis commitment to abide by the provisions of the Washington Job Protection Agreement of 1936. Furthermore, the record is clear that any labor economies would come as the result of normal retirements, not discharges.

In reaching its arbitrary conclusion to approve the further aggrandizement of the two railroad giants and to overlook the harmful effects on these appellants and others, the Commission not only ignored the controlling statutory criteria but also violated the procedural requirements. It did not, because it could not, make the findings required by section 8 of the Administrative Procedure Act (5 U.S.C. § 1007). Absent such findings, there was no basis on which the District Court could perform its duty of judicial review. These appellants were denied fair treatment by the Commission. They were then deprived of judicial review by the District Court. Their only hope for any consideration in this uneven struggle lies in full review on the merits by the Supreme Court.

2. The Antitrust Effect.

The Interstate Commerce Commission and the district Court sanctioned and approved what is in effect a gigantic railroad merger. The acquisition of Western gives the Pennsylvania-Santa Fe combine a third major gateway and unifies their operations from Tidewater on the east to Tidewater on the west.

In *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 86 (1944), this Court announced:

> "Congress, however, neither has made the antitrust laws wholly inapplicable to the transportation industry nor has authorized the Commission, in passing on a proposed merger, to ignore their policy."

Admittedly section 5(11) of the Interstate Commerce Act (49 U.S.C. § 5(11)) empowers the Commission in an appropriate case to give immunity from prosecution under the antitrust laws. That immunity, if it is to be granted, must be based on an explicit judgment that it is required by other factors in the "public interest". The size of the merging carriers cannot be wholly ignored as it was in the instant case. The powerful rail combine authorized by the Commission in this case dwarfs, by comparison, the few motor lines whose merger was authorized in the *McLean* case.

The Pennsylvania-Santa Fe combine is a gigantic one, by any test. Its latent power is an enormous threat to any smaller competitors and to intervenors, like these appellants, who are dependent upon such smaller competitors. The monopoly or oligopoly sanctioned in this case has no precedent. There are no findings and there is no articulation of any reasons which could justify the creation of this colossus. If this Court affirms that result or declines to review it, it will be holding that the antitrust laws are wholly inapplicable to the transportation industry. It will also be making a mockery of the standards of the Interstate Commerce Act and the requirement for adequate transportation service.

CONCLUSION

The Interstate Commerce Commission failed to perform its statutory duty. Its arbitrary conclusions have neither a rational basis nor supporting findings. It is respectfully submitted that the instant appeal presents substantial questions of public importance and should be heard on the merits.

Respectfully submitted,

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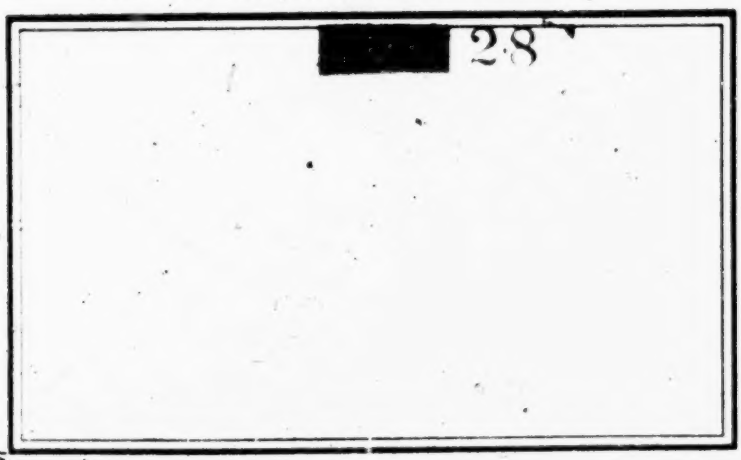
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In the Supreme Court of the United States

OCTOBER TERM 1958



ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JURISDICTIONAL STATEMENT

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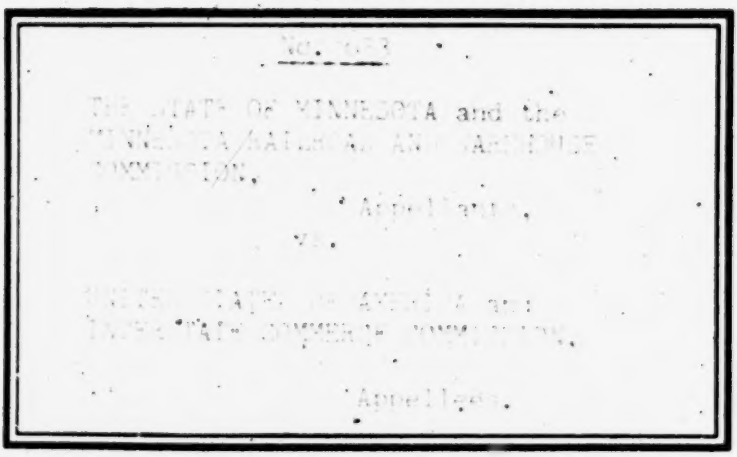
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In the
Supreme Court of the United States

OCTOBER TERM 1958



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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JURISDICTIONAL STATEMENT

The State of Minnesota and the Minnesota Railroad and Warehouse Commission (hereinafter together referred to as the State of Minnesota) join with the Minneapolis and St. Louis Railway Company (hereinafter referred to as appellant or Minneapolis) in appealing from the final order of the United States District Court for the District of Minnesota, entered September 16, 1958, dismissing the appellant's complaint and the complaint in intervention of the State of Minnesota and refusing to set aside an order of Division 4 of the Interstate Commerce Commission issued May 31, 1957, and an order of the Interstate Commerce

Commission issued October 30, 1957. Those orders, in substance, granted the application of The Atchison, Topeka and Santa Fe Railway Company, the Pennsylvania Company and the Pennsylvania Railroad Company to purchase the stock of, and acquire control of, the Toledo, Peoria & Western Railroad Company, and dismissed the competing application of the appellant.[1] This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW

The opinion of the District Court for the District of Minnesota, 4th Division, is reported in 165 F. Supp. 893. A copy of that opinion is attached as Appendix A to the Minneapolis jurisdictional statement, Docket No. 552, and is incorporated herein by reference. The report of Division 4 of the Interstate Commerce Commission is reported in 295 I. C. C. 523. Copies of that report and of the orders of Division 4 and of the full Commission are attached to the Minneapolis jurisdictional statement as Appendix B and are incorporated herein by reference.

---

[1] The interested railroads will be referred to hereinafter as follows:

Minneapolis and St. Louis Railway Company	Minneapolis
Toledo, Peoria & Western Railroad Company	Western
The Pennsylvania Railroad Company	Pennsylvania Railroad
The Atchison, Topeka & Santa Fe Railway Company	Santa Fe
Chicago, Burlington & Quincy Railroad Company	Burlington
Wabash Railroad Company	Wabash
The Monon Railroad	Monon
New York, Chicago & St. Louis Railroad Company	Nickel Plate
Chicago, Rock Island & Pacific Railroad Company	Rock Island

JURISDICTION

This action was brought under *28 U. S. C.*, §1336, to set aside the above-mentioned orders of Division 4 of the Interstate Commerce Commission and of the Interstate Commerce Commission. It was heard by a District Court of three judges, as provided in *28 U. S. C.*, §2284 and §§2321-2325. The final order of the District Court was entered September 16, 1958, and the Notice of Appeal of the present appellant was filed in that court November 10, 1958. The jurisdiction of the Supreme Court to review that decision by direct appeal is conferred by *28 U. S. C.*, §§1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review that decision on direct appeal in this case: *Chicago, M., St. P. & P. R. R. Co. v. Illinois*, 355 U. S. 300 (1958); *Allegheny Corp. v. Breswick & Co.*, 353 U. S. 151 (1957); *United States v. I. C. C.*, 352 U. S. 158 (1956); *United States v. Pierce Auto Freight Lines*, 327 U. S. 515 (1946).

STATUTES INVOLVED

Section 1 of the Sherman Act, as amended (*15 U. S. C.*, §1), sections 7 and 10 of the Clayton Act, as amended (*15 U. S. C.*, §§18 and 20), and the National Transportation Policy and sections 5(2) and 5(11) of the Interstate Commerce Act, as amended (*49 U. S. C.* preceding §1, and §§5(2) and 5(11)) are set forth in Appendix C to the Minneapolis jurisdictional statement and are incorporated herein by reference.

THE QUESTIONS PRESENTED

The statement under this heading in the Minneapolis jurisdictional statement is incorporated herein by reference.

STATEMENT OF THE CASE

The statement under this heading in the Minneapolis jurisdictional statement is incorporated herein by reference.

In addition, the State of Minnesota wishes particularly to advise the court of the reasons for its participation throughout this proceeding and the background of its position. The interest of the State stems from its duty to assure the adequacy of service by railroads operating within its boundaries. The State intervened before the Interstate Commerce Commission in support of the application of the Minneapolis for authority, under Section 5(2) of the Interstate Commerce Act, to acquire control of the Western. Support of this application was determined to be necessary to the continued adequacy of railroad service in the State of Minnesota on the basis of the preservation of the present economic strength of the Minneapolis and the preservation of the Peoria Gateway. For the same reasons opposition to the competing application of the Pennsylvania-Santa Fe group was determined to be necessary.

The position of the State was arrived at after consultation with Dr. Edmund A. Nightingale, Professor of Economics and Transportation, School of Business Administration, of the University of Minnesota, and is based only upon the interests of the State of Minnesota and not the interest, as such, of the Minneapolis. The gist of the State's concern is that acquisition of the Western by Pennsylvania and Santa Fe will likely result in loss of considerable revenue to the Minneapolis, and the consequent impairment in the strength of the Minneapolis is detrimental to the interests of the State. The State's support of the Minneapolis application also considers the positive effects of consolidation of the Minneapolis and Western which undoubtedly

would give strength to the Minneapolis and would thereby be beneficial to the interests of the State.

THE QUESTIONS ARE SUBSTANTIAL

The statement under this heading in the Minneapolis jurisdictional statement is incorporated herein by reference. Although the arguments therein make the most severe criticisms of the administrative and judicial processes so far involved in this proceeding, these criticisms are fully justified.

In addition, the State of Minnesota raises the following matters which are of special concern to it.

I.

The findings.

The commission either failed to make findings or made conclusions entirely inconsistent with any findings on the following matters which were urged by the State of Minnesota.

A. *The importance of the Minneapolis to the State of Minnesota, advantages to the State of Minnesota inherent in the granting of the Minneapolis application, and injuries to the State of Minnesota inherent in the denial of that application and the grant of the competing Pennsylvania-Santa Fe application.*

Since its low-water point in the 1930's, the Minneapolis has virtually been rebuilt and has steadily progressed to become a sound, good-service railroad. Its progress results from able management and its success in obtaining public acceptance of its freight service between the Twin Cities Gateway to the South, Southwest and East through the Peoria Gateway rather than through Chicago.

Dr. Nightingale's Exhibit, H-77, shows statistically the importance of the Minneapolis to the State of Minnesota. These data show, as may be expected, that the line renders extensive freight service, has large operating expenses, tax payments, capital investments and payroll. All of these contribute to the wealth and development of the state. Any curtailments of the line without some compensating advantage are bound adversely to affect the State of Minnesota.

If the Commission had granted the application of the Minneapolis, the railroad would have been greatly strengthened. Acquisition of the Western would give the Minneapolis direct access to interchanges with the numerous lines connecting with the Western. The Minneapolis would thereby secure both the advantage of longer hauls and also a greater competitive advantage by being enabled to render better service. The larger operation which would result from a combination of these two relatively small railroads would be conducive to many economies in management and general operations. Possibly of greatest benefit would be the resulting diversification of traffic which is so badly needed by the Minneapolis to relieve its current reliance on agricultural and mineral shipments.

On the other hand, a denial of the Minneapolis application and approval of the application of the Pennsylvania-Santa Fe combination would greatly damage and weaken the Minneapolis. This would occur primarily through the loss of Peoria-Nemo traffic handled by the Minneapolis in Illinois. The significance of this loss is so great that we feel it is appropriate to quote from the record on this point:

> "M&StL freight revenue losses in the Peoria-Nemo Traffic and that through Peoria to or from other gateways in the event the application of the Pennsylvania-

Santa Fe combination were granted, have been estimated by witness James A. Swanson at approximately $1,110,000 in his Exhibit H-32, Schedule 1, and testimony. His estimate of potentially vulnerable traffic revenue is $7,000,000. Highly desirable traffic like that between Peoria and Nemo not only pays its way but gives substantial support to the entire M&StL system. It is highly doubtful that the grant of authority to acquire control of the TP&W to the Pennsylvania-Santa Fe group which would further reduce the already thin cushion which enables the M&StL to provide needed service on thin-traffic lines, is consistent with the National Transportation Policy and the requirements of Section 5(2) of the Interstate Commerce Act" (Tr. 1670-71).

The State of Minnesota is separately concerned with Minneapolis as an existing excellent transportation agency within the State, and Minneapolis' ability to transport goods through the Peoria gateway. Anything that would lessen Minneapolis' ability in either respect would be prejudicial to the State of Minnesota. Approval of the Pennsylvania-Santa Fe deal for Western would diminish the volume of traffic and revenues of Minneapolis, with repercussions on the secondary thin traffic lines of Minneapolis in Minnesota, which repercussions could take the form of curtailed accessorial facilities at the particular Minnesota communities, or even abandonment of trackage. The testimony of witnesses Nightingale and Swanson stands undisputed in these respects.

The Commission failed to give proper consideration to, and to make appropriate findings with respect to, these inevitable consequences of a grant of either of the competing applications. That failure constituted a violation of the requirements of the Administrative Procedure Act. It also led to a conclusion in flat disregard of the standards of

the National Transportation Policy and section 5(2) of the Interstate Commerce Act. The District Court did nothing to correct any of those errors. They can now be corrected and the Commission can be guided to a proper performance of its duty under the law only if the Supreme Court will give this appeal a full hearing on the merits.

B. *The importance of the Peoria Gateway to the State of Minnesota, advantages to the State of Minnesota inherent in the granting of the Minneapolis application and injuries to the State of Minnesota inherent in the denial of that application.*

At the hearing, Dr. Nightingale presented a comprehensive picture of the various gateways important to the State of Minnesota. The gateways mentioned were the Soo Gateway, the Chicago Gateway, the Peoria Gateway and the St. Louis Gateway. Because of the geographic situation of the State of Minnesota and the nature, origin and destination of its interstate commerce by railroad, Dr. Nightingale concluded that the Peoria Gateway, next to the Chicago Gateway, is the most important to the State of Minnesota. This importance stems from the necessity of connection with Official Territory railroads and connection with the Ohio River Gateways into Southern Territory and connection through St. Louis, Missouri or Thebes or Cairo, Illinois into Southwestern Territory. Moreover, three Western Trunk Line railroads, namely, the Minneapolis, the Rock Island lines and the Burlington lines, all serving the Twin Cities, have a direct connection to the Peoria Gateway. The Minneapolis line between the Twin Cities and the Peoria Gateway is the main line of that railroad. A further consideration of the importance of the Peoria Gateway to the

State of Minnesota is seen with regard to the aspects of national defense and the added importance that the Peoria Gateway would assume during any period of national emergency.

Economic circumstances indicate that control of the Western by the Pennsylvania-Santa Fe combination would lead inescapably to stagnation of the Peoria Gateway because of the superior interest that these lines now have and would have in the St. Louis and Chicago Gateways. Any such lack of interest in the Peoria Gateway by a group in control of the Western, which railroad is so important to the future of the Peoria Gateway, would be highly detrimental to the interests of the State of Minnesota.

The interests of the Minneapolis in the Peoria Gateway, as already briefly mentioned, are altogether different from those of Pennsylvania-Santa Fe group. The Minneapolis is intimately and deeply concerned with the development of the Peoria Gateway. There is a long history of close relationship between the Peoria Gateway and the Minneapolis. Of all the lines coming into the Peoria Gateway, the Minneapolis alone gives this gateway national publicity. This advertising program is conducted for the very good reason that the Peoria Gateway is more than just the eastern terminus of the Minneapolis—it is the very genius of the enterprise. In view of the importance of the Peoria Gateway to the State of Minnesota, the state would feel more confident of its future development if the Western were placed in the hands of a railroad whose own economic well-being is tied in with the development of that gateway and its maintenance as an open gateway. That is to say, one that is not dominated by great railroad systems like the Pennsylvania and the Santa Fe whose primary and major interests lie elsewhere. Approval of Pennsylvania-Santa Fe deal

would dry up Peoria as a gateway in so far as the Minneapolis is concerned, resulting in the State of Minnesota, its industry and agriculture, being forced to rely more heavily on Chicago as their only large east and west rail gateway. The geographical location of Minnesota at the top tier of the United States and the natural barrier of the Great Lakes to the east, does not give Minnesota the choice of rail gateways, as contrasted to her sister states to the south. These factors, again, were ignored by the Commission in disregard of its statutory duty.

II.

The failure to accord a comparative hearing.

The Commission failed to conduct a true comparative hearing of the two competing applications as required by the law, all to the prejudice of the State of Minnesota as well as the Minneapolis.

In the hearing held under the provisions of the Interstate Commerce Act and the National Transportation Policy, it had always been the assumption of the State of Minnesota that since the Western was up for sale, that it would be sold to one or a combination of applicants after a hearing to determine which application was most in accordance with the public interest.

The Commission casts doubt upon Minneapolis' ability to consummate a "transaction" with the trustees and the minority stockholders of Western in the event the Commission would find for Minneapolis and against Pennsylvania-Santa Fe (Appendix B to Minneapolis jurisdictional statement, p. 92). The Commission's reasoning is that as Minneapolis has presently no enforcible contract for the purchase of Western stock (as does Pennsylvania-Santa Fe),

there would be no assurance the trustees would sell to Minneapolis if they were the only remaining prospective purchaser; and further that there would still remain a substantial minority of stock in the hands of other holders, which Minneapolis has no assurance it could acquire. As this question is primarily one for answer by Minneapolis, the State of Minnesota will leave it to it fully to cover the matter, with only one passing remark: the Commission in making its conclusion as above ignored the testimony of witness Patterson for Pennsylvania-Santa Fe and Exhibit H-76. From that evidence and exhibit it is clear the trustees would be willing to sell to Minneapolis (as they were on the verge of doing on May 26, 1955 before Santa Fe stepped in), and that the minority stockholders would have no reluctance to follow through on a sale to Minneapolis at the same price paid to trustees.

The effect of this approach of the Commission, questioning Minneapolis' ability to follow through on the "transaction", is a point which deserves scrutiny. The immediate effect is a dismissal of the Minneapolis application, which is the same as a denial of that application for all practical purposes. The dismissal operates as a denial in that the Commission then merely proceeds to compare the advantages in the public interest of the Pennsylvania-Santa Fe ownership versus ownership by the Pennsylvania-Santa Fe together with other railroads, or continuation of the present ownership of Western.

The test stated by the Commission as to the burden of proof in this proceeding is as follows:

> "These proceedings represent a new and more complicated phase in the administration of section 5, since it involves 2 applications for authority to control the same property, and petitions by 4 other carriers for

> inclusion in the transaction under varying circumstances. We must weigh whether each application is consistent with the public interest, with or without inclusion of other railroads, considering not only other intervening petitioners seeking such inclusion but also the other applicant and non-participating railroads as well.
>
> "The burden of proof, therefore, has become most heavy for an applicant in a proceeding like this, because it must not only overbalance the claims of those seeking to share in the control but also of those seeking to exclude it from the transaction. As a practical matter we, in such a proceeding as this, must arrive at a standard of public interest and determine which of the various plans of control most nearly approximates it. The applications and petitions for inclusion must be denied unless there are advantages in the public interest." (Appendix B to Minneapolis jurisdictional statement, p. 65.)

We agree with this statement as to the burden of proof, but a full reading of the Division 4 report makes it clear that the Commission did not observe its own statement. What appears to have happened is that the application of the Pennsylvania and Santa Fe survived by a process of elimination over the other possible outcomes before the Commission. The decision that the Pennsylvania-Santa Fe ownership of Western would be better than the present ownership of Western was based simply upon the desirability of having the control of a carrier pass from non-carrier interests which no longer desire it to carrier interests. The Commission's report suggests that a comparison of the Minneapolis with the Pennsylvania-Santa Fe application was made on the merits. However, that was not the basis for the Commission's decision and it does not appear that it could have been.

In comparing the advantages of acquisition of the Western to Minneapolis or the Pennsylvania and Santa Fe, Dr. Nightingale stated:

"The effect of the grant of authority to acquire control of the TP&W to petitioners in Docket No. 18991 upon the net income of the Pennsylvania-Santa Fe combination, or either of them, would be minute. Actually, with operation of the TP&W as a separate property, the net income effect, assuming a 50 per cent net equity of Pennsylvania and Santa Fe in net income of TP&W, will be $320,584. In the case of the Pennsylvania Railroad, this would amount to 1.1% of 1954 consolidated net income, or $.02 per share of common stock; in the case of the Santa Fe this amount would produce 0.5% of 1954 consolidated net income, or $.07 per share of common stock. By way of contrast, the estimated annual value of the TP&W to the M&StL is $1,732,000 or 105.2% of 1954 net income of $1,647,000 or $2.17 per share of common stock (witness L. S. Provo, Exhibit H-44, Schedule 2).

"According to the Interstate Commerce Commission's Sixty-Eighth Annual Report on Transport Statistics in the United States for the Year ended December 31, 1954, total assets of the TP&W are $9,893,197, those of the Pennsylvania Railroad are $2,455,547,988, and those of the Santa Fe are $1,484,889,559, and those of the M&StL are $37,807,778. The TP&W assets in relation to the combined assets of almost $4,000,000,000 for the Pennsylvania-Santa Fe combination are hardly visible at only 0.025% of this huge total. Viewed in broad perspective, the effect therefore of adding the 1954 net income and assets of the TP&W to those of the Pennsylvania-Santa Fe group is negligible, or about that of a peanut tossed by a child at a zoo to a hippopotamus" (Tr. 1669-70).

The test of public interest certainly includes consideration of the comparative advantages enuring to the competing applicants themselves. Acquisition of the Western could not be for the Pennsylvania-Santa Fe group, as it would be for Minneapolis, a needed economic tonic. If, then, the Pennsylvania-Santa Fe proposed purchase amounts is only for the purpose of making a profitable investment, that is surely a poor justification for their proposal. It is possible that their intention is to monopolize the gateways of the midwest and alleviate the competition of the Peoria Gateway against their long-hauls to other gateways, although the avowed objective of these parties, as expressed in their contract with each other, was to keep the Western independent, free, open and neutral. The curious contradiction of acquiring control of the Western to assure its freedom and independence is, we suppose, possible, but the Pennsylvania-Santa Fe contract being "not for the benefit of others not parties thereto" (Appendix B to Minneapolis jurisdictional statement, p. 63) protects only the parties thereto against a change of mind, and the Commission's conditions for a neutral Western could be observed equally by Minneapolis.

In view of the fact that the Minneapolis application should not have been dismissed, but should have been considered on its merits and the further fact that Minneapolis consented to the conditions imposed by the Commission, which would keep the Western open and neutral in every respect, the relative advantages of the acquisition to the competing applicants looms as the most important consequence in the public interest involved in this proceeding. Yet, that is a consequence which the Commission virtually ignored. Its error can be corrected only by this court.

III.

The scope of review by the district court.

The opinion of the District Court merely mentions the appearances of the States of Minnesota and South Dakota and fails to deal specifically with any of their contentions. The three judge court convened to review this order of the Interstate Commerce Commission was an exceptional court, notwithstanding its unfortunate decision. It is impossible to attribute the failure of this court thoroughly to review the action of the Commission to any lack of ability or lack of industry on its part. It is plain that the court disagrees with the determination of the Interstate Commerce Commission. It is also plain that the court is unduly respectful to the Commission's errors. Where a court such as this is made to pay undeserved tribute to the Interstate Commerce Commission, as the facts and results of this case demonstrate, then a need for clarification of the powers of the courts with respect to review of administrative determinations is presented.

CONCLUSION

The Interstate Commerce Commission ignored both procedural requirements and the controlling substantive standards. The District Court failed to accord any meaningful review to the Commission's determination. It is submitted that the substantial questions of public importance presented by the several appeals in this action require full consideration on the merits.

Respectfully submitted,

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No. 12

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In the Supreme Court of the United States

OCTOBER TERM, 1958

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

STATE OF SOUTH DAKOTA AND PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA, APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

STATE OF MINNESOTA AND MINNESOTA RAILROAD AND WAREHOUSE COMMISSION, APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

MOTION TO AFFIRM

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Solicitor General,
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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 552

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

No. 620

STATE OF SOUTH DAKOTA AND PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA, APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

No. 633

STATE OF MINNESOTA AND MINNESOTA RAILROAD AND WAREHOUSE COMMISSION, APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(e) of the Revised Rules of this Court, the United States of America and

the Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

These are direct appeals from the final judgment of a three-judge district court dismissing a complaint which sought to set aside orders of the Interstate Commerce Commission authorizing the Atchison, Topeka & Santa Fe Railway Company (Sante Fe) and the Pennsylvania Railroad Company (Pennsylvania) to acquire joint control of the Toledo, Peoria & Western Railroad Company (Western) through ownership of equal amounts of Western's capital stock.

Western is essentially a bridge carrier for east-west traffic and derives more than two-thirds of its total revenues from overhead or bridge traffic. As described in the Commission's report (J. St. 59–60):

> The main line of Western extends from its eastern terminus at Effner, on the Illinois-Indiana State line, via Peoria, to the western termini at Keokuk, Iowa, and Lomax [Illinois], approximately 234 miles. * * * It has connections for the interchange of traffic with 16 railroads, the principal ones being with the Pennsylvania at Effner, with the Santa Fe at Lomax, and with several carriers [including appellant [1]] at Peoria, a point almost midway between Chicago and St. Louis, Mo. * * *.

---

[1] We use the word "appellant" to refer to the Minneapolis & St. Louis Railway Company, appellant in No. 552. Appellants in Nos. 620 and 633 will be respectively referred to as the South Dakota appellants and the Minnesota appellants. The references throughout this motion to "J. St." are to the jurisdictional statement filed by the railway appellant.

On July 8, 1955, the Santa Fe and Pennsylvania (and Pennsylvania's parent, Pennsylvania Company) filed with the Commission an application for approval, under Section 5(2) of the Interstate Commerce Act, of a proposed joint acquisition of control of Western. Subsequently appellant also applied for authority under this section to acquire control of Western through ownership of Western's entire capital stock. Appellant intervened in opposition to the Santa Fe-Pennsylvania application and the joint applicants intervened in opposition to appellant's application.

Subsections (a) and (b) of Section 5(2) provide that it shall be lawful, with the approval of the Commission, for any carrier (or two or more carriers jointly) to acquire control of another through stock ownership if the Commission finds that the acquisition "will be consistent with the public interest." Section 5(2)(c) provides that in passing upon a proposed acquisition of control, the Commission shall give weight to (1) the effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected. Section 5(11) provides that the authority conferred by Section 5 shall be exclusive and plenary, and that the participants in an approved transaction are relieved from the operation of the antitrust laws and of all other prohibitions of law insofar as necessary to carry the transaction into effect.

The State of Illinois, various communities, civic organizations, and shippers located along the line of

Western, and the Railway Labor Executives Association (on behalf of Western's employees) intervened in support of the Santa Fe-Pennsylvania application. The States of Minnesota and South Dakota and their respective utility regulatory bodies intervened in support of appellant's application.

The two applications were consolidated for hearing. After the taking of extensive oral and documentary evidence, the hearing examiner issued a proposed report, recommending approval of the Santa Fe-Pennsylvania application and dismissal of appellant's application. The matter was heard by Division 4 on exceptions to this report, and Division 4, after oral argument, issued a report and order authorizing the acquisition of control of Western by Santa Fe and Pennsylvania and dismissing appellant's application. The Division found, subject to the conditions for the protection of railway employees and the maintenance of existing routes and channels of trade referred to in its report, that the terms and conditions of the proposed Santa Fe-Pennsylvania acquisition are "just and reasonable", and that the transaction "will be consistent with the public interest" (J. St. 94).

By order of October 30, 1957, the entire Commission denied the petitions for reconsideration filed by appellant and others, and made the order of Division 4 effective thirty days from the date of service of the order of October 30, 1957 (J. St. 96–98). Appellant thereupon instituted the present action, and the district court issued a temporary restraining order staying the effectiveness of the Commission's orders pending its determination of the case on the merits.

The district court, in an opinion which carefully considered and rejected appellant's principal contentions, unanimously sustained the validity of the Commission's orders (J. St. 37–54). The court discharged its temporary restraining order, but granted a 30-day stay and, after appellant had filed its notice of appeal, enjoined enforcement of the Commission's orders during the pendency of the appeal to this Court.

ARGUMENT

I

Appellant contends (J. St. 13–26) that the Commission's ultimate "public interest" finding lacks the support of essential subsidiary findings and that the Commission erroneously failed to accord appellant a "comparative hearing".[2] These sweeping, but very generalized, claims of error are to be tested against the Commission's actual findings, which, we submit, furnish ample foundation for the Commission's determination and order. Application of the statutory test requires the Commission to consider numerous factors—whether a proposed acquisition will promote "adequate transportation service to the public"; the "best use of transportation facilities"; and the interests of affected shippers, railroads, and carrier employees. See Section 5(2)(c) of the Act; *New York Central Securities Co. v. United States*, 287 U.S. 12, 25.

[2] The contention that certain Commission findings are unsupported by the evidence and that others are contrary to the evidence is, we believe, sufficiently answered by the Santa Fe-Pennsylvania motion to affirm filed in No. 552 (pp. 17–21).

The Commission found that two-thirds of Western's revenues are derived from overhead or bridge traffic; that Western provides an east-west route bypassing the congested Chicago and St. Louis terminals; that over 70% of its interline traffic is interchanged with the Santa Fe or Pennsylvania or both; that only about 8% of appellant's revenues come from traffic interchanged at Peoria with Western, and only about 4% from bridge traffic so interchanged; that, among Western's 16 railroad connections, appellant ranks seventh in volume of interchange; that the Santa Fe and Pennsylvania have coordinated their schedules with Western; and that, on both westbound and eastbound traffic, service via Western's full route and the Santa Fe is substantially faster than via the Santa Fe to its junction with appellant at Nemo, via appellant between Nemo and Peoria, and via Western between Peoria and its eastern end at Effner (J. St. 60–61, 68–69).[1] The Commission further found (*id.* 89):

> Fast, strong, and reliable through transportation service is necessary in order for the railroads adequately to compete with the other modes of modern transportation, and Western, as a direct east-west line, supplies the short-line connection for providing this through service with a minimum of delay.

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[1] Related findings are that the large volume of traffic moving via Western's route evidences "the superior connecting service it provides", whereas appellant has not coordinated schedules with the Santa Fe at Nemo or with the Western at Peoria on eastbound traffic, and that appellant's Peoria-Nemo traffic "does not move on a competitive service basis" (J. St. 78).

The Commission found that appellant's proposal "unequivocally contemplates the disappearance of Western as an independent and neutral connection for the other 15 carriers" with which it presently interchanges traffic; that while Western would remain a separate corporate entity, its ownership, management, and operation would be integrated with appellant; that its headquarters and general offices would be moved from Peoria to the city of Minneapolis; and that of Western's present 24 executive positions, only a trainmaster and roadmaster would be retained for direct supervision of Western's trackage (J. St. 71). In contrast to appellant's proposal to eliminate Western as a separate operating entity, the Santa Fe-Pennsylvania contract for acquisition of Western's stock provided, as found by the Commission, (1) that Western will be operated under local management as a separate and independent carrier, (2) that Western will maintain its own solicitation forces and be free to solicit the traffic best serving Western's needs, (3) that all of Western's existing routes will be maintained and kept open without discrimination as between connecting railroads, and (4) that Western will have 11 directors consisting of its president, two Santa Fe representatives, two Pennsylvania representatives, and six "prominent citizens" not connected with the Santa Fe or the Pennsylvania (*id.* 63-64). This would be a continuation of Western's past and present policy of maintaining neutrality as between all connecting railroads (*id.* 60).

The Commission found that the communities served by Western, the shippers who appeared as witnesses,

and all of the railroad intervenors[1] "insist that the separate and independent operation of Western under its present local management is a public necessity" (J. St. 72), and virtually every shipper and community witness stressed the desirability of retaining Western's headquarters at Peoria "in order to continue the present easy access to management which is of inestimable value to shippers" (*id.* 91). It likewise found that Western's employees unanimously favored the grant of the Santa Fe-Pennsylvania application (*id.* 88).

The Commission noted that the Santa Fe and Pennsylvania had agreed to accept certain specific conditions to any order of approval, and the Commission's order was, in fact, made subject to these conditions (J. St. 83, 85, 95). Included among these express conditions were that Western maintain and keep open all existing routes and channels of trade, continue its present neutrality of handling inbound and outbound traffic without discrimination as to routing or movement of traffic, continue its present traffic and operating relationships with all connecting lines, and accept and handle all inbound and outbound cars without discrimination as between cars destined to or received from competing carriers (*id.* 83-84).[2]

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[1] The intervening railroads were: New York, Chicago & St. Louis Railroad (Nickle Plate), the Chicago, Rock Island, and Pacific Railroad (Rock Island), the Chicago, Burlington & Quincy Railroad (Burlington), and the Wabash Railroad (Wabash).

[2] The Commission has recognized the efficacy of separate and independent operation of a controlled carrier (*Chicago Junction* case, 71 I.C.C. 631, 638-639; *Wabash R. Co. Control*, 247

The Commission found that unification of Western's operations with that of appellant "would be extremely harmful to other carriers" (J. St. 73), but that the Santa Fe-Pennsylvania acquisition would result in no appreciable diversion of traffic from other carriers (*id.* 75–82). Particular attention was paid to the question of diversion of traffic from appellant (*id.* 77–79).

Still other findings were that the combined efforts of the industrial development departments of the Santa Fe and Pennsylvania could be expected to lead to location of new industries on Western's line and that the city officials and chamber of commerce representatives of communities on Western's line all "recognized the advantage of Santa Fe-Pennsylvania ownership as an economic stimulus to the industrial development of their communities"; that Western would be assisted in railroad-management techniques, realization of operating economies, and economical large-volume purchases by the presence on its Board of Santa Fe and Pennsylvania representatives (J. St. 90–92).

While appellant additionally contends that the Commission failed to accord a "comparative hearing" of the two mutually exclusive applications which were before it, the contention, as elaborated, merely constitutes an attack on the Commission's evaluation of the evidence or of the factors determinative of the public interest. To the extent that the contention is that

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I.C.C. 365, 370–371; *Pacific Coast R.R. Co. Control*, 282 I.C.C. 600, 607), and it has had occasion to require such separate operation (*Clinchfield Ry. Lease*, 90 I.C.C. 113, 132–133).

the Commission erred in not making an item-by-item comparison of the competing proposals, the answer is that they differed so radically in character that such a comparison was neither requisite nor appropriate.

To summarize, the Commission was certainly right in viewing the public interest as "the prime consideration" (J. St. 93). The findings previously referred to cover all relevant factors and amply support the Commission's conclusion. The court below recognized that "the Commission's expertise is not infallible", but held, we submit properly, that its order was based on "adequate findings supported by substantial evidence", and that in these circumstances a reviewing court cannot substitute its judgment for that of the administrative agency (J. St. 50, 54).

II

Appellant contends (J. St. 26–29) that the Commission erred in sanctioning an acquisition of control which involved a prior violation of Section 10 of the Clayton Act, 15 U.S.C. 20. The section makes it unlawful for an interstate railroad to have any "dealings in securities, supplies, or other articles of commerce", aggregating more than $50,000 in any one year, with any corporation when any person who is a director of the railroad is at the same time a director of the other corporation, unless the purchase or dealings shall be pursuant to competitive bidding and with the bidder most favorable to the railroad. The alleged violation of the statute is predicated upon the following facts: 82% of Western's stock was held by two trustees, and when the Santa Fe-Pennsylvania agreed to purchase this stock, one of the two trustees, the

Delaware Trust Company, had four directors who were also directors of Pennsylvania."

The plain purpose of Section 10 is to prevent a railroad from buying at too high a price or selling at too low a price, resulting from the existence of some common relationship between it and the seller or buyer. The Santa Fe-Pennsylvania purchase of Western's stock is, however, totally unrelated to the evils Section 10 is designed to prevent. If the price paid for Western's stock was high, the factor determinative of this price was competition for the stock between appellant and Santa Fe-Pennsylvania (J. St. 62–63), not any common relationship between one of the sellers and Pennsylvania. The purchase was also remote from the evils against which Section 10 was directed because both Santa Fe's purchase agreement and the agreement by which Pennsylvania became a 50% purchaser were subject to the Commission's approval (*id.* 63), which approval entailed determination that the price paid for the stock was reasonable (J. St. 85–86).

The sole sanction for Section 10 is a criminal prosecution, and the Commission is not authorized either to enforce the section or to determine whether it has been violated. Moreover, even if the Commission had concluded that Section 10 had been violated, the statute expressly authorized it to approve the acquisition notwithstanding such violation. Section 5(11) pro-

---

"Santa Fe agreed to purchase all the stock held by the trustees at $135 a share, and also made agreements with the remaining stockholders of Western to purchase their Western stock at the same price, and, about a month after the agreement with the trustees, agreed to sell 50% of Western's stock to Pennsylvania's parent, The Pennsylvania Company, at $135 a share (J. St. 63).

vides that the authority given the Commission by Section 5 shall be "exclusive and plenary", and that any person participating in a transaction approved under Section 5 is "hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal * * * ". While the Commission probably may not "ignore" the policy embodied in Section 10 of the Clayton Act (see *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 86), in this case it did not disregard such policy. It gave consideration to the only relevant aspect of the section when it considered the fairness of the price paid for the Western stock. The Commission would have been remiss if it had made its determination of the public interest turn on a technical breach of the provisions of Section 10, rather than on the questions of large importance relating to adequate transportation service to the public which the Commission viewed as making the acquisition "in the public interest."

III

Appellant's final contention (J. St. 29–34) is that the acquisition of control approved by the Commission "violates the wording, the principle and the spirit of" the antitrust laws, and Section 1 of the Sherman Act and Section 7 of the Clayton Act in particular (*id.* 30). Appellant recognizes that, under Section 5(11) of the Act, the Commission's approval of an acquisition immunizes it from the operation of the antitrust laws, but appellant asserts that the Commission improperly failed to set forth in its report its reasons for concluding that the transportation con-

siderations favoring the Santa Fe-Pennsylvania acquisition outweighed any opposing antitrust considerations.

In *McLean Trucking, supra,* which involved a Section 5(2) order and presented precisely the issue here raised by appellant, this Court said (321 U.S. 67, 83):

> The history of the development of the special national transportation policy suggests, quite apart from the explicit provision of § 5(11), that the policies of the antitrust laws determine "the public interest" in railroad regulation only in a qualified way.

The Court said (*id.* at 85) that Congress, in authorizing mergers and acquisitions of control, "did not import the general policies of the anti-trust laws as a measure of their permissibility". It said further (*id.* at 87) that the Commission has the duty "to consider the effect of the [acquisition] on competitors and on the general competitive situation in the industry in the light of the objectives of the national transportation policy". It said that the Commission, in determining whether an acquisition "will assist in effectuating the over-all transportation policy", has the duty of considering both the effects of any curtailment of competition and the advantages of improved service, lower cost, etc., resulting from a proposed acquisition (*ibid.*). "Resolving these considerations is a complex task", and "Congress left that task to the Commission" (*ibid.*).

In the instant case, the Commission devoted much of its long report to an analysis of the effect of the Santa Fe-Pennsylvania acquisition upon competing carriers,

including appellant. It considered whether this acquisition would have an adverse competitive effect on other carriers and found that it would not (J. St. 75–82). The Commission summarized its conclusion on this aspect of the proceeding as follows (J. St. 81–82):

> We are convinced that the benefits to be derived from the operation of Western under the control of the Santa Fe and the Pennsylvania as proposed will be in furtherance of the over-all national transportation policy declared by the Congress, and its consummation will not unduly curtail competition in connection with the other carriers. Compare *McLean Trucking Co.* v. *U.S.*, 321 U.S. 67.

We submit that, under the tests and principles enunciated by this Court in *McLean Trucking*, the Commission plainly fulfilled its statutory duty.

IV

The Minnesota and South Dakota appellants stress the importance to the economy of their respective States of the appellant railroad's transportation service. Since the legal questions which these appellants present are those which have already been considered, we believe it unnecessary to discuss separately the contentions made by the Minnesota and South Dakota appellants.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the appeals present no substantial question and that the judgment of the district court should be affirmed.

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JANUARY 1959.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. [redacted] 27

THE STATE OF SOUTH DAKOTA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA, *Appellants*,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

AND

No. [redacted] 28

THE STATE OF MINNESOTA AND THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION, *Appellants*,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 620.

THE STATE OF SOUTH DAKOTA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA,

Appellants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

AND

No. 633.

THE STATE OF MINNESOTA AND THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION,

Appellants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM.

Appellees, The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company, and Pennsylvania Company, move that the judgment of the District Court be affirmed on the ground that the questions presented on the two above-entitled appeals are so insubstantial as not to need further argument.

STATEMENT AND ARGUMENT.

This motion is addressed to two appeals, one on behalf of the State of South Dakota and the Public Utilities Commission of that state (together referred to as South Dakota) and the other on behalf of the State of Minnesota and the Minnesota Railroad and Warehouse Commission (together referred to as Minnesota). Both South Dakota and Minnesota support the position of the Minneapolis & St. Louis Railway Company (the Minneapolis), appellant in No. 552, *The Minneapolis & St. Louis Railway Co. v. United States, et al.*

Although their arguments take a slightly different form, the jurisdictional statements of South Dakota and Minnesota raise questions which have already been raised in the jurisdictional statement of The Minneapolis. These have been fully dealt with in the Motion to Affirm filed by these appellees in No. 552 under date of December 30, 1958. Accordingly, we will refer to that motion* for the statement of the case and the argument generally, commenting only briefly on certain aspects of the arguments made by South Dakota and Minnesota in their jurisdictional statements.

Both South Dakota and Minnesota contend—as did Minneapolis—that in approving the acquisition of control of Toledo, Peoria & Western Railroad Company (Western) by Santa Fe and Pennsylvania, the Interstate Commerce Commission failed to give adequate consideration to the competitive effects of such acquisition on the Minneapolis and the area it serves. Particular stress is laid on the possibility that Minneapolis might be forced to abandon

*The Motion to Affirm filed by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company in No. 552 will be referred to hereafter as "Motion to Affirm."

certain branch lines in South Dakota and Minnesota. The short answer to these arguments is that the Commission considered the competitive effects of the proposed acquisition not only generally but particularly with respect to the Minneapolis and found that the volume of traffic handled by Minneapolis and the other intervening carriers would not be materially affected. *See* Report of the Commission (Minneapolis J. S., pp. 75-82, 83-85, 90). This finding is fully supported by the evidence. *See* Motion to Affirm, pp. 26-27.

South Dakota's contentions with respect to the anti-trust laws assume that control of Western is to be acquired by a "Pennsylvania-Santa Fe combine" and that this is in effect "a gigantic railroad merger." But joint control of a carrier by two of its connections is in no sense a unification or merger of the acquiring roads. Moreover, the assumption that this is a merger overlooks the fact that Western is a bridge line between the east and the west and that the proposal is for joint control by the Pennsylvania, an eastern railroad, and the Santa Fe, a western railroad. Under such joint control Western would not be a part of either the Santa Fe or the Pennsylvania systems but would continue as a separately operated carrier. And, as the Commission found, the checks and balances inherent in such control by an eastern and a western carrier would protect Western's other connections, such as Minneapolis, from discriminatory service and solicitation policies. *See* Motion to Affirm, pp. 26-27.

Minnesota suggests that acquisition of Western by Santa Fe and Pennsylvania would "dry up" the Peoria gateway as far as the Minneapolis is concerned and thus force Minnesota to rely more heavily on the Chicago gateway. The Commission is said to have ignored this. On the contrary, the Commission found that the plan of the Pennsylvania to place Effner, where it connects with

Western, on a solicitation parity with Chicago, would make additional traffic available for solicitation by the Minneapolis through Peoria (Minneapolis J. S., p. 7). Moreover, the argument assumes that Western's line is the Peoria gateway when, in fact, the Minneapolis interchanges more traffic through Peoria with the Nickel Plate and the New York Central than with Western. Minnesota's argument also overlooks the fact that the Pennsylvania receives valuable traffic via Western from the Minneapolis and therefore would not permit Western to be operated in such a way as to lose that traffic.

The contention that Minneapolis was not accorded comparative hearing is fully answered in the Motion to Affirm at pages 12-17. In its jurisdictional statement Minnesota argues that the application of the Minneapolis was not considered on its merits because the Minneapolis had no contract to purchase the stock of Western. Minnesota also argues that the dismissal of the Minneapolis application indicates that it was not considered on its merits. These arguments simply ignore what the Commission said and did. The following excerpt from its report makes it entirely clear that the lack of a contract did not prevent full consideration on the merits and also explains the reason for dismissal of the Minneapolis application:

> "* * * In determining consistency with the public interest and the national transportation policy we are not shackled in a case like this by the first application filed, if there is presented for our consideration at the same time a different proposal which but for the situation created by the first application might easily be accomplished. The public interest is the prime consideration, and in making that determination we must have regard for all relevant factors.
>
> "Consistent with the foregoing, we have carefully considered the evidence and arguments presented to

lating to both the applications before us and conclude upon the basis of the whole record, and as reflected by this report, that the application of the Santa Fe and the Pennsylvania should be granted subject to the conditions previously alluded to herein. With our approval of that application, the possibility of the Minneapolis' acquiring the Western's stock is eliminated and its application becomes moot. Accordingly, the application of the Minneapolis will be dismissed." (Minneapolis J. S., pp. 93-94.)

Minneapolis suggests that this case should have been decided on the relative advantages of the acquisition to the two competing applicants. But this is by no means the prime consideration in determining the public interest. The interests of the applicants and their stock holders are not the public interest. The concept is a broad one, which embraces all parts of the public affected by the transaction; the interests of shippers using the services of Western, of the communities dependent on Western, of Western's employees and of the other railroads involved, are included within it. *Detroit T. & I. R. Co. Control*, 275 I. C. C. 455, 488 (1950); *Watson Bros. Transp. Co., Inc.*, 57 M. C. C. 745, 758 (1951); *Florida East Coast Ry. Co. Reorganization*, 267 I. C. C. 295, 325 (1947). And see *N. Y. Central Securities Co. v. U. S.*, 287 U. S. 12, 25 (1932). The review of the findings at pages 7-12 of the Motion to Affirm shows that all aspects of the public interest were fully considered by the Commission in arriving at its final determination.

CONCLUSION.

Neither South Dakota nor Minnesota presents a substantial question for consideration by this Court. The motion to affirm should, therefore, be granted.

Respectfully submitted,

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January 29, 1959.

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Clerk

NOTICE OF

AFFIRM ON BEHALF

OF THE STATE OF

ILLINOIS

NO 12

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FILED
FEB 2 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. [redacted] 27
No. [redacted] 28

THE STATE OF SOUTH DAKOTA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA,

THE STATE OF MINNESOTA AND THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION,

Appellants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM ON BEHALF OF THE STATE OF ILLINOIS.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 620.

No. 633.

THE STATE OF SOUTH DAKOTA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA,

THE STATE OF MINNESOTA AND THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION,

Appellants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM.

The State of Illinois, appellee in both of the above-entitled cases, pursuant to Rule 16, paragraph 1(c) of the Revised Rules of the Supreme Court, respectfully moves to affirm on the ground that the Decision of the Court below is wholly correct, in accord with all relevant authority and that the questions raised by appellants, are so unsubstantial as not to require further argument.

STATEMENT.

The arguments employed by South Dakota and Minnesota in an effort to establish the substantiality of the questions presented are unique. The arguments are based upon the assumption that both the Commission's report and the decision of the District Court should be ignored in determining whether the questions presented are substantial. Thus it is asserted that the District Court's decision, affirming the Commission's report, should be ignored because the Court did not actually mean what it said in its opinion since it is "plain" that the Court really disagrees with the Commission's decision (Minn. J. S. p. 15). Appellants assert that the Commission's report, moreover, should be similarly ignored because the language employed in the report is meaningless as an indication of what the Commission did. South Dakota and Minnesota argue that the Commission's decision is based upon a "shocking prejudgment" of the case (S. D. J. S. p. 6) and that the Commission "did not observe its own statement" (Minn. J. S. p. 12).

The nature of the assumptions underlying South Dakota's and Minnesota's arguments renders their position so untenable as to hardly require answering. We feel somewhat constrained to give dignity by replying to an argument which presupposes that neither the language of the report of the administrative agency nor the opinion of the Court reviewing the administrative order accurately reflect the basis for those decisions. There is no basis for any assumption other than that the Commission acted in good faith, that its statements as to the consideration it gave to the evidence are true and that the District Court did, in fact, affirm the Commission's decision on the basis of the relevant law and the record which was before it.

ARGUMENT.

I. THE MINNESOTA JURISDICTIONAL STATEMENT.

1. Minnesota Branch Lines:

Minnesota's argument concerning its branch lines is manifestly no more than a reiteration of Minneapolis'[1] claims of traffic diversion. Minnesota says that such diversion would occur primarily through the loss of the traffic moving via Minneapolis between Nemo and Peoria (p. 6).[2] Minnesota says that the evidence relating to the diversion of this traffic "stands undisputed" and that the Commission failed to make findings with respect to it (p. 7).

The Commission's extensive findings dealing specifically with Minneapolis' contentions respecting the Peoria-Nemo traffic, covering three full paragraphs in its report, provide a complete answer to Minnesota's argument and no purpose would be served by extending the discussion beyond these findings (App. B, Mpls. J. S. pp. 76-77).

1. The Railroads referred to herein will be designated as follows: The Atchison, Topeka and Santa Fe Railway Company as "Santa Fe"; The Pennsylvania Railroad Company as "Pennsylvania"; the Toledo Peoria & Western Railroad Company as "Western"; and The Minneapolis & St. Louis Railway Company as "Minneapolis".

2. Numbers in parentheses refer to pages in the Appellants' Jurisdictional Statements; numbers in parentheses preceded by "R" refer to the transcript before the Commission; numbers in parentheses preceded by "H" refer to exhibits received by the Commission.

2. The Peoria Gateway:

After first arguing that the Santa Fe-Pennsylvania acquisition will divert traffic from Minneapolis to Western,[3] Minnesota then inconsistently argues, that the Santa Fe and Pennsylvania are attempting to purchase Western in order to "dry up" Peoria (pp. 9-10) and "alleviate the competition" of Western's route between the east and the west (p. 14).

Minnesota's argument is based upon the assumption that the movement of traffic via Western's route and through the Peoria Gateway is really detrimental to the interests of Santa Fe and Pennsylvania. The findings, however, indicate that Santa Fe and Pennsylvania's interest in the Peoria Gateway are based upon their self-interest and the economics of their relationship with Western. No other reason could explain the finding respecting Santa Fe and Pennsylvania's record of cooperation with Western in coordinating schedules and services for the past thirty years (App. B, Mpls. J. S. pp. 60-61). The Commission found that Santa Fe and Pennsylvania are presently "just about as well off" financially where traffic is handled via the Peoria Gateway as via the Santa Fe and Pennsylvania's long-haul to Chicago (App. B, Mpls. J. S. p. 75) and that Santa Fe and Pennsylvania's policies as owners of Western would increase Western's opportunity to secure traffic via the Peoria Gateway which now moves via other gateways (App. B, Mpls. J. S. p. 75), which would also benefit other lines connecting with Western at Peoria (App. B, Mpls. J. S. p. 78).

Minnesota's argument also presumes that control of Western is control of the Peoria Gateway. However, this

3. Minnesota argues that the loss of traffic by Minneapolis will occur "primarily" through the elimination of traffic now moving via St. Louis and Peoria (p. 6). Minneapolis contended that all of this loss would occur by diversion to Western.

is not so. The record shows that there are a number of other western and eastern lines connecting at Peoria interchanging a large volume of traffic which does not move via Western (H-126, H-128). Minneapolis, for example, interchanges more traffic with the Nickel Plate and the New York Central at Peoria than it does with Western (H-128). Minnesota is directly served by several railroads, the Rock Island, Chicago & North Western, Burlington and Minneapolis, which all operate through the Peoria Gateway.

Minnesota's argument also presumes that the Peoria Gateway traffic could be diverted to Santa Fe's and Pennsylvania's own lines. The Commission found to the contrary, Western being only one of several routes through Peoria between the East and the West. Any attempt at suppression of Western would only divert such traffic to any number of available alternative routes via Peoria without benefit to either Santa Fe or Pennsylvania. This fact was conclusively established by a number of shippers who use Western as a bridge carrier, who testified that the self-interest of Santa Fe and Pennsylvania as owners of Western would preclude such suppression of Western's route via Peoria (R. 593, 661-62, 690, 773-74).

3. Comparative Hearing:

Minnesota makes two points in an effort to support its argument that the Commission did not accord Minneapolis a comparative hearing. First, it asserts the Commission decided the case on the fact that Minneapolis did not have an enforceable contract for the purchase of Western stock rather than a comparison of the two applications (pp. 10-12). In order to support its contention, Minnesota was obliged to discredit both the Commission's statements of its function in this proceeding and its discharge of that function as reflected by the extended discussion of the merits of both proposals contained in the report. Minne-

sota argues that the Commission did not do what it said it was going to do and then failed to do what it said it did do, *i.e.* consider the merits of both applications. Such a position is unworthy of a reply since it assumes bad faith on the part of the Commission. The Commission's conclusion, after considering the merits of both proposals, should be sufficient answer to Minnesota's contention. The report states:

> "* * * In determining consistency with the public interest and the national transportation policy we are not shackled in a case like this by the first application filed, if there is presented for our consideration at the same time a different proposal which but for the situation created by the first application might easily be accomplished. The public interest is the prime consideration and in making that determination we must have regard for all relevant factors. Consistent with the foregoing, we have carefully considered the evidence and arguments presented relating to both the applications before us and conclude upon the basis of the whole record, and as reflected by this report, that the application of the Santa Fe and the Pennsylvania should be granted subject to the conditions previously alluded to herein. * * *" (App. B. Mpls, J. S. p. 93.)

Second, Minnesota contends that the Commission could not have actually made a comparison of the two proposals since the public interest lies solely with the application of Minneapolis. It takes the position that the public interest lies only in viewing the possible economic advantage to the competing applicants and upon that basis Minneapolis should have been allowed to acquire Western (pp. 13-14). Minnesota admits that the Commission's report recites that a comparison of the applications was made on the merits, but contends that such could not be the fact since the Commission did not adopt the theory of Dr. Nightingale, the consultant and witness for Minnesota (p. 13). Actually,

Minnesota is saying that Minneapolis should have won the case and the fact that it lost is conclusive evidence that the Commission did not consider the applications on the merits.

In determining which of the proposed transactions are more nearly consistent with Section 5(2) of the Act, the Commission has more to consider than the possible benefits to the competing applicants. The interest of the applicants and their stockholders are not the public interest. The concept is a broad one and embraces all parts of the public affected by the transaction, the interest of shippers using the services of Western, the communities dependent upon Western, the employees of Western and the other railroads involved. The evidence showed that the proposal of Minneapolis was based upon the integration of Western into Minneapolis which would afford economic benefits to Minneapolis, but which would destroy Western as a financially strong, independently operated bridge railroad. The destruction of this independently operated railroad should greatly outweigh the economic benefit to the stockholders of Minneapolis. Furthermore, the Commission's finding with respect to the financial stability of Minneapolis indicates that there is no factual basis for Minnesota's argument (App. B, Mpls. J. S., p. 68).

4. The District Court's Decision:

Minnesota says that the District Court did not mean what it said in its opinion since it is "plain" that the Court really disagrees with the Commission's decision (p. 15). It thereby seeks to dispose of the District Court's decision on the same cavalier basis that it dealt with the Commission's order. We should not be obligated to reply to an argument which assumes that the language used by the Court is meaningless and is not an indication of the Court's decision. We feel that the opinion of the Court which Minnesota concedes to be "an exceptional court", stands as its own answer to such contention.

II. THE SOUTH DAKOTA JURISDICTIONAL STATEMENT

1. South Dakota's Branch Lines.

South Dakota's argument that the Santa Fe-Pennsylvania "combine" would adversely affect the branch lines of Minneapolis in South Dakota again assumes that the only public interest lies in the economic benefit to Minneapolis. The benefit to South Dakota through the creation of a theoretically stronger railroad which could then support the low density marginal branch lines in that State through either the destruction of a strong main line railroad in Illinois or by converting it into a branch line is not necessarily in the public interest. Besides, it is the very function of the Commission to weigh and determine the evidence, and, in this case, the Commission found that the acquisition by Santa Fe and Pennsylvania "will be consistent with the public interest". The record substantiates the finding by the Commission that the status of Western as a strong transcontinental bridge carrier will remain the same through the acquisition by the Santa Fe and Pennsylvania, but would be greatly changed by Minneapolis's ownership. The Commission obviously felt that the preservation of the existing 239 miles of operation in Illinois which Western performs is more in the public interest than the integrity of 154 miles of marginal branch lines of Minneapolis serving the northeastern part of South Dakota.

While completely unrelated to its branch line argument, South Dakota proceeds to attack the intervention of public bodies and the Railway Labor Executives' Association which intervened in support of Santa Fe-Pennsylvania control of Western (pp. 8-9). The significance of the unanimous public support accorded Santa Fe-Pennsylvania acquisition by the municipalities, business associations and shippers along Western's line cannot be dismissed with

the assertion that these interests have been victimized by a Santa Fe public relations campaign since their interests are really jeopardized through the acquisition of Western by Santa Fe-Pennsylvania (p. 9). No reply need be made to this assertion since South Dakota does not indicate how these interests will be hurt by Santa Fe-Pennsylvania control. Furthermore, it would seem that the communities and shippers along Western's line would be better able to judge their own interest than South Dakota. It is further stated by South Dakota that labor would not "suffer" since it is protected by the Washington Job Protection Agreement. This ignores the fact that the interest of Western's employees extend beyond the award of a dole under a job protection agreement.

2. The Anti-Trust Effect:

The argument that Santa Fe-Pennsylvania's control of Western would violate the anti-trust laws is based upon the assumption that the proposed transaction constitutes a "gigantic railroad merger" which "unifies" the operations of Santa Fe and Pennsylvania from "tide water" to "tide water" (pp. 9-10). Joint control of another carrier is not in any sense a merger of the owning roads. This is particularly true where, as here, they are an eastern and a western carrier subject to the checks and balances inherent in such control. The Commission expressed this as follows:

> "* * * No greater protection could be afforded to carriers interchanging traffic with Western than to have ownership divided equally between the largest connecting carrier in the east and the largest one in the west. Under this built-in system of checks and balances, it is inconceivable for the Santa Fe to permit impairment of service or discriminatory solicitation with respect to eastern connections, or the Pennsylvania with respect to western ones. * * *" (App. B., Mpls. J.'S., p. 90).

CONCLUSION.

The motion to affirm should be granted. The grounds upon which the District Court's decision rests are fully sustained.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. [redacted]

No. [redacted]

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JAMES R. BROWNING, Clerk

THE STATE OF MINNESOTA AND THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION,

THE STATE OF SOUTH DAKOTA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA,

APPELLANTS,

VS.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

MOTION TO AFFIRM ON BEHALF OF MUNICIPALITIES AND SHIPPERS ALONG THE LINES OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY.

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CASE CITED

Associated Railways Company Acquisition and Securities, 228 I.C.C. 277 (1938)	5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 620.
No. 633.

THE STATE OF MINNESOTA AND THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION,

THE STATE OF SOUTH DAKOTA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA,
APPELLANTS,

VS.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM.

These intervening appellees,[1] pursuant to Rule 16, paragraph 1(c) of the Revised Rules of the Supreme Court, move that the judgment of the United States District Court for the District of Minnesota be affirmed on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

1. The City of Peoria, Illinois; the City of East Peoria, Illinois; the Peoria Association of Commerce; the City of Bushnell, Illinois; the Bushnell Chamber of Commerce; the City of Canton,

STATEMENT OF THE CASE.

The proceedings below are sufficiently described in the Motion to Affirm filed by these intervening appellees in response to the Minneapolis Jurisdictional Statement which was filed heretofore in this Court in Case No. 552 designated The Minneapolis & St. Louis Railway Company, Appellant, v. United States of America, Interstate Commerce Commission *et al.*, Appellees.

QUESTIONS PRESENTED.

Minnesota's arguments, that the Commission failed to accord Minneapolis[2] a comparative hearing and that the District Court failed to discharge its function of review, merely duplicate the arguments raised by Minneapolis in its Jurisdictional Statement. This is also true of South Dakota's argument that the Commission failed to give appropriate consideration to the competitive effects of the proposed acquisition. These intervening appellees rely

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Illinois; the Canton Chamber of Commerce; the City of LaHarpe, Illinois; the LaHarpe Golden Rule Club; the Village of Lomax, Illinois; the City of Keokuk, Iowa; the Keokuk Chamber of Commerce; the Keokuk Bridge Commission; the City of Warsaw, Illinois; the Warsaw Chamber of Commerce; the City of Forrest, Illinois; the City of Fairbury, Illinois; the City of Gridley, Illinois; the City of Gilman, Illinois; the City of Sheldon, Illinois; the City of Watseka, Illinois; the City of Eureka, Illinois; the Village of Secor, Illinois; the City of Washington, Illinois; and the City of Chenoa, Illinois. All of said appellees will hereinafter be referred to as "these intervening appellees."

2. The interested railroads will be referred to hereafter as follows: Toledo, Peoria and Western Railroad Company as "Western," The Pennsylvania Railroad Company as "Pennsylvania" and The Atchison, Topeka and Santa Fe Railway Company as "Santa Fe."

upon their Motion to Affirm and the Motion to Affirm filed by Santa Fe and Pennsylvania in response to the Minneapolis Jurisdictional Statement as a response to the arguments relating to these questions.

South Dakota and Minnesota have raised three additional questions which may be stated as follows:

1. Did the Commission make adequate findings with respect to the effect of the Santa Fe-Pennsylvania proposal upon the Minneapolis' branch lines in South Dakota and Minnesota?

2. Are the findings which were made which relate to the effect of Santa Fe-Pennsylvania's control upon the branch lines, supported by substantial evidence?

3. Did the Commission make adequate findings with respect to the effect of the Santa Fe-Pennsylvania's proposal upon the Peoria Gateway?

THE QUESTIONS ARE UNSUBSTANTIAL.

I.

Minneapolis Branch Lines in South Dakota and Minnesota.

A. Adequacy of the Findings.

South Dakota and Minnesota argue that the Commission "disregarded" the effect of Santa Fe-Pennsylvania control of Western upon the Minneapolis branch lines located in those States and in Western Iowa. They contend that the Commission failed to make findings with respect to the "inevitable" detrimental consequences which would result to these lines. South Dakota and Minnesota contend first that the acquisition of Western by Minneapolis is

necessary to insure adequate rail service via its branch lines in those States (S.D. J.S., p. 7; Minn. J.S., pp. 6-7). Secondly, they contend that the traffic of Minneapolis would be diverted under Santa Fe-Pennsylvania control of Western which would result in a loss of gross revenue which, in turn, would result in the "inevitable" abandonment of the Minneapolis branch lines (S.D. J.S., p. 7; Minn. J.S., pp. 6-7). Adequate findings were made by the Commission on both of these issues. These findings indicate that there is no basis for the concern expressed by the States of South Dakota and Minnesota.

The Commission found that Minneapolis is a reasonably prosperous railroad whose financial and physical status has been steadily improving (App. B., Mpls. J.S., pp. 66, 68). It follows, therefore, that no need exists for Minneapolis to acquire Western in order to maintain its branch lines in South Dakota and Minnesota. The Commission found, furthermore, based upon exhaustive evidentiary and subsidiary findings, that the Minneapolis traffic would not be materially affected by Santa Fe-Pennsylvania control of Western (App. B., Mpls. J.S., pp. 75-79). It follows, therefore, that the abandonment of these branch lines would not result from Santa Fe-Pennsylvania's control of Western. The Commission found, moreover, that any diversion of traffic as might occur through the improvement of Western's route under Santa Fe-Pennsylvania control would not jeopardize the maintenance of adequate transportation service by Minneapolis (App. B., Mpls. J.S., p. 74).

These findings effectively dispose of the South Dakota and Minnesota contentions with respect to the impairment of branch-line service. The Commission further found, in placing these contentions in their proper context, that no abandonments were presently contemplated by Minneapolis. It observed, furthermore, that, in any event,

no abandonment could be effected without its approval (App. B., Mpls. J.S., p. 86). Although South Dakota asserts that these findings were not sufficient (S.D. J.S., p. 5); they did provide an adequate disposition of the issue in the light of the previous findings.

B. Substantiality of the Evidence.

Without conceding that adequate findings were made, South Dakota argues that the findings upon which the Commission "ignored" its abandonment claims were not supported by substantial evidence (S.D. J.S., pp. 3, 7). Three basic findings were made which relate to the contentions of South Dakota and Minnesota. Two of them, the finding with respect to the financial stability of Minneapolis and the finding that Santa Fe and Pennsylvania control of Western will not materially divert Minneapolis traffic, are ignored by South Dakota and Minnesota. The third finding, that any diversion which might occur would not jeopardize adequate transportation service is said to be "empty, unexplained, unsupported and erroneous" (S.D. J.S., p. 7).

The finding with respect to the financial stability of Minneapolis is supported by substantial evidence. The earnings record of Minneapolis during the last twenty years and its excellent financial and physical condition are evidence of this (R. 1152). Inefficient operation and excessive debt were the cause of its earlier troubles. *Associated Railways Company Acquisition and Securities*, 228 I.C.C. 277 (1938). It is now almost entirely free from debt (R. 1020). The need to diversify its traffic base to relieve its reliance on agricultural products is said to be necessary to secure its financial security (Minn. J.S., p. 6). But its excellent earnings record in the past several years in the face of an agricultural recession of major

proportions belies these fears (R. 1052; H-44). This finding is corroborated by testimony of South Dakota and Minnesota's witnesses (R. 1681, 1263).

The finding that Santa Fe-Pennsylvania control of Western would not materially affect the traffic of Minneapolis and the finding that such diversion as might occur through the development of Western would not jeopardize adequate transportation of Minneapolis are both based upon the Commission's extensive analysis of the competitive effects of the proposal and its analysis of the specific claims of traffic diversion advanced by Minneapolis. To suggest, as does South Dakota, that the findings are "unexplained" (S.D. J.S., p. 7) is to ignore five full pages of the Commission's report (App. B., Mpls. J.S., pp. 75-79). To suggest, as does South Dakota that the evidence of traffic diversion adduced by Minneapolis is "uncontroverted" (S.D. J.S., p. 7), or as does Minnesota, that it is "undisputed" (Minn. J.S., p. 7) is to ignore the record completely and the detailed findings based on that record relating to each of the categories of traffic included in the Minneapolis diversion "study."

II.

The Peoria Gateway.

Minnesota argues that the Commission failed to consider and failed to make adequate findings regarding the effect of Santa Fe-Pennsylvania control of Western upon the Peoria Gateway. It contends that control by Santa Fe and Pennsylvania will lead "inescapably to stagnation" of Peoria as a rail gateway to the detriment of Minnesota which relies upon Peoria as a secondary gateway from and to the East (Minn. J.S. pp. 8-10).

This argument is completely groundless. It is based upon the assumption that the movement of traffic via

Peoria is detrimental to the interests of Santa Fe and Pennsylvania. It ignores the record and the findings which indicate that the opposite is true (App. B, Mpls. J.S. pp. 60, 61, 75, 76). The argument assumes, furthermore, that Western *is* the Peoria Gateway. This ignores the fact that there are several other east-west routes through Peoria which serve Minnesota and do not include Western. These routes are formed by such lines as the Rock Island, Burlington and Minneapolis on the west and the Nickel Plate, the New York Central and the Chicago & Illinois Midland-Baltimore & Ohio on the east (H-4, p. 1; H-11; 771, 773). A substantial volume of traffic moves through Peoria via these routes cutting Western out entirely (H-126, H-128). Any attempted suppression of Western would only divert the Peoria Gateway traffic to these other routes without benefits to either Santa Fe or Pennsylvania (R. 593, 597, 661-62, 773-74, 690).

The argument, moreover, ignores the significance of the participation in this proceeding of the Cities of Peoria and East Peoria and the Peoria Association of Commerce, the interests having the most immediate interest in the development of Peoria as a major rail gateway. South Dakota's suggestion that these intervening appellees have participated in the case because of the "wealth" of the Santa Fe (S.D. J.S. pp. 8-9) is not worthy of a reply.

The Commission, furthermore, made findings which specifically relate to the effect of Santa Fe-Pennsylvania control upon the volume of traffic moving via the Peoria Gateway. The Commission found that under their control Western would have an "increased opportunity" to secure traffic for the Peoria Gateway which now moves via other gateways (App. B, Mpls. J.S. p. 75). This was based in part upon Santa Fe and Pennsylvania policies, as joint

owners, to solicit Lomax and Effner respectively on a parity with the Chicago Gateway. The Commission found that Pennsylvania's policy would divert a portion of its traffic now moving via Chicago to the Peoria Gateway (App. B, Mpls. J.S. p. 78). It found that, because of the increase in the volume of traffic moving via Peoria, Minneapolis would have an opportunity to solicit this added traffic at Peoria (App. B, Mpls. J.S. p. 78). These findings are adequate and are supported by substantial evidence.

CONCLUSION.

The District Court in holding that the Commission's order was valid was clearly right. It is submitted by these intervening appellees that it is manifest that the questions raised by the appellant on which the decision in this cause depends are so unsubstantial as not to need further argument, and the motion to affirm should be granted.

Respectfully submitted,

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FILE COPY

In the
Supreme Court of the United States
OCTOBER TERM 1958

No. [redacted]

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, A MINNESOTA CORPORATION,

Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

APPELLANT'S BRIEF IN OPPOSITION TO MOTIONS TO AFFIRM

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In the
Supreme Court of the United States
OCTOBER TERM 1958

No. 552

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, A MINNESOTA CORPORATION

Appellant

VS.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

APPELLANT'S BRIEF IN OPPOSITION TO MOTIONS TO AFFIRM

Four motions to affirm have been filed in this appeal: (1) By United States of America and Interstate Commerce Commission, (2) by the Pennsylvania-Santa Fe partners, (3) by the State of Illinois, and (4) by certain municipalities, shippers, and allied organizations. Because of the need for brevity, no attempt will be made herein to meet all of the arguments advanced in support of those motions in an effort to defend the action of the Commission. Instead, we shall attempt to deal with only some of the most egregious

errors which demonstrate why a full review of this appeal on the merits is needed. At the outset it should be noted that the moving parties have all elected to remain silent on the important questions of the contrast between the motives of the competing applicants and the tainted history of the negotiations of the Pennsylvania-Santa Fe group by which they obtained from Wilmington Trust Company an illegal preference which they now seek to preserve and defend.

ARGUMENT

I.

The Interstate Commerce Commission adopted a false, artificial and meaningless standard by which to test the competing applications; use of that standard deprived appellant of a fair hearing and of a comparative consideration of its application.

Section 5(2)(b) of the Interstate Commerce Act (49 U. S. C. §5(2)(b)) lays down the ultimate standard that an acquisition transaction is to be approved if the Commission finds that it will be consistent with the "public interest". That ultimate standard is given meaning by the National Transportation Policy (49 U. S. C. preceding §1), which provides:

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; *to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers;* to encourage the establishment and maintenance of rea-

> sonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—*all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.* All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." (Emphasis supplied)

The Commission repeatedly stressed the desirability of "separate and independent management" as the guiding criterion by which the competing applications would be tested. It found that the Pennsylvania-Santa Fe application met that standard and that the Minneapolis application did not. The moving parties in this Court repeatedly stressed that contrast and that standard as valid and correct (*e. g.*, U. S. A.-I. C. C. motion 7; P.-S. F. motion 3, 4, 11).

The standard of "independent management" adopted by the Commission is inherently meaningless and utterly unrelated to any statutory or judicial definition of public interest. Neither the Interstate Commerce Act nor the National Transportation Policy contains a syllable indicating that independent management of small carriers will advance the public interest. Indeed, in this very opinion the Commission itself insisted that carrier control of small lines is desirable and in the public interest (J. St. 89).

Apart from the fact that independent management of a small line collides with the emphasis on economy and efficiency dictated by the statutory statement of transporta-

tion policy is the fact that the standard is wholly illusory. It is arrant nonsense to suggest that the management of Western could be independent with all of the stock concentrated in, and voted, without Commission limitation, by, the powerful Pennsylvania-Santa Fe combination. While Pennsylvania-Santa Fe ownership might leave a "President" in Peoria as against a "Division Superintendent" under Minneapolis ownership, both executives, of necessity, would be subordinate to the owners in every meaningful sense. That incontrovertible fact cuts the ground from under the entire premise upon which the Commission reached its decision. Both the Commission and the District Court declined to recognize or examine that fact.

The Commission's adoption, at the outset, of this artificial standard, necessarily ruled out a comparative hearing. The proper approach for the regulatory agency should have been to catalog the advantages and disadvantages, from the public viewpoint, of each of the two competing applications. Advantages and disadvantages could then have been weighed by appropriate findings. Then the application which improved the public transportation system, facilitated integration and economy, and strengthened railroad carriers in the interests of commerce and the national defense—all objectives expressed in the legislative policy—should have been selected as the application most in the public interest and hence the application to be approved. Instead of pursuing that proper course, what the Commission here did was to decide in advance upon a standard that had no relation to the National Transportation Policy and which only one of the two competing applicants could possibly satisfy.

A so-called comparative hearing in the framework of that advance discriminatory determination is merely an

empty phrase, as the Commission recognized when it said, "With our approval of that [Pennsylvania-Santa Fe] application, the possibility of the Minneapolis' acquiring the Western's stock is eliminated and its application becomes moot" (J. St. 93-94). And that apparently, is the tacit explanation for the refusal of the Commission to make any findings with respect to the undisputed evidence that the Minneapolis application would promote the National Transportation Policy by (a) the integration and elimination of duplicate yard, roundhouse, accounting and other facilities, (b) the effectuation of economies reaching the level of almost 40 per cent of Western's expenses,[1] (c) the elimination of duplicate switching and transfers, (d) the acceleration of schedules and improved service, (e) the dependence of Minneapolis upon, and its self-interest in promoting traffic and industrial development for, the Peoria gateway, (f) the soundness of the purchase price under the Minneapolis program, the effect of which would be virtually to double the earnings of Western, and (g) the advantage of strengthening the 1,400 mile system of Minneapolis and diversifying and improving the density of its traffic. Nor could a truly comparative analysis omit findings on the critical issues of the motivation and economic self-interest of the competing applicants, particularly in view of the undisputed evidence that the successful applicants initiated negotiations for the express purpose

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[1] If the Commission had addressed itself to this question, it would have been required to compare the two applications. The President of the Santa Fe testified that no special study had been made of economies which might be achieved under Pennsylvania-Santa Fe control. The most that he and his large staff could come up with after months of thought, preparation and consultation with Western officers, was that they might trade "ideas" on the subject (Tr. 69-70, 148-49, 153, 1630-31).

of blocking the purchase by Minneapolis and thus foreclosing the competition they might face from a so-called outer-outer belt line around Chicago under Minneapolis control. The Commission's shocking disinterest in the elimination of waste and duplication proposed by Minneapolis, in the added and accelerated service to the public proposed by Minneapolis, and, above all, in the competition-stifling purpose of the Pennsylvania, resulted in a discriminatory and unfair hearing and in a total failure to meet the requirements for findings enunciated by the Administrative Procedure Act. That failure, in turn, necessarily precluded proper judicial review because the reviewing court was not provided with the underpinnings for the Commission's arbitrary conclusion.

Intertwined with the Commission's mistaken emphasis on "independent management" is its discussion of the element of neutrality among connecting carriers. The moving parties maintain that the Pennsylvania-Santa Fe application was to be preferred, because it would preserve neutrality among connecting carriers, whereas the Minneapolis proposal would not. In fact, the Minneapolis testimony was clearly to the effect that service with all carriers connecting with Western would be maintained and improved (Tr. 1274-85, 1289-90). It is true that the successful applicants also testified that they would maintain neutrality with connecting carriers, but they did so, as they testified, in their own self-interest and in fear of retaliation if they adopted any other course (Tr. 221-223, 320, 360). If that economic insurance obtains when the owners are the most powerful carriers, originating the most tonnage in America, how much more effective is it with respect to a small carrier with infinitesimal originations. This economic fact of life is underscored by the powerful influence the

originating carrier has on the routing of traffic.[2] The very fact that Minneapolis is dependent solely upon the Peoria gateway provides the single true guarantee of neutrality with the connecting carriers who feed the pipeline of traffic into the gateway and carry it out.

To assure neutrality, the Commission imposed standard conditions upon the Pennsylvania-Santa Fe acquisition. In open hearing, Minneapolis had proposed to accept those same standard conditions. The Commission blatantly disregarded that fact and concluded, without foundation, that the standard conditions would be adequate to protect others in the event of control by the powerful Pennsylvania-Santa Fe combine, but not in the event of ownership by the infinitely weaker appellant. In the same vein the Commission brushed off as unimportant the clear, convincing and unchallenged evidence of the loss the Minneapolis would suffer from the Pennsylvania-Santa Fe acquisition (Tr. 1162-1175-83, 1237, 1258 *et seq.*, 1388, 1545, 1611 *et seq.*). In contrast it stated that acquisition by Minneapolis would be "extremely harmful to other carriers" (J. St. 73), naming only the Wabash. The extreme solicitude for that large subsidiary of the Pennsylvania was based on a confused and unsupported claim of one witness which was rendered meaningless on cross examination (Tr. 1415-16, 1448-50). In order to survive, the Minneapolis could not do otherwise than maintain a policy of neutrality with respect to all connecting carriers. The giant Pennsylvania and the giant Santa Fe are under far less economic compulsion. Their powerful ability to reward or punish is already all too well known to connecting lines.

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[2] Mr. Gurley, President of the Santa Fe, in discussing the influence of the traffic solicitors on the routing of traffic, testified that "our utmost could really be quite tremendous" (Tr. 170).

By its adoption of the false standard of "independence" and by its distortion of the concept of "neutrality" and the disparity of the treatment of the competing applications thereunder, the Interstate Commerce Commission disobeyed the statutory mandate and made a farce of the concept of a comparative hearing.

2.

On certain essential issues the Interstate Commerce Commission failed to make any findings; on others its findings are contrary to undisputed record facts.

The report of the Commission makes no serious effort to present systematic and authentic findings to support its predetermined conclusion. The motions to affirm fail to discuss some of the important issues which the Commission ignored, and rely on the Commission's recitals of position as a substitute for findings on other vital areas of conflict. Finally, they deal with some of the evidence pertinent to a few of the findings which require full briefing on the merits. At this preliminary stage we shall indicate only briefly certain of the important deficiencies in the Commission report.

1. We have already noted the absence of any findings with respect to the economies and improved service proposed by Minneapolis or the benefits to the national transportation system of strengthening Minneapolis and diversifying its traffic through the combination with Western. Indeed, in at least thirteen instances the report cites the position of Minneapolis without drawing any conclusion. The terminology used is "Minneapolis contends", "Minneapolis estimates", "Minneapolis states", and "Minneapolis insists" (J. St. 72-78). Nowhere in its report does the

Commission evaluate the validity of these positions and their effect under the ultimate standard of the public interest, despite the fact that in no material respect was the supporting evidence contradicted in the record.

2. The Commission made no findings with respect to the economic motivation of the competing applicants. Minneapolis proved, and the President of Pennsylvania conceded, that he had long regarded Western and Minneapolis as a natural combination (Tr. 306-08, 970, 1040). When Minneapolis began negotiating in 1954 for the purchase of Western and the Monon (a small railroad running roughly north and south in Indiana) so as to promote an outer-outer belt line circumventing Chicago, Pennsylvania moved in to buy Western and stop that "nonsense" (Tr. 309, 310, 1040). That vital aspect of purpose and motive is completely omitted from any findings of the Commission. The seriousness of the omission is underscored by the fact that Pennsylvania had previously proved what disastrous consequences its ownership could have for Western (see pp. 13-14, *infra*).

3. With respect to the propriety of the purchase price, the Commission based its approval on the statement that the price to Pennsylvania-Santa Fe "was established on the basis of agreement between a willing seller and a willing buyer" (J. St. 85). The Commission made no findings with respect to these pertinent considerations:

(a) A few weeks before they entered the transaction at $135 per share which was subsequently approved by the Commission, the same "willing buyers" entered into contracts with the same "willing sellers" to purchase 52 per cent of Western's stock at $100 per

share (Exs. 7-f, 7-g, to I -S. F. application). Obviously the minority shares would be worth less than majority control. If the Commission had power to approve a price negotiated at "arm's length" in May, 35 per cent higher than the price negotiated at "arm's length" in April, at minimum it was incumbent upon the Commission to explore the transactions and to set out the findings of fact upon which it relied.

(b) The Commission stated that if $135 per share were a proper price for Minneapolis to pay, it would automatically be fair and reasonable for the Pennsylvania-Santa Fe group (J. St. 86).[3] The Pennsylvania-Santa Fe motion to affirm attempts to make capital of the fact that in its petition for reconsideration before the full Commission, Minneapolis requested inclusion in the ownership group if Pennsylvania-Santa Fe were successful. That request, of course, was made without regard to the purchase price and as a matter of desperate defense necessity because of the ruinous effect unfettered Pennsylvania-Santa Fe ownership would have on the traffic and income of Minneapolis.

(c) The price earnings ratio, embraced in the Pennsylvania-Santa Fe proposal, far outstripped the price earnings ratios of all other railroads in the United States, as shown by the public markets. That fact passed unnoticed and its significance was not appraised.

[3] Based on the 1954 figures used at the hearing, the Pennsylvania-Santa Fe purchase was predicated on average annual earnings from Western of some $641,000, whereas the Minneapolis offer to pay the same price was predicated, as a result of the proposed economies on average earnings of Western of some $1,279,000 (Tr. 1387-88). How those two can be equated, the Commission's report does not reveal.

In the District Court both the Commission and the successful applicants attempted to shore up the Commission's fallacious conclusions as to the purchase price by decrying the "speculative test of potential earnings". In so doing, they ignored the principle that "the commercial value of property consists in the expectation of income from it". *Galveston, Harrisburg, etc. Ry. Co. v. Texas*, 210 U. S. 217, 226 (1908). See also, *Consolidated Rock Products Co. v. DuBois*, 312 U. S. 510, 526 (1941); *Group of Investors v. Milwaukee R. Co.*, 318 U. S. 523, 540 (1943).

4. On the topic of the promotion and future of the Peoria gateway, the Commission omitted findings of undisputed facts and made findings directly contrary to the sworn testimony of officers of the successful applicants.

(a) No finding was made of the fact that, by the use of competing gateways, Pennsylvania and Santa Fe are in full and complete competition with the Peoria gateway. Conversely Minneapolis relies exclusively upon the Peoria gateway, which constitutes its lifeline.

(b) Neither Pennsylvania nor Santa Fe has solicited for the Peoria gateway because economic self-interests have dictated the longer haul through St. Louis and Chicago for Pennsylvania and through Chicago for the Santa Fe. The Commission found that all this would change, and that while "Pennsylvania will continue to solicit its long haul to St. Louis, Effner and Chicago will be on a parity" (Tr. 76). That runs directly counter to the sworn testimony of Mr. Symes, President of Pennsylvania, who testified that the past solicitation policy had been for St. Louis first, Chicago next, and Effner (for the Peoria gateway) last. When asked about the future, he said that the policy would not

"change very much" (Tr. 280-82, 291-92).[4] With respect to the Santa Fe the record is somewhat more confused, but nevertheless contradicts the bald assertion of the Commission that Lomax (at the western end of Western) and Chicago would be on a parity. Mr. Duffy, the Traffic Vice President of the Santa Fe, conceded that unrouted traffic would be sent through Chicago for the long haul (Tr. 259).

That testimony from the two successful applicants showing their preference for Chicago also contradicts the Commission's conclusion that "Santa Fe and Pennsylvania are just about as well off financially when handling traffic via Western as they would be on the long haul through Chicago" (J. St. 75). True, there was a self-serving generalization to that effect in the evidence, but if the Pennsylvania-Santa Fe partners were to sustain the notion that their economic self-interest was in the shorter, rather than in the longer, haul, they were duty-bound to produce data and figures to establish that startling fact. This Court has long recognized that the contrary is true. See *United States* v. *Southern Pacific Co.*, 259 U. S. 214, 231 (1922).

Furthermore, the Commission, with its asserted expertise, must have been aware, as is any thoughtful businessman, of the lower incremental costs and the higher margins of profit arising from more intensive utilization of yard facilities, which facilities the two successful applicants have in the major competing gateways. Subsequent to the Commission's determination,

[4] On a related point, when speaking of the Fifner interchange at the east end of Western, Mr. Symes testified (Tr. 321): "That is what I mean when I say we made it, if anything here does harm to it, we could destroy it. That is not a threat. I don't mean it that way but I could very well do it from the standpoint of economics."

Santa Fe announced the opening of a "high-speed 'push-button' railroad freight yard" in Chicago which would double the existing working capacity of the Santa Fe yard (Santa Fe Railway press release, March 25, 1958). That announced investment of 20 million dollars in improvements to double the working capacity in Chicago effectively belies the notion of preference or equality for the short haul through Peoria.

(c) The Commission expressed confidence that the Pennsylvania-Santa Fe acquisition would improve Western's car supply, despite the undisputed evidence that both lines experienced great car shortages in their own operations and that Minneapolis, as the Commission conceded (J. St. 68), was one of the "bright spots" in the country in car ownership and supply.

5. The Commission ignored the lesson of history that Pennsylvania Railroad, jointly with the Burlington (a Western carrier operating from Chicago to the west), had previously owned Western and permitted it to sink into receivership. *Acquisition by T. P. & W. R. R.*, 124 I. C. C. 181 (1927). The destruction of Western was the natural result of Pennsylvania's self-interest in the competing Chicago and St. Louis gateways, which provided the longer haul. At that earlier stage, Pennsylvania and the Burlington had more than ample time and opportunity to develop Western and to build up the Peoria gateway, but as Western itself advised the Commission, "it was against the interest of the controlling companies (Pennsylvania-Burlington) to develop the property because it competed for traffic with their lines" (Ex. 100, p. 7). In the instant case no showing was made and no findings were supplied by the Commission to suggest that there has been any change

in the economic or transportation conditions which would alter Pennsylvania's economic incentives. The Commission did not have to speculate as to what Pennsylvania might do in the future; it had only to look at what it had done in the past. The economic self-interest of Minneapolis is to promote the maximum use of the Peoria gateway upon which it is solely dependent. The economic self-interest of the Pennsylvania-Santa Fe group is to use the competing long haul gateways of Chicago and St. Louis which furnish higher revenues. All of the promises that Pennsylvania and Santa Fe made to each other (and expressly "not for the benefit of others not parties hereto") cannot erase these facts; the failure of the Commission to make appropriate findings in this regard is, we respectfully submit, fatal.

6. The findings of the Commission with respect to the shippers and local officials brought to the witness stand by Pennsylvania-Santa Fe omit any consideration of the following undisputed facts:

(a) The witnesses were assembled as part of a large scale publicity campaign (Exs. H-92, H-94, H-95, H-96, H-97). Cross examination revealed that the witnesses had not seen, and, with one or two exceptions, were not even remotely aware of, the considerations underlying the Minneapolis application.

(b) All of the shippers testified that their interest was solely in good service. Not one expressed opposition to the elimination of duplicate facilities, the acceleration of train service, and the addition of more trains. Every shipper who had ever used Minneapolis testified to the excellence of its service and its satisfaction with the way Minneapolis operated (*e. g.*, Tr. 426-28, 447-

48, 599, 602-03, 667, 700, 784, 799, 813). A mine operator who appeared on the stand to support the Pennsylvania-Santa Fe application admitted that Pennsylvania had experienced shortages of coal cars and that Minneapolis had kept his competitor supplied (Tr. 506).

(c) Finally, the Commission erred in failing to recognize that its treatment of the testimony of the shipper witnesses should have been confined to the economic substance of that testimony. Instead, the Commission concentrated on the numbers of witnesses produced by the free-spending Pennsylvania-Santa Fe promotion, as though the proceedings before it were a popularity contest.

7. The Commission's denigration of the Minneapolis program of integration, because it would result in the displacement of some employees, ignored the following considerations with respect to which no findings were made:

(a) Integration and economy are express aims of the National Transportation Policy, and those aims can seldom, if ever, be accomplished without a reduction in employment. They can, however, be accompanied by a protective cushioning program such as the program offered by Minneapolis in the present case.

(b) The only true ultimate guarantee of job security lies in economic, efficient, profitable operations such as those proposed by the appellant, with an emphasis on augmented and improved service through the Peoria gateway. Feather-bedding cannot last forever and jobs cannot be secure when based on uneconomical operations.

(c) The appellant explained fully how minimal the impact on the employees would be because of the time consumed in integration, the replacement of retired and resigned employees in lieu of displacement, the full observance of the Washington Job Protection Agreement of 1936, and other factors (Tr. 1335-36, 1579). In fact, appellant voluntarily offered to abide by the Washington Job Protection Agreement at an earlier time than counsel for railway labor organizations was able to exact a commitment to that effect from the successful applicants.

8. The Commission made no findings of fact with respect to the elements which had to be considered on the key issue of the violation of section 10 of the Clayton Act (15 U. S. C. §20). It did not identify the interlocking directors. It made no findings with respect to the preference which Pennsylvania-Santa Fe enjoyed in the negotiations as a result of the interlocking directorate. It made no finding with respect to the exclusion of Minneapolis from the negotiations, also as a result of the interlocking directorate. Finally, if it be assumed that section 5(11) of the Interstate Commerce Act (49 U. S. C. §5(11)) could be read to permit condonation of a past violation of section 10, the Commission failed to make any findings of the considerations in the public interest which could warrant such condonation.

9. The findings as to the anticompetitive consequences of the Pennsylvania-Santa Fe acquisition are wholly inadequate to sustain the grant of immunity from antitrust prosecution.

(a) The Commission did not mention either section 1 of the Sherman Act (15 U. S. C. §1) or section 7 of

the Clayton Act (15 U. S. C. §18) and hence did not examine how the Pennsylvania-Santa Fe proposal squared with those statutory interdictions.

(b) Although the Commission discussed (without making findings) some possible consequences *within the Peoria gateway*, it gave no consideration to the power of the two railroad colossi to cut off competition by *drying up the Peoria gateway in its entirety*, and their economic incentive to do so. The record is devoid of evidence that they could not and would not do so and would not profit by sending traffic through their larger gateways—precisely as Pennsylvania and the Burlington had done for years in the past.

(c) The Commission emphasized the fact that Pennsylvania and Santa Fe are the two largest connections of Western (J. St. 61) but ignored its own finding that Western's business was obtained primarily through the aggressive solicitation of its own traffic department (J. St. 60) in competition with the solicitation of Pennsylvania and Santa Fe for other gateways.

(d) The Commission ignored the fact that the successful applicants' easy assurance of the continuation in the future of Western's aggressive traffic solicitation policies was confined to a private agreement between the two partners, which agreement expressly was not for the benefit of, and will not be enforceable by, any outside party. The Commission thus rested the ultimate standard of the public interest on the shifting sands of a private assurance between the two partners completely beyond the control of the Commission, shippers or other carriers.

3.

The order of the Interstate Commerce Commission condones a direct violation of Section 10 of the Clayton Act.

The two motions to affirm which attempt to deal with the argument on this point rest primarily on the grounds that (1) there were no "dealings in securities" (P.-S. F. motion 22), and (2) that section 10 of the Clayton Act was designed "to prevent a railroad from buying at too high a price" (U. S. A.-I. C. C. motion 11), whereas the Commission, in this case, expressly found the purchase price to be reasonable (P.-S. F. motion 24). Hence, it is urged that this Court make no further inquiry. With respect to the matter of "dealings in securities"—the exact language of the statutory prohibition—we have both the letter agreements of April 15, 1955 by which Wilmington Trust Company agreed to sell 26 per cent of the stock of Western to Santa Fe and 26 per cent of the stock to the Pennsylvania Company (wholly-owned subsidiary of The Pennsylvania Railroad Company) at a price of $100 per share (Tr. 45, 1033-34; Exs. 7-f, 7-g to P.-S. F. application), and the May 26, 1955 agreement to sell stock to the Santa Fe at a price of $135 per share (Ex. 7 to P.-S. F. application), followed shortly by the agreement to sell half of that stock to the Pennsylvania Company (Ex. 7-d to P.-S. F. application). It seems abundantly clear that the negotiations leading to those contracts, and those contracts themselves, are sufficient to come within the statutory prohibition of "dealings". At least one of the successful applicants agrees. On April 14, 1958, Pennsylvania Company commenced a lawsuit against the trustees of the McNear Estate, seeking specific performance of the April 15,

1955 contract to sell at $100 per share, or, in the alternative, damages for breach of that contract in the amount of $35 per share (*Pennsylvania Company, etc.* v. *Wilmington Trust Company, etc. & ano.*, Civil Action No. 969, Court of Chancery, New Castle County, State of Delaware). That lawsuit is presently pending.

The moving parties suggest that the prohibition of section 10 applies only to a consummated purchase of securities (*e. g.*, P.-S. F. motion 24). Had Congress so intended, it would have been easy to use appropriate language to that effect. The adoption of the term "dealings" is intended to encompass all business transactions with respect to the enumerated subject matter.

Nor is there any basis for assuming that the adequacy of price was the sole consideration to which the Congress addressed its attention. The sole judicial decision on the subject is to the contrary. *In re Missouri Pacific R. Co.*, 13 F. Supp. 888 (E. D. Mo. 1935). If the hospitable approach of that decision to remedial legislation in the public interest is to be rejected, it should be done on a basis of nothing less than an authoritative determination by this Court.

It is true, as the moving parties suggest, that the penalties for violation of section 10 of the Clayton Act are criminal. Nevertheless, the fact remains that the Commission must determine whether a transaction, conceived in such illegality and ruthlessly dedicated to the suppression of competition, is so vital to the health of our national transportation system that the violators of the law should be clothed with immunity to assure them the fruits of their illegal conduct. Even if one assumes that the power to condone *prior* violations, as well as the power to immunize *future* violations, of the antitrust laws is to be read into section

5(11) of the Interstate Commerce Act, such power may not properly be exercised by edict or fiat, unaccompanied by findings which disclose the considerations in the public interest dictating its exercise."

Significantly enough, both the Commission and the District Court completely ignored and did not even mention the only judicial decision construing section 10 of the Clayton Act. That decision held that the statute must be enforced even where circumstances do not permit the competitive bidding established as an exemption by the statute. *In re Missouri Pacific R. Co., supra.* Here, of course, Wilmington Trust Company could have allowed competitive bidding and could have afforded Pennsylvania Railroad the opportunity of purchasing the stock by that means, but such action would have denied Pennsylvania Railroad the special preference which it secured. The transparency of the attempts by the tribunals below to avoid the impact of section 10 are manifest by the Commission's suggestion that taking the second contract in the name of the Santa Fe, with a subsequent division of the shares with the partner, Pennsylvania, immunized the transaction from the

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"The law seems clear, of course, that the Commission's power under section 5(11) does not extend to the condonation of past violations. See Commissioner Eastman's concurring opinion in *Interstate Commerce Commission v. Baltimore & O. R. Co.*, 152 I.C.C. 721, 734 (1929), construing the earlier statutory version of what is now section 5(11).

"Plainly there is nothing in this provision which in any way modifies the antitrust statutes, and nothing which suspends their operation until we have made an order. In that event the operation of these statutes is suspended with reference only to *future* acts authorized or required by the order. In no way is it suspended with reference to unauthorized acts pending our subsequent approval or disapproval, such suspension to continue . . . we approve and to cease if we disapprove. If that had been the intent of Congress it could very easily have been expressed, but there is no language which even remotely suggests such an intent." (emphasis in original)

statute (J. St. 88), and the District Court's intimation that the statutory prohibition could be evaded by virtue of the fact that the Pennsylvania Railroad acted through its wholly-owned subsidiary, Pennsylvania Company (J. St. 46, ftnt. 3).

The unpleasant odor of these intimations is not dissipated by the suggestion of the Department of Justice in its motion to affirm (p. 12) that this case presents at most "a technical breach of the provisions of Section 10". Rather, this case presents, with all the ugly brush strokes highlighted, a vivid picture of the nation's largest railroad carrier using the influence of an interlocking directorate to crush the natural expansion of a small carrier—and doing that for the deliberate purpose of stifling competition. If that be merely a technical breach, let it be technically suppressed, not technically condoned.

4.

The Pennsylvania-Santa Fe acquisition was designed and calculated to restrain competition via the Peoria gateway and to afford monopolistic power to the successful applicants; the Commission's attempt to immunize that acquisition from the operation of the antitrust laws was an abuse of its statutory power.

In dealing with this argument, the several motions to affirm err primarily in (1) ignoring the motives of the successful applicants, and (2) considering the Peoria gateway alone without regard to the primary interests of the successful applicants in other, more lucrative, competing gateways.

Pennsylvania Railroad, the nation's largest carrier, enjoys a dominant position in the St. Louis and Chicago

gateways, and, through its subsidiary, the Wabash, in the Decatur gateway. Santa Fe has a dominant position in the Chicago gateway. Among all the carriers in the United States, they are two of the largest originators of traffic, and, as such, are able to exercise a tremendous influence over the routing of traffic. To allow control of a competing gateway—Peoria—to pass into the hands of the Pennsylvania-Santa Fe combine puts them in a powerful position to strangle competition through Peoria, to the advantage of their preferential positions in Chicago and St. Louis and Decatur. That the fear is not idle is made apparent by the testimony of Mr. Symes, President of the Pennsylvania, that "we could destroy it" (Tr. 321). No serious consideration was given to this subject and no substantive findings on it were provided by the Commission. Indeed, the Commission did not even mention section 1 of the Sherman Act or section 7 of the Clayton Act.

Many years ago this Court analyzed and condemned the very evils which the Commission and the District Court have here chosen to sanction. In *United States v. Southern Pacific Co.*, 259 U. S. 214, 230 (1922), the Court stated:

> "Such combinations, not the result of normal and natural growth and development, but springing from the formation of holding companies, or stock purchases, resulting in the unified control of different roads or systems, naturally competitive, constitute 'a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected.' "

The foregoing principle was then applied to the very considerations which will inevitably influence the Pennsylvania-Santa Fe group in the instant case. The Court stated:

> "Self-interest dictates the solicitation and procurement of freight for the longer haul by the Southern Pacific lines. While many practices, formerly in vogue, are eliminated by the legislation of Congress regulating interstate commerce, and through rates and transportation may be had under public supervision, there are elements of competition in the granting of special facilities, the prompt carrying and delivery of freight, the ready and agreeable adjustment and settlement of claims, and other elements which that legislation does not control." (259 U. S. at 231)

In *Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 152 I. C. C. 721, 735, 736 (1929), the Commission pointed out that (a) the effective competition in the solicitation of the acquired carrier could not survive the acquisition because, "knowledge of its relationship to its controlling lines would deprive it of force as a competitor for their traffic", and (b) the motivation of the acquiring carriers "to prevent the consummation of the plans for a competing through system" should not be ignored.

As indicated above, the Commission's report was silent on the motives of the Pennsylvania-Santa Fe group, although evidence on that point was clear, convincing and uncontradicted (Tr. 302-303, 309, 1040). Even the most ingenuous of optimists ought to be convinced by the admission made by President Symes of Pennsylvania under oath that he entered upon negotiations to acquire Western in order to block the competitive outer-outer belt line around Chicago which Minneapolis was proposing to establish by acquisition first of Western and then of the small Monon

railway (Tr. 310).[6] The Commission, the District Court, and the moving parties are unanimous in their disregard of the intent and history of the Pennsylvania-Santa Fe purposes and negotiations. If the suspicion of a purpose to suppress competition was sufficient to evoke disapproval in the *Baltimore & O. R. Co.* case, *supra*, how much more forceful is the demand for judicial condemnation in the instant case, where the improper motives are admitted under oath by the prime movers.

At times the Justice Department has shown an awareness of its duty in this respect quite at variance with the position adopted in its motion to affirm here. On December 30, 1958, the Assistant Attorney General in charge of the Antitrust Division wrote the Chairman of the Civil Aeronautics Board in response to a request for a comment on the certificated air carriers' mutual assistance pact. That letter dealt with the Board's obligation to weigh competitive factors under section 2 of the Civil Aeronautics Act (49 U. S. C. former §402) before granting antitrust immu-

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[6] The President of the Santa Fe did not address himself to exactly the same question, but testified:

"Q. Mr. Gurley, is it proper to conclude from your testimony that when there are two competing applicants for control of a given railroad the applicant having the greatest exchange of traffic with that railroad should be preferred?

"A. Well, I think I'd answer that by saying that is pretty nearly yes, there might be some qualifications but I think the answer is yes. (Tr. 72)

* * * * *

"A. You say you don't want a lengthy answer, and the brief answer is that we prefer to own it.

"Q. Don't you feel that you are protected by those conditions?

"A. Be that as it may, I prefer to own it, that is the reason I oppose them." (Tr. 180)

That was the best showing in the public interest that Santa Fe's President was able to offer.

nity—an obligation not unlike that which rested on the Interstate Commerce Commission in this case. At the outset the Department of Justice pointed out that the Board should inquire into the motives or purposes of the proposed pact and then examine its effects upon competition.

The duty of the Commission with respect to granting immunity under the antitrust laws was spelled out by Mr. Justice Rutledge, speaking for this court in *McLean Trucking Co.* v. *United States*, 321 U. S. 67, 86, 88 (1944):

> "Congress however neither has made the antitrust laws wholly inapplicable to the transportation industry nor has authorized the Commission in passing on a proposed merger to ignore their policy. Congress recognized that the process of consolidating motor carriers would result in some diminution of competition and might result in the creation of monopolies. To prevent the latter effect and *to make certain that the former was permitted only where appropriate to further the national transportation policy*, it placed in the Commission power to control such developments.
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> * * * * *
>
> "If the Commission did not exceed the statutory limits within which Congress confined its discretion *and its findings are adequate and supported by evidence*, it is not our function to upset its order." (Emphasis supplied)

In discharging that obligation, the Commission may not substitute its own conclusory evaluation of competitive requirements for the dictates of the National Transportation Policy. See *F. C. C.* v. *RCA Communications, Inc.*, 346 U. S. 86 (1953).

In its report the Commission did concede that the effect of the Pennsylvania-Santa Fe acquisition might be "some diversion of traffic" (J. St. 76). The Commission, how-

ever, was addressing itself solely to the narrow effect as among the several carriers within the Peoria gateway. What it failed to consider was the much more important, much broader, question of the future of the Peoria gateway itself when in the hands of powerful carriers whose primary interests lay elsewhere. It ignored the fact that its order would place it within the unrestrained power of the Pennsylvania-Santa Fe group substantially to lessen the traffic through the Peoria gateway, for the benefit of the competing St. Louis and Chicago gateways, which, at least in respect of the Pennsylvania Railroad, was the very purpose of the acquisition. It also was blind to the fact that the drying up of the Peoria gateway had been the actual result of the earlier analogous ownership of Western by Pennsylvania Railroad and Burlington. It is in this vital and sensitive area of the working of economic forces that the Commission was called upon to exercise the highest level of expertise knowledge, and it is in this very area that the greatest vacuum exists in the Commission's report.

The Commission was required to consider whether the "public interest" to be served by a grant of the Pennsylvania-Santa Fe application was so clear and convincing as to warrant immunization from the effect of the antitrust laws. In discharging that function, it was incumbent upon the Commission to consider the available alternatives. The Minneapolis application was ready at hand as a clear alternative. It was calculated to promote and stimulate, rather than to stifle and lessen, competition. It carried with it, in the public interest, the economy, the integration and the elimination of duplication and waste, objectives underscored in the National Transportation Policy. The gradual reduction of unnecessary job positions contemplated under

the Minneapolis proposal was to be effected under the cushioning protection of the policy established by the Commission for just that purpose. The Commission's criticism of the Minneapolis proposal on the ground that top management would no longer be located in Peoria has been shown to be a transparent sham in which the Commission can take little pride as an expert.

The blunt truth is that the Commission simply did not consider whether the harm to the public from the monopolistic power which the acquisition of Western would concentrate in the Pennsylvania-Santa Fe group could be avoided in reasonable fashion by the alternative Minneapolis proposal. The applications were not balanced in that light. There was no weighing of the Minneapolis application with its emphasis on promoting the competition of the Peoria gateway against the proposal of the successful applicants whose interests lay elsewhere. Indeed, after the Commission decided to grant the Pennsylvania-Santa Fe application, it said quite frankly that that action made the Minneapolis application moot (J. St. 94). Perhaps that very admission accounts for the fact that the Commission chose never to dignify by findings the considerations underlying the Minneapolis application.

We respectfully suggest that the Commission utterly failed to discharge the serious weighty duty entrusted to it of determining whether or not immunity from antitrust prosecution should be granted to the Pennsylvania-Santa Fe partners.

5.

The District Court review was inadequate.

None of the motions to affirm makes any real effort to defend the perfunctory opinion of the District Court. The reason is not far to seek.

The errors committed by the Commission to which this brief is addressed relate to the improper application of the law, the failure to make findings on many vital issues, and the inadequacy of the record basis for the significant findings which were made. There can be no dispute that these items constitute a proper subject matter for judicial review. The District Court failed to recognize the scope of its authority to deal with these errors. It summed up its concept of the whole matter in the extraordinary statement that, "within the limits of the jurisdiction conferred upon it, the power of a Court or an administrative agency to decide questions is not confined to deciding them correctly" (J. St. 45). And with all respect, we suggest that the District Court in its opinion applied that approach literally.

CONCLUSION

We recognize that we are asking this Court to make a true analysis of the facts and law and to look behind the superficial plausibility of the Commission report and the easy reliance thereon by the District Court. We do so only because there is no other way to avoid a dangerous precedent and to avert a serious miscarriage of administrative justice.

For the reasons set forth above, as well as those presented in our Jurisdictional Statement, it is respectfully submitted that the questions presented by this appeal are sub-

stantial, that they are of public importance, and that they require that the motions be denied and the appeal be heard on the merits.

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BRIEF OF APPELLANT

THE MINNEAPOLIS AND ST

LOUIS RAILWAY

COMPANY

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In the Supreme Court of the United States

OCTOBER TERM 1959

No. 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, A MINNESOTA CORPORATION

Appellant

VS.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

BRIEF OF APPELLANT THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

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Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

BRIEF OF APPELLANT THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

OPINIONS BELOW

The opinion of the District Court for the District of Minnesota, 4th Division (R. 91-105), is reported at 165 F. Supp. 893. The report of Division 4 of the Interstate Commerce Commission (R. 17-49), is reported at 295 I.C.C. 523.

JURISDICTION

The action in the District Court was brought under 28 U.S.C. § 1336 to set aside orders of the Interstate Com-

merce Commission. It was heard by a District Court of three judges, as provided in 28 U.S.C. § 2284 and §§ 2321-2325. The final order of the District Court was entered September 16, 1958 (R. 105), and the Notice of Appeal was filed in that Court October 2, 1958 (R. 106-110). On March 9, 1959, this Court entered an order noting probable jurisdiction and transferring this case, together with two companion appeals (Nos. 27 and 28) to the summary calendar (R. 2029). The jurisdiction of this Court is conferred by 28 U.S.C. §§ 1253 and 2101(b). The following decisions sustain the jurisdiction of this Court to review the determination of the District Court on direct appeal in this case: *Chicago, M., St. P. & P. RR.* v. *Illinois*, 355 U.S. 300 (1958); *Alleghany Corp.* v. *Breswick & Co.*, 353 U.S. 151 (1957); *United States* v. *ICC*, 352 U.S. 158 (1956); *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515 (1946).

Statutes Involved

Section 1 of the Sherman Act, as amended (26 Stat. 209, as amended, 15 U.S.C. § 1); section 7 of the Clayton Act, as amended (38 Stat. 731, as amended, 15 U.S.C. § 18); section 10 of the Clayton Act (38 Stat. 734, 15 U.S.C. § 20); the National Transportation Policy (54 Stat. 899, 49 U.S.C. preceding § 1); sections 5(2) and 5(11) of the Interstate Commerce Act, as amended (24 Stat. 380, as amended, 15 U.S.C. §§ 5(2) and 5(11)); and sections 8(b) and 10(e) of the Administrative Procedure Act (60 Stat. 242, 243, 5 U.S.C. §§ 1007(b) and 1009(e)) are set forth in Appendix A hereto.

QUESTIONS PRESENTED FOR REVIEW

1. Minneapolis[1] was denied a comparative hearing.

2. Under the appropriate legislative standard, the Commission may not authorize an acquisition that violates section 1 of the Sherman Act and sections 7 and 10 of the Clayton Act, in the face of an alternative application which would promote competition and assure, as well, improved and accelerated service, added service routes, large operating economies and the strengthening of a small carrier.

3. The legislative standard of "public interest" requires an accommodation of the antitrust laws and the National Transportation Policy of the Interstate Commerce Act. The national policy of unfettered competition may be overridden only by compelling considerations of improved service, safer operation, lower costs and other aspects of sound and effective transportation, of such magnitude as to outweigh the public harm of stifled competition or monopoly.

4. The Commission's order is invalidated by the total failure to make findings of fact on many essential issues and the making of findings contrary to the undisputed record proof. No findings were made with respect to (i) public service benefits of the Minneapolis application, (ii) Penn-

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[1] The interested railroads will be referred to hereinafter as follows:

The Minneapolis & St. Louis Railway Company	Minneapolis
Toledo, Peoria & Western Railroad Company	Western
The Pennsylvania Railroad Company	Pennsylvania
The Atchison, Topeka & Santa Fe Railroad Company	Santa Fe
Chicago, Burlington & Quincy Railroad Company	Burlington
Wabash Railroad Company	Wabash
The Monon Railroad	Monon
New York, Chicago & St. Louis Railroad Company	Nickel Plate
Chicago, Rock Island & Pacific Railroad Company	Rock Island

sylvania's specific intent to stifle competition by the acquisition of Western, (iii) the contrasting motivations and self-interests of the competing applicants, (iv) antitrust questions, and other important considerations. The basic finding that Pennsylvania-Santa Fe would solicit traffic for the Peoria gateway on a parity with their long haul gateways is in direct contradiction with the testimony of their own principal officers and their economic incentives. Similar conflicts invalidate the findings as to industrial development, "independence" of Western and other matters.

5. The purchase of Western shares by Pennsylvania and the underlying negotiations and contracts constitute violations of section 10 of the Clayton Act to which the Commission cannot accord retroactive condonation.

6. The Commission may not sanction Pennsylvania's scheme to stifle competition with Chicago and St. Louis gateways by blocking the acquisition of Western by Minneapolis.

7. The District Court improperly declined to review the errors of law and the failure of the Commission to supply systematic findings, adequately supported by the record, in conformity with the Administrative Procedure Act.

STATEMENT OF THE CASE

This action was instituted in the District Court by Minneapolis, to set aside orders of the Interstate Commerce Commission denying the Minneapolis application to acquire the capital stock of Western and authorizing the acquisition of Western's shares in equal parts by Pennsylvania and Santa Fe. The appeal is from the District

Court's order dismissing the complaint and, in effect, sustaining the report of the Commission.[2]

1. The Competing Gateways, the Competing Applicants and the Status of Western.

Western is a short railroad spanning Illinois east and west through Peoria; it utilizes the Peoria gateway to bridge east-west traffic, avoiding the longer haul and congestion through Chicago or St. Louis. (R. 21) For thirty-three years Pennsylvania had owned Western in partnership with the Burlington and such ownership resulted in a disastrous receivership. *Acquisition by T.P. & W.R.R.*, 124 I.C.C. 181 (1927). At the receivership sale Western was acquired by George McNear, who built it into a fine property. Upon his death the present management took over with equal success. Emancipated from Pennsylvania-Burlington control, Western engaged in aggressive solicitation for the Peoria gateway, augmenting the solicitation of complementary carriers such as Minneapolis. (R. 21, 426, 520-521, 582, 589, 590, 1011, 1408)

There are three principal gateways for rail traffic moving between the east and the west. The two largest are St. Louis and Chicago. Lying about midway between St. Louis and Chicago, Peoria provides a third competitive gateway, bypassing the larger terminals with heavier traffic and affording an opportunity for expedited service. (R. 21) Western (and complementary carriers such as Minneapolis) have aggressively solicited Peoria gateway routing. Much of this volume is bridge traffic, received or delivered

[2] For the convenience of the Court, we have included at the end of the brief two maps showing the routes of the railroads primarily involved in the appeal. Map I covers the entire United States. Map II shows in greater detail the north central section of the country and the gateways and other points to which frequent reference is made.

at Effner on the east and Nemo and Lomax on the west. Thus, Pennsylvania and Santa Fe have become Western's largest connections without the solicitation of a pound of Peoria gateway freight. Pennsylvania and Santa Fe have solicited exclusively for the longer hauls and better divisions through the Chicago and St. Louis gateways. (R. 21, 402, 426, 520-522, 582, 589, 590, 1011, 1408)

Minneapolis is a small agricultural carrier with its main line operating between Minneapolis, Minnesota, and Peoria, Illinois. Branch lines extend into South Dakota and through Minnesota and Iowa. The Commission found that Minneapolis was sixtieth in size among the 127 Class I railroads and had annual operating revenues approximating $20,000,000. The Commission found further that the capital structure of Minneapolis is conservative, unburdened by preferred stock, and carries only a relatively small amount of long term debt. It came out of reorganization receivership in 1943 and, according to the Commission, was built into a modern and efficient plant providing exceptionally good service to the public. It is completely dieselized and owns what the Commission described as well-conditioned rolling stock, adequate to accommodate an increase of 25% in the tonnage now available to it. Minneapolis is predominantly an east-west railroad, with the operating slogan "The Peoria Gateway", used since 1912. It advertises, promotes and utilizes the Peoria gateway, which is the only east-west gateway to which it has access. (R. 27-28, 1011)

The successful applicants are two of the largest, most powerful rail carriers in the United States. They converge at Chicago. Santa Fe extends from that point to the Pacific coast, serving 12 states. It ranks first in mileage and third in freight revenues among all carriers. About 64%

of its freight revenues are derived from the transportation of manufactured products originating on its lines. Santa Fe enters the Kansas City and Chicago gateways and connects with Western at Lomax, Illinois for traffic through Peoria.[1] (R. 25-26) Some years ago the Commission denied the Santa Fe entrance into the St. Louis gateway. *Chicago, B. & Q. R. R. Control*, 271 I.C.C. 63 (1948). In Chicago, Santa Fe has recently completed a $20 million push-button freight yard, doubling the number of cars that can be handled, enlarging the storage facilities, and greatly accelerating interchange." The President of Santa Fe conceded that its Chicago line competes with the full length of Western. (R. 388, 398)

The Commission found Pennsylvania to be the largest rail carrier "by practically any standard used to indicate size and volume of business handled." (R. 26) Its system operates in thirteen states and blankets the industrial east. Wabash, an almost entirely owned subsidiary, has lines extending westwardly to Des Moines, Iowa, Omaha, Nebraska, and Kansas City. (R. 26) More than half of Pennsylvania's freight revenue is derived from manufactured goods originating on its lines. (R. 26) Pennsylvania solicits traffic for its long haul through St. Louis and then Chicago, both lines being competitive with Western. (R. 521-522) The Decatur gateway, served by its subsidiary Wabash, provides another competitive route (see attached maps).

2. Motivations of the Competing Applicants.

Shortly after World War II there were discussions that Minneapolis might acquire Western. From that time until

[1] Santa Fe press release, March 25, 1958; Chicago Tribune, March 26, 1958, p. 5; Traffic World, March 29, 1958, p. 152; Railway Age, March 31, 1958, pp. 18-9.

as late as 1954, the President of Pennsylvania urged the heads of Minneapolis and Western to merge their properties and operations. (R. 537-538, 977-978) In June, 1954 new management took control of the Minneapolis and immediately opened negotiations with the McNear trustees for the purchase of the stock of Western. (R. 1014) The purposes, as shown by undisputed evidence, were these: (R. 1027-1028, 1076-1077, 1102-1104, 1177-1184, 1186-1187, 1222-1233, 1239-1242; Ex. H - 44, R. 1894-1924, 1379)

(i) Economies of operation estimated at $1,770,945 through the elimination of duplicate yard, roundhouse, repair, accounting and other facilities and the integration of operations.

(ii) More intensified use of the Peoria gateway by (A) integrated through service, (B) acceleration of schedules by direct interchanges with eight railroads and the elimination of duplicate switching and transfer, (C) aggressive industrial development, and (D) an added bypass of the Chicago terminal, adding connections and services to the east, south and southwest not theretofore available for Peoria gateway routing.

(iii) Strengthening of Minneapolis through industrial diversification and improved density of traffic, thereby solving the primary problems which had plagued Minneapolis for several decades and had resulted in its receivership and drastic reorganization.[4]

[4] The condition of Minneapolis had been so precarious that in 1938 the Interstate Commerce Commission gave serious and lengthy consideration to a proposal of eight midwestern railroads to dismember and divide up Minneapolis, and in the process to abandon more than one-

The motivations of the successful applicants revealed themselves during the course of the negotiations. During the summer of 1954 the McNear trustees showed no interest in Minneapolis' offers to purchase the shares held in the trust estate and the minority interests. Despite the reluctance of the trustees even to discuss a sale, offers to purchase were repeatedly pressed upon them by Minneapolis. (R. 1014-1016) In the forepart of 1955 Wilmington Trust Company, the corporate trustee, advised Minneapolis that it would consider its latest proposal and make a response by the first of February. (R. 1017) In the meantime, Wilmington Trust Company approached the President of Pennsylvania with respect to the possible purchase of Western by his railroad. Pennsylvania exhibited immediate interest, Mr. Symes, its President, explaining on the witness stand that his change in attitude grew out of rumors that Minneapolis, Western and Monon would form an outer-outer belt line around Chicago. (R. 529, 539) Upon learning of these "grandiose plans", as Mr. Symes described them, he decided that Pennsylvania "had better take steps to stop this nonsense". (R. 1022)

While pursuing the conversations with Pennsylvania, an officer of Wilmington Trust Company and an officer of the Hanover Bank, which held a minority of the Western shares, met with the Chairman of Minneapolis and again put him off for thirty days. (R. 1017-1018) The trustees

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fourth of its trackage. Not a single bid had been received at any of the 55 occasions on which the road was offered on the auction block. The determined opposition of the States of Minnesota, South Dakota, Iowa and Illinois and their regulatory agencies accounted in large measure for the survival of the carrier, which languished in receivership for 20 years—a record in railroad history. *Associated Railways Company, Acquisition and Securities*, 228 I. C. C. 277 (1938). Donovan, *Mileposts on the Prairie* (Simmons-Boardman, 1950). This is a significant backdrop to the efforts of Minneapolis to increase the diversity and density of its traffic.

and the Hanover Bank meanwhile turned to the Pennsylvania and the Santa Fe, which had been invited into the matter by Pennsylvania. (R. 512) On April 15, 1955, Wilmington Trust Company, acting on behalf of both trustees, entered into letter agreements to sell 26% of the Western Stock to Santa Fe and a like percentage to Pennsylvania Company, a wholly-owned subsidiary of Pennsylvania, at a price of $100 per share. (R. 365, 1018; Exs. 7-8 and 7-g to Pennsylvania-Santa Fe application, R. 174-176) Despite its earlier offers, Minneapolis received no prior notice of the proposed sale and was afforded no opportunity to negotiate or to bid a higher price. (R. 1018)

Immediately upon receiving word of the sale, the Chairman of Minneapolis advised Wilmington Trust Company of the willingness of his railroad to increase the purchase price by 5%, pursue further negotiations and enter into competitive bidding, either publicly or privately. The corporate trustee showed no interest, and when the Minneapolis Chairman offered to come to Wilmington to discuss the matter, he was advised that "it would not be worth his carfare". (R. 1018-1020) Subsequently the individual trustee of the McNear Estate indicated that he had not been informed of the Minneapolis offer, whereupon Minneapolis submitted a written offer to purchase the stock in Western owned by the McNear Estate and all minority interests at $133 per share. (R. 1021-1022, 1024) That offer was to remain open for one week.[5] On the afternoon of the last day of the term of the offer, while attorneys for the individual trustee were preparing papers for the accept-

[5] The offer was kept open for two additional weeks upon assurance by counsel for the individual trustee that Minneapolis, having made the market for the Western shares, would be afforded an opportunity of meeting any higher bid—an assurance that was dishonored. (R. 1025-1026)

ance of the Minneapolis offer, the corporate trustee contracted for the sale to Pennsylvania and Santa Fe of all of the stock of Western held by the McNear trustees, without further conversations with Minneapolis." (R. 1026-1027; Ex. H-76, R. 1956-1957, 1445) The transaction took the form of a sale of the stock to Santa Fe in an agreement dated May 26, 1955, followed on June 28, 1955 by an agreement between Santa Fe, Pennsylvania and its subsidiary, Pennsylvania Company, under which the latter acquired half of the Western stock. (Exs. 7 and 7-d to Pennsylvania-Santa Fe application, R. 150-153, 165-169) This roundabout procedure resulted from Pennsylvania's insistence that the earlier agreement of April 15th remain in force, but the President of Santa Fe testified that from the outset he had contemplated joint ownership with Pennsylvania. (R. 409, 458)

During the period of the negotiations and contracts, the following persons were directors of Wilmington Trust Company and were also directors of Pennsylvania or its affiliates or subsidiaries: (Ex. H-73, R. 1944-1945, 1365)

Lammot duPont Copeland was a director of Wilmington Trust Company, a director of Pennsylvania and a director of a Pennsylvania subsidiary.

At the outset, Pennsylvania told Wilmington Trust that it would not discuss acquisition of Western "if they had in mind negotiating with us and others for the purpose of raising the price of the stock". (R. 512) The trustee with the interlocking directors yielded quickly. At every stage of the negotiations, Pennsylvania was afforded a decisive preference by Wilmington Trust Company. As the Minneapolis offer was expiring, Wilmington Trust approached Symes and Gurley to "match the price", which they promptly did by topping the Minneapolis offer of $12 million for all the Western stock by $150,000. Wilmington Trust did not even bother to telephone Minneapolis, which had made the high level market for Western's shares. (R. 535, 367, 391, 1026-1027)

F. M. Donohue was a Vice President and director of Wilmington Trust Company and a director of two Pennsylvania subsidiaries.

Hugh M. Morris was a director of Wilmington Trust Company and a director of a Pennsylvania subsidiary.

Wilmer Stradley was a director of Wilmington Trust Company and a director of a Pennsylvania subsidiary.

The Commission omitted from its report any findings with respect to the interlocking directors, the special preference accorded Pennsylvania-Santa Fe in the negotiations, or the motivations and objectives of the competing applicants in the acquisition of Western.

3. Proceedings before the Interstate Commerce Commission.

Pennsylvania and Santa Fe filed an application for approval of joint acquisition of control of Western through exercise of the several stock purchase contracts. (R. 129-130) Minneapolis filed an application with the Commission for authority to acquire Western. Minneapolis did not have a contract but proposed that if its application were approved, it would purchase for cash all of the outstanding stock of Western at the same price and upon the same terms proposed by Pennsylvania-Santa Fe. (R. 281) The applications were consolidated for hearing. (R. 2027-2028)

Numerous parties intervened in the two dockets. Nickel Plate and Rock Island each requested authority to be included in the acquisition of the Western stock on an equal basis with the successful applicant or applicants. Burlington and Wabash expressed no objection to the Pennsylvania-Santa Fe application, provided appropriate condi-

tions were attached for continuance of existing routes and traffic arrangements. They asked, however, that if any other carrier were authorized to acquire Western's stock, each of them be included in the transaction to the same extent as any such other railroad. Certain other carriers, without participation, requested the inclusion of certain conditions in the order authorizing control. (R. 19-20) The State of Illinois and certain other bodies intervened in support of the Pennsylvania-Santa Fe application. (R. 20) The States of Minnesota and South Dakota, together with their respective regulatory agencies, supported the application of Minneapolis upon the ground that the acquisition of Western would strengthen Minneapolis' ability to provide essential service in large agricultural areas which lacked dense and diversified traffic. (R. 328-332)

A consolidated hearing was held before an examiner who recommended (a) dismissal of the Minneapolis application, (b) approval of the Pennsylvania-Santa Fe application, and (c) denial of petitions of intervening railroads to participate in the acquisition. Exceptions, briefs and oral argument were presented before Division 4 of the Commission, which issued an order in effect sustaining the examiner. (R. 50-51) A petition for reconsideration by the full Commission was denied without opportunity for oral argument. (R. 51-53)

4. Proceedings in the District Court.

On November 29, 1957 Minneapolis instituted its action against the United States of America and the Interstate Commerce Commission in the United States District Court for the District of Minnesota seeking to suspend and annul the orders of the Interstate Commerce Commission. Pending briefs and argument, a temporary restraining order was

issued. On September 6, 1958 the Court filed its order dismissing the complaint of Minneapolis. The District Court's opinion gave no consideration either to the omission of pertinent findings or to the entry of findings contrary to the sworn testimony of the successful applicants. The District Court saw no public concern with the competition-stifling motivations of the successful applicants because the "Commission had no authority to direct the trustees to deal with Minneapolis rather than with the other interested purchasers." (R. 97) The bidding requirements of section 10 of the Clayton Act were held inapplicable because the interlocking directors had not been corruptly enriched. It was further held that the Commission did not, and had no obligation to, determine "whether the acquisition of Western by these two railroads will violate the antitrust laws". (R. 101) Underlying the District Court's entire review was the comment "that, within the limits of the jurisdiction conferred upon it, the power of a court or an administrative agency to decide questions is not confined to deciding them correctly". (R. 97)

Subsequently Minneapolis filed its Notice of Appeal (R. 106-110) and secured an injunction pending appeal. Two later Notices of Appeal were filed, one by the State of Minnesota and the Minnesota Railroad and Warehouse Commission on November 12, 1958 and the other by the State of South Dakota and its Public Utilities Commission on November 13, 1958. (R. 111-117) These parties have been intervenors throughout the entire administrative and judicial proceedings, representing the public interest of their respective jurisdictions and supporting the position of Minneapolis.

SUMMARY OF ARGUMENT

1. The statutory standard of public interest, as amplified by the National Transportation Policy, was completely ignored. The Commission adopted "separate and independent" management of Western as the standard for determining which application to approve. The acquisition of absolute control of Western by the successful applicants robs this concept of any real meaning. The Commission fallaciously treated "separate" as synonymous with "independent." What is more serious, the illusory standard has no basis in the National Transportation Policy; it collides with the statutory policy of promoting economy and improved service and preventing unfair competition in transportation. The artificial standard served only to screen the Commission's failure to balance the relative advantages and disadvantages of the competing applications, as required in a truly comparative hearing.

Any notion that Minneapolis could discriminate in service among carriers connecting with Western runs afoul of the admissions by the successful applicants that neutrality is a product of economic self-interest. If that self-policing consideration is effective to restrain the largest carriers, it certainly cannot be flouted by a very small railroad. The standard conditions of neutrality imposed on the successful applicants in the Commission's order would provide at least equally effective protection if imposed on Minneapolis, which needs the cooperation and support of all roads serving its lifeline, the Peoria gateway.

2. The omission of pertinent findings and the entry of findings contrary to undisputed evidence deprived the Commission's report of the necessary factual expertise foundation. While the Commission noted the evidence or posi-

tion of Minneapolis with respect to economies, improved service and benefits to the national transportation system, there was a total absence of findings on these matters. Other subjects ignored in the report were the economic self-interests of the competing applicants, Pennsylvania's competition-stifling purpose in acquiring Western, the interlocking directorate, the prior disastrous history of ownership of Western by Pennsylvania and Burlington, and the absence of any reason to assume the present proposal would be less hazardous. The Commission report is barren alike of findings with respect to the violation of the antitrust laws and of any public interest consideration moving the Commission to override the antitrust violations.

Findings designed to show that Pennsylvania and Santa Fe would promote Western traffic were made in the face of contrary testimony by officers of the two railroads. The self-interest of Pennsylvania and Santa Fe is in the longer hauls through St. Louis and Chicago. No findings explain how the approved sale price of $135 per share could be fair when only one month earlier the same sellers and the same buyers signed contracts of sale at $100 per share. Only the exclusion of Minneapolis in order to forestall outer-outer belt line competition can account for that difference.

3. Inasmuch as Pennsylvania and Wilmington Trust Company had directors in common, the negotiations and contracts for the purchase of Western's shares by Pennsylvania constituted dealings in securities prohibited by section 10 of the Clayton Act. Pennsylvania is not insulated from that section by the fact that the second contract was taken in the name of its partner, Santa Fe, and immediately assigned to the extent of 50%, nor by the fact that Pennsylvania acted through its wholly-owned subsidiary. More-

over, nothing in the Interstate Commerce Act excuses, or authorized the Commission to condone, a past violation of the antitrust laws, even under circumstances warranting exoneration. Section 5(11) of the Act suspends the operation of the antitrust laws only with respect to future acts necessary to consummate transactions approved by the Commission.

4. The acquisition of Western by Pennsylvania-Santa Fe would tend substantially to lessen competition between the Peoria gateway and the larger, more profitable St. Louis and Chicago gateways, as well as to lessen competition within the service areas of the respective acquiring carriers. Minneapolis would be denied the opportunity of promoting the Peoria gateway and intensifying competition, with improved, accelerated service and new service routes. In these vital respects, and in linking the most powerful carrier in the east with the most powerful carrier in the west, the approved acquisition clearly offends section 1 of the Sherman Act and section 7 of the Clayton Act. Neither section was examined by the Commission, nor does the Commission's report outline any considerations of public interest so compelling and far-reaching that the consequences of the antitrust violations should be subordinated to them.

ARGUMENT

I.

The standard of "separate and independent management" adopted by the Commission to determine public interest is false, artificial and meaningless and collides with the National Transportation Policy. That standard deprived Minneapolis of a fair hearing and comparative consideration of its application.

Section 5(2)(b) of the Interstate Commerce Act lays down the ultimate standard that an acquisition transaction shall be approved if the Commission finds that it "will be consistent with the public interest". *49 U. S. C.* § 5(2)(b).[7] That ultimate standard is given meaning by the National Transportation Policy which provides:

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; *to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers*; to encourage the establishment and maintenance of reasonable charges for transportation services, *without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices*; to cooperate with the several states and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a na-

[7] In addition to that ultimate standard, section 5(2)(c) requires that consideration be given to the effects of the proposed transaction upon "adequate transportation service to the public," the effect on the public interest of including or excluding other railroads in the transaction, the fixed charge resulting, and the interest of carrier employees affected. 49 U. S. C. § 5(2)(c).

> tional transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." (*49 U. S. C.* preceding § 1) (Emphasis supplied)

At the outset, the Commission adopted "separate and independent management" as the guiding criterion against which the competing applications would be tested. (R. 25, 46) This standard is not to be found anywhere in the Interstate Commerce Act or in any published authority. It was lifted out of the contract between Pennsylvania and Santa Fe which, incidentally, provides that it is solely for the benefit of the contracting parties and not enforceable by anyone else. (R. 24, 167) The very source of that language and the automatic exclusion of Minneapolis with its proposed elimination of duplicate facilities and unification of service, precluded any semblance of a true comparative hearing.

Independent management of a wholly-owned subsidiary is inherently meaningless. Unrestricted ownership and exclusive voting power are incompatible with independence. *Alleghany Corp.* v. *Breswick & Co.*, 353 U. S. 151 (1957). Secondly, the standard is not only artificial and illusory, but it disregards the basic statutory goal established by the Congress in the National Transportation Policy. The Commission was commanded to direct its activities toward achieving a strong effective transportation system designed to assure economy of operation, effective and efficient service and an avoidance of "undue preferences" and "unfair or destructive competitive practices". The Congression-

al concern for elimination of wasteful duplicate facilities, improved service, strengthening of a weak carrier and prevention of destructive competitive practices are not in any respect reflected in the Commission's criterion.

Separate is not independent. It is arrant nonsense to assume that the management of Western could be independent with all of the stock concentrated in, and voted, without Commission limitation, by, the powerful Pennsylvania-Santa Fe combination. While Pennsylvania-Santa Fe ownership might leave a nominal "President" in Peoria, as against a "Division Superintendent" under Minneapolis ownership, both executives would, of necessity, be subordinate to the owners in every meaningful sense. That incontrovertible fact cuts the ground from under the entire premise upon which the Commission reached its decision.

The virtue of maintaining Western's separate solicitation organization, stressed by the Commission, is not without its defeating fallacies. That organization would be placed under the control of a competing management that has consistently solicited against Peoria gateway routing. On the other hand, Minneapolis would strengthen the Western solicitation with its own organization which has always promoted the Peoria gateway. Here again the unity would involve strength, the separateness no independence. Reflecting the lack of substance in the Commission's concept of independence is the admission by the Traffic Vice President of Pennsylvania that Minneapolis could be expected "to maintain aggressive sales and service policies that have been successful in the past with respect to the Peoria gateway". (R. 590) The Minneapolis application would thus admittedly achieve the continuation of "the present policies of Western" which the Commission cites as its public interest goal. (R. 45) It would be fortified by the power-

ful incentive of self-interest and a program for the further development of the gateway through better public service, industrial development and enhanced solicitation. (R. 1102-1104, 1184, 1229-1234)

The Commission's standard presents a particularly idle illusion when it is recalled that Pennsylvania, Pennsylvania's subsidiary, Wabash, and Santa Fe are in full, active competition with Western. (R. 388, 389, 1288-1289) A more realistic approach is to be found in *ICC* v. *Baltimore & O. R. R.*, 152 I. C. C. 721, 735-736 (1929), where three carriers proposed acquisition of Wheeling with the retention of the Wheeling management. Rejecting the application, the Commission said:

> "We are unable to accept the theory that competition of the Wheeling with the respondents might continue unimpaired pending the final assignment of the Wheeling in a consolidation of eastern lines. The knowledge of its relationship to its controlling lines would deprive it of force as a competitor for their traffic."

Control is a matter of business reality which cannot be ignored either on the basis of finespun theories or pious promises among partners. *United States* v. *Southern Pacific Co.*, 259 U. S. 214 (1922); *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146 (1939). The power to select rather than the domination of individual directors constitutes the realistic test of control. *Alleghany Corp.* v. *Breswick & Co.*, 353 U. S. 151, 162-163 (1957). Nor can the reality of control be circumvented by conditions imposed in a Commission order. *Chicago, B. & Q. R. R. Control*, 271 I. C. C. 63; 162-163 (1948). These facts were recognized in *Control of Central California Traction Co.*, 131 I. C. C. 125, 135, 136 (1927), where the Commission stated:

> "It appears that irrespective of the method of operation shippers are inclined to look upon the line of a controlled company as the road of the company which exercises the control.
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> * * * * *
>
> "It is manifestly impossible to estimate with any degree of certainty the extent to which safeguards required by us would reach and counteract the influence exerted upon the practices of shippers by considerations of expediency, real or imagined, incident to obtaining adequate service."

A clue to the proposed independence of Western in operation is provided by the conversations between Santa Fe and Pennsylvania with respect to traffic routing. The only item discussed, according to Gurley, was the use of Western for routing empty refrigerator cars westward. (R. 412, 429-430) Santa Fe and Pennsylvania would thus receive the full revenue for moving the loaded refrigerator cars eastward and Western would bear the expense of moving the empties westward, without compensation and indeed with the added burden of a per mile rental. At that price the public interest in the Peoria gateway can do without the successful applicants' brand of "independence."

The adoption, at the inception, of the artificial standard necessarily ruled out a comparative hearing. The one-sided procedure was no different from that condemned by this Court in *Schaffer Transportation Co.* v. *United States*, 355 U. S. 83 (1957). There the Commission denied an application for a trucking service solely upon the determination that the rail service was adequate. This Court held that the Commission was not relieved of the duty of evaluating competing truck services in the light of statutory standards or from the duty of articulating, in findings, the steps it had taken to reach a composite measure of the competing positions.

What the Commission should have done in this case was to observe the requirements of the National Transportation Policy and the definition given by Chief Justice Hughes to the term "public interest" in *New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 25 (1932). It should have balanced the competing applications and catalogued their merits and demerits from the public viewpoint.[*] Had the Commission performed its function, it would have made comparative findings with respect to such matters as (1) efficiency and economies of operations,[**] (2) improvement and expansion of service through the Peoria gateway, (3) promotion of industrial development, (4) strengthening the carriers concerned in the interest of the national transportation system, (5) stability of employment, and (6) promotion of unfettered competition, particularly between the east-west gateways.

The competing applications present strong contrasts in each of these areas. The acquisition by Minneapolis would advance the National Transportation Policy in each of these areas under its affirmative program and under the sanction of economic self-interest. On the other hand, as a matter of announced purposes and economic self-interest, the Pennsylvania-Santa Fe acquisition would bring no improvement or expansion in operating service, no elimination of duplicate facilities or waste, no dynamic support for

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[*] The comparative hearing technique of listing advantages and disadvantages and arriving at a "composite consideration of the findings as to the several differences, pro and con," is well described in *Johnston Broadcasting Co.* v. *FCC*, 175 F. 2d 351, 357 (D. C. Cir. 1949).

[**] "Use of the words 'economical' and 'economic' in the National Transportation Policy clearly demonstrates the intention of Congress that one of the primary concerns of Congress is to have the Commission give serious attention to the matter of providing economical transportation." *Southern Railway Co.* v. *United States*, 167 F. Supp. 747, 754 (M. D. Ga. 1958).

the gateway as a basis for job security, only secondary concern for new industry, and, finally, it would materially impair the fair, constructive competition that the national public policy would protect. Such rational balancing procedure the Commission spurned. It selected in advance an illusory standard unrelated to any authoritative aspect of public interest and calculated from the outset to assure the award to the successful applicants.

A so-called comparative hearing within the framework of that advance discriminatory determination was merely an empty phrase, as the Commission recognized when it said, "With our approval of that [Pennsylvania-Santa Fe] application, the possibility of the Minneapolis' acquiring the Western's stock is eliminated and its application becomes moot" (R. 48). And that, apparently, is the tacit explanation for the refusal of the Commission to make any findings with respect to the undisputed evidence that the Minneapolis application would promote the National Transportation Policy in all the respects indicated above, without offending the antitrust laws.

The economies offered by the two competing applications provided an ideal subject for comparative findings. After months of thought, preparation and consultation with Western's officers, the President of Santa Fe came up with nothing more than the likelihood that they might trade "ideas" (R. 434). Minneapolis supplied a detailed study of economies to be achieved in the amount of $1,770,945, facility by facility, job by job.[10]

[10] The Minneapolis study showed savings to be effected by an integration of executive, accounting and operating departments, the elimination of duplicate yard, shop, roundhouse, accounting and traffic facilities, the more effective utilization of power, rolling stock and work equipment, the combination of car service, purchases and related supplementary activity. (R. 1028, 1077, 1186, 1222-1229, 1239-1242; Ex. H-44, R 1894-1924, 1380)

At every opportunity the Commission has by decision, by report to the Congress, by testimony before Congressional Committees, by public statements, emphasized the achievement of economies through merger as one of the fundamental hopes upon which the effective survival of the railroad industry rests. 72d Annual Report of I. C. C. 4-5 (1958); testimony by Commissioners Freas and Arpaia, *Hearings Before the Senate Committee on Interstate and Foreign Commerce*, 85th Cong., 2d Sess., pt. 2 at 1834-1836, 1845-1846, 1869-1873 (1958), *Spokane International R. R., Control*, 295 I. C. C. 425 (1956); *Seaboard Airline, Acquisition of Greensville, Midland Ry.*, — I. C. C. — (Fin. Docket 20296, March 26, 1959); *Acquisition by Denver & Rio Grande Western and Union Pacific R. R. of Properties of Bamberger R. R.*, — I. C. C. — (Fin. Docket 20338, Nov. 25, 1958); Addresses by Commissioner Freas before New York Society of Security Analysts, May 29, 1959; Commissioner Walrath before Trans-Missouri-Kansas Shippers Board, March 20, 1959; Commissioner Walrath before Southwestern Association of R. & U. Comms., April 16, 1959; Commissioner Tuggle before Great Lakes R. & U. Comms., June 30, 1958; Commissioner Tuggle before Transportation Association of America, October 9, 1958; Commissioner Murphy before Transportation Conference, University of Alabama, February 11, 1959.

Testifying before the Transportation Subcommittee of the House Armed Services committee on July 17, 1959, Chairman Tuggle of the Commission urged the transportation industry to "improve its economic health" by eliminating duplicative facilities and fostering consolidations. Traffic World, July 25, 1959, pp. 23-24. A year earlier, in reporting on the Transportation Act of 1958, the Surface

Transportation Subcommittee of the Senate Committee on Interstate and Foreign Commerce said:

> "The railroad industry has not, in the subcommittee's opinion, been sufficiently interested in self help in such matters as consolidations and mergers of railroads; joint use of facilities in order to eliminate waste such as multiple terminals and yards that require expensive interchange operations; . . ." (S. Rep. No. 1647, 85th Cong., 2d Sess. 11 (1958))

Senator Smathers, Chairman of that Subcommittee, has recently urged consolidations as the path to "better service to the public", "greater security in jobs provided by the railroads", and a "stronger transportation network for the nation's defense". Smathers, *Blueprint to Save Our Railroads*, This Week Magazine, July 26, 1959.

That the expanded, accelerated service through the Peoria gateway proposed by Minneapolis would promote the public interest in terms of both commerce and national defense needs no documentation. The definite realistic Minneapolis proposals contemplate (1) the establishment of through trains, (2) the acceleration of time schedules by direct interchanges with other railroads, and (3) the establishment of a new interchange with the Chicago and Eastern Illinois Railroad at Watseka, Illinois, to open a new bypass of the Chicago terminal[11] (R. 1177-1184). Pennsylvania and Santa Fe could hardly be expect-

[11] The new bypass would open new, broader and faster routings through the Peoria gateway to the east, the south and the southwest via many carriers. In a number of instances it would substitute mainline for branch line connections. In considerable measure it would provide the outer-outer belt line, competition from which Pennsylvania sought to forestall by the purchase of Western. That fact is apparent from examination of attached Map H and by comparison of maps 15 and 17 in Exhibit H-4 (R. 1629, 1631, 462). In addition, direct interchanges will cut terminal delays as much as 24 to 48 hours and even the first class freight trains will make faster deliveries. (R. 1179, 1230)

ed to intensify competition with the gateways they dominate by improving the service through Peoria, and no such improvement was suggested. Here is an obvious, measurable contrast which the Commission elected not to draw.

Nor can a truly comparative analysis omit findings on the critical issue of the motivations and economic self-interests of the competing applicants. The undisputed evidence reveals, and Pennsylvania's President admitted under oath, that Pennsylvania entered upon the acquisition of Western for the deliberate purpose of blocking the purchase by Minneapolis so as to foreclose competition from an outer-outer belt line around Chicago (R. 535, 539, 1022). Here is a specific intent to monopolize and to restrain competition, to which neither the Commission nor the District Court paid the slightest attention. The Commission's shocking disinterest in the elimination of waste and duplication, in the added and accelerated service to the public proposed by Minneapolis and, above all, in the competition-stifling purpose of the nation's most powerful carrier resulted in a discriminatory and unfair hearing and a total failure to meet the requirements of the Administrative Procedure Act, *5 U. S. C.* § 1007 (b). The failure to disclose the factors balanced for the ultimate conclusion necessarily precluded proper judicial review. *Schaffer Transportation Co.* v. *United States*, 355 U. S. 83 (1957).

The public interest is served by affording a carrier the "opportunity to expand and develop its facilities and to make itself sufficiently strong, financially and otherwise, to provide effective and adequate competitive . . . service." *American Bus Lines, Inc., Purchase, Dollar Lines*, 56 M. C. C. 39, 48 (1949). Public interest has been held to warrant an acquisition for the purpose of strengthening a weak carrier. *Savannah & A. Ry. Co., Control*, 282 I.C.C. 39,

60 (1951). Western is a natural extension of Minneapolis, which would derive significant strength from the acquisition in terms of diversity and density of traffic as well as financial stability and revenues. The freight business of Western would add a third to that of Minneapolis and increase the net railway operating income 36.9%. (R. 1402) The thin traffic lines, so important to the States of Minnesota and South Dakota would be balanced and fortified. On the other hand, the effect of the acquisition of Western could hardly be found in the Pennsylvania and Santa Fe accounts. In net railway operating income Pennsylvania would gain 1.4% and Santa Fe 1.0%. (R. 1402-1403) Were the order permitted to stand, $7,000,000 of Minneapolis' revenue, 35% of its total, would become vulnerable, and a persuasive showing was made that $1,100,000 of this amount would be diverted. (R. 1114-1117, 1156-1157, 1356-1357, 1611-1612; Ex. H-32, R. 1755-1767, 1166)

Minnesota and South Dakota expressed the fear that such diversion ". . . would further reduce the already thin cushion which enables the M. & St. L. to provide needed service on thin-traffic lines . . .". (R. 1437, 1167) Both States emphasized the importance to their agriculture and commerce of an effective Peoria gateway. The States' expert witnesses cited economic motivations for their confidence that Minneapolis would develop and foster the Peoria gateway and that Pennsylvania-Santa Fe would continue their competitive preferences for the long haul. (R. 1167-1170, 1435-1438) The importance of the Peoria gateway in national defense could not be overstated, according to Minnesota's expert, because the Soo locks and the great Chicago industrial and transportation complex constitute strategic targets of high priority. (R. 1440)

Neutrality among connecting carriers was invoked by both the Commission and the defendants' motions in this Court to breathe life into the meaningless standard of independence. The contention is that the Pennsylvania-Santa Fe application should be preferred because it would preserve Western's neutrality among connecting carriers. The Commission saw a "built-in" assurance that Pennsylvania would insist upon equality with western connections and Santa Fe with those in the east (R. 46). Unexplained is the Commission's preference for this highly theoretical assumption against the reality of actual history. This very built-in assurance was operative during three decades of Pennsylvania-Burlington ownership which were catastrophic for Western as well as the Peoria gateway connections.

The testimony unequivocally established that Minneapolis, being entirely dependent upon the Peoria gateway, was determined in its self-interest that service with all carriers connecting with Western be maintained and improved (R. 1102-1104, 1184, 1229-1234). The successful applicants also undertook to maintain neutrality with connecting carriers; as they expressly testified, they did so in their own self-interest and in fear of retaliation were any other course adopted (R. 483-484, 546, 572). If that automatic safeguard is operative when the owners are the most powerful carriers, originating the greatest tonnage in America, how much more effective is it with respect to a small carrier dependent largely on bridge traffic. This economic fact of life is underscored by the powerful influence exerted by the originating carrier upon the routing of traffic.[12] (R. 1113-1114) The very fact that Minneapo-

[12] The President of Santa Fe, in discussing the influence of traffic solicitors on the routing of traffic, testified that "our utmost could really be quite tremendous". (R. 449) Another Santa Fe witness described how he could force the use of Lomax rather than Nemo, the junction served by Minneapolis. (R. 1355)

lis is dependent solely upon the Peoria gateway provides an overriding, self-policing guarantee of neutrality with connecting carriers who feed the pipeline of traffic into the gateway and those who carry it out.

To assure neutrality, the Commission imposed upon Pennsylvania-Santa Fe the standard conditions that Minneapolis had in open hearing offered to accept. The Commission concluded, without foundation, that the standard conditions adequate to protect other carriers in the event of control by the powerful Pennsylvania-Santa Fe combine would not be acceptable in the event of ownership by the infinitely weaker Minneapolis. The Commission might well have heeded Santa Fe's shipper witness who expressed preference for service dependent upon economics to that dependent upon commission-imposed conditions[13] (R. 858).

In the same vein, the Commission brushed off the clear, convincing and unchallenged evidence of the telling loss that the Minneapolis would suffer from the Pennsylvania-Santa Fe acquisition. (R. 1103-1104, 1112-1117, 1166-1170, 1254, 1356-1357, 1402-1412) Santa Fe asserted that it would actively solicit Lomax exchange with Western (R. 403, 405) and the reduction in the interchange with

[13] In denying Santa Fe access to St. Louis, the Commission said at an earlier date:

> "The policy of railroad managements to obtain long hauls over their lines is too pronounced to warrant a finding that the Santa Fe could, continue, in the slightest degree, to interchange with other carriers any traffic which it would handle to or from St. Louis. Furthermore, a requirement that the applicants maintain present routes or gateways would not prevent the loss of traffic by other railroads now handling such traffic in connection with the applicants via such routes and gateways." *Chicago, B. & Q. R. R. Control*, 271 I.C.C. 63, 163 (1948). This recognition of the doubtful worth of conditions makes particularly pertinent a query as to the Commission's authority to whittle away the Congressional standards on the assumption that conditions in the order would provide substitute protection for the public interest.

the Minneapolis at Nemo is an obvious and natural consequence (R. 496, 1114-1117, 1156-1157, 1356-1357). In contrast, the Commission asserted that the acquisition by Minneapolis would be "extremely harmful to other carriers", naming only the Wabash. (R. 32) The extreme solicitude for that large subsidiary of the Pennsylvania was based on a confused claim of one witness, unsupported by any specific data, figures or estimates, and rendered meaningless on cross-examination. (R. 1270-1271, 1292-1293) As a matter of survival, the Minneapolis could not do otherwise than maintain a policy of neutrality with respect to all connecting carriers. The colossi Pennsylvania and Santa Fe are under far less economic compulsion. Their powerful ability to reward or punish is already all too well known to connecting lines.

By its adoption of the false standard of "independence", by its distortion of the concept of "neutrality" and the disparity of the treatment of the competing applications thereunder, the Interstate Commerce Commission disobeyed the statutory mandate and made a farce of the concept of a comparative hearing.

In the present case even the Commission recognized that the two applications were mutually exclusive. Thus it was a clear case for a true comparative hearing under the *Ashbacker* doctrine. *Ashbacker Radio Corp.* v. *FCC*, 326 U. S. 327 (1945). According to Professor Davis, "The Ashbacker doctrine has a large and complex future." 1 Davis, *Administrative Law Treatise* 576 (1958). That prophesy cannot be fulfilled and the promising doctrine of comparative hearing in the public interest will die in its infancy if an administrative agency may adopt in advance an arbitrary standard that automatically precludes one of the competing applicants. Absent a composite weighing of the

advantages and disadvantages of the competing applications, there can be no comparative hearing and judicial review is rendered impotent.

One additional inference is equally ineluctable. The Congress set up the general and undefined standard of the "public interest" in section 5(2) (b) of the Interstate Commerce Act; that standard, however, was given a substantial degree of clarity, definiteness and meaning by the more specific commands of section 5(2)(c) and the National Transportation Policy. Here the Commission ignored all the more definite commands (as well as the precedents and its own contemporaneous pronouncements) and equated the "public interest" standard almost solely to a self-serving, unreal pronouncement of the successful applicants. If that course of action be not condemned, then it seems clear that the standard is void for vagueness and must be stricken under the Constitution.

II.

On many essential issues findings were completely omitted and on others findings were made contrary to undisputed record proof. The Commission failed to provide the findings and explanation for decision required by law.

Section 8(b) of the Administrative Procedure Act (5 U.S.C. § 1007(b)) contains the clear requirement that

> "All decisions . . . shall . . . include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; . . ."

In the instant case the Commission made no serious effort to present systematic and authentic findings to support

its predetermined conclusion. Particularly in a comparative hearing requiring composite balancing of the attributes of the competing applications, scrupulous regard should be had for the requirement of basic findings of fact underlying the ultimate conclusions and the reasoning in logic and law by which the decision is reached. The report should reflect the weight, if any, given to each significant factor of the competing applications and the considerations which led to the conclusion. *Schaffer Transportation Co.* v. *United States*, 355 U.S. 83, 88, 90, and (dissenting opinion) 125 (1957).

The "ultimate finding" that approval of the Pennsylvania-Santa Fe application is in the public interest is at best a mixed conclusion of law and fact. *Helvering* v. *Tex-Penn Oil Co.*, 300 U.S. 481, 491 (1937) Adequate subsidiary or basic findings that are both clear and complete are required to support the ultimate conclusions. *Colorado-Wyoming Gas Co.* v. *FPC*, 324 U.S. 626, 634 (1945). Whatever the problem, the evidence must be marshalled in a comprehensive and meaningful fashion and the reasoning must be exposed for an intelligible review by the courts.

The failure of the District Court to enforce the fundamental requirements for a fair administrative hearing makes it necessary that we catalog the most glaring deficiencies:

1. Already noted is the absence of any findings with respect to the economies and improved service proposed by the Minneapolis or the benefits to the national transportation system of strengthening Minneapolis and diversifying its traffic through combination with Western. Indeed, in at least thirteen instances the report cites the position of Minneapolis without drawing any conclusion. The terminology used is "Minneapolis contends", "Minneapolis estimates",

"Minneapolis states", and "Minneapolis insists". (R. 31-36) These factual aspects of the proposed Minneapolis acquisition, on which the Commission failed to make any findings, included (a) the making of direct interchange connections with twelve carriers, eliminating duplicate transfers and shortening schedules, (b) the fact that, of all carriers in the proceedings, Minneapolis alone had no economic incentive other than to maximize utilization of the Peoria gateway, (c) the showing that no one could operate Western with greater economy or better public service than Minneapolis, (d) the fact that the impact of integration on employees would be minimized by transfers to openings generated by attrition, and (e) the enormous economies, specified as to character and amount, which could be realized in the Minneapolis acquisition, thereby providing means for improved service and industrial development.

Nowhere in its report does the Commission evaluate the validity of the recited contentions nor their significance under the ultimate standard of public interest, despite the fact that in no material respect was the supporting evidence contradicted in the record. While the Commission report recites the concern of the States of Minnesota and South Dakota with a denial to Minneapolis of the opportunity for strengthening its operations and facility for service, there is not the slightest indication, by finding or declaration, that any weight was given to this factor.

These shortcomings have their counterparts in all too many Commission reports. Quite recently, in *Boston & Maine R.R.* v. *United States*, 162 F. Supp. 289, 298 (D. Mass. 1958), *appeal dismissed* 358 U.S. 68 (1958), the court stated:

> "What we do say is that the plan deserves more than the cursory consideration given it by the Commission, for without more detailed findings by it we cannot exercise our judicial function."

There is manifest a breakdown of the statutory scheme for administrative findings sufficiently organized and presented as to facilitate judicial review. Recitals of the positions of the parties and generalizations that fail to come to grips with the fundamental economic factors provide no substitute for a methodical marshalling of the facts and the law. Only from that orderly marshalling can a court determine whether the administrative agency has faithfully carried out the standards and requirements imposed by the Congressional enactment. The Commission should again be reminded that whatever expertise appointment to that body may carry with it, there is no authority to substitute Commission opinions for the statute.

2. The Commission made no findings with respect to the economic motivations of the competing applicants. The President of Western had long regarded his road as a natural extension of the Minneapolis and favored a merger.[11] Minneapolis proved, and President Symes of Pennsylvania conceded on the witness stand, that he also had long regarded Western and Minneapolis as a natural combination. (R. 537-538, 1022) While Minneapolis was negotiating in 1954 for the purchase of Western, friendly interests acquired control of the Monon, a small railroad running roughly north and south in Indiana, so that Minneapolis-Western-Monon could constitute an outer-outer belt line circumventing Chicago. When the President of Pennsyl-

[11] His position understandingly changed after Pennsylvania-Santa Fe entered into a contract to purchase the Western stock. (R. 977-978)

vania heard of this "grandiose scheme", he moved in to buy Western and put a stop to "this nonsense". (R. 1022) The purchase would not only thwart the immediate peril of competition, but as Symes put it, guarantee "the best permanent protection for the Pennsylvania Railroad". (R. 1023) Neither the Department of Justice, nor the Commission, nor the successful applicants have provided the slightest hint as to how permanent protection of Pennsylvania from competition provides even a color of public interest. The specific intent of Pennsylvania to monopolize and restrain competition, established without challenge in this record, received tacit blessing in the Commission's orders and went completely unnoticed in the Commission's findings and report. That omission stands in sharp relief against Pennsylvania's prior demonstration that it could and would curtail competition through the Peoria gateway under similar circumstances. Under much less telling circumstances, the Commission was moved to inquiry and action in the preservation of competition. *ICC* v. *Baltimore & O. R. R.*, 152 I. C. C. 721 (1929). The unwillingness of the "experts" to enter this fertile area of inquiry can be explained only by a deliberate purpose to sustain a predetermined, artificial standard.

3. The Commission ignored the lesson of history that Pennsylvania jointly with Burlington (a western carrier operating from Chicago to the west) had previously owned Western and permitted it to sink into receivership. *Acquisition by T. P. & W. R. R.*, 124 I.C.C. 181 (1927). The destruction of Western was the natural result of Pennsylvania's self-interest in the competing Chicago and St. Louis gateways which provide the longer hauls and the higher rate divisions. At that earlier stage the Pennsylvania and the Burlington had ample time and opportunity to develop

Western and to build up the Peoria gateway, but as Western itself advised the Commission, "it was against the interest of the controlling companies [Pennsylvania-Burlington] to develop the property because it competed for traffic with their lines."[15] (124 I.C.C. at 187)

In the instant case no showing or findings were made to suggest that there has been any change in the traffic or transportation conditions which would alter Pennsylvania's economic incentives or those of a western carrier. The Commission did not have to speculate as to what Pennsylvania might do in the future; it had only to read what it had done in the past. "A page of history is worth a volume of logic." *New York Trust Co.* v. *Eisner*, 256 U.S. 345, 349 (1921). The economic self-interest of the Pennsylvania-Santa Fe group is to use the competing long hauls to St. Louis and Chicago which furnish higher revenues. All of the promises that Pennsylvania and Santa Fe made to each other (and expressly "not for the benefit of others not parties hereto")[16] cannot erase these facts.

4. With respect to the propriety of the purchase price, the Commission rests its approval upon the premise that

[15] When the eight western carriers sought to acquire and dismember Minneapolis, the Commission said:

> "As the applicants serving both Minneapolis and Peoria have their own lines to Chicago, it is hardly to be expected that they would make the same use of the Peoria gateway as does the Minneapolis and St. Louis." *Associated Railways Company, Acquisition and Securities*, 228 I.C.C. 277, 325 (1938)

[16] The arrangement between Pennsylvania and Santa Fe for the proposed management of Western is embodied in a contract between them which contains the following provision (Ex. 7-d to Pennsylvania-Santa Fe application, R. 167):

> "The Parties hereto, each with the other, and not for the benefit of others not parties hereto, agree that they will exercise their stock ownership of the TP&W to accomplish the following objectives: . . ."

the price to Pennsylvania-Santa Fe "was established on the basis of agreement between a willing seller and a willing buyer". (R. 42) The Commission made no findings, however, with respect to these pertinent price considerations:

(a) A few weeks before they entered into the sale at $135 per share, the same "willing buyers" entered into contracts with the same "willing sellers" to purchase 52% of Western's stock at $100 per share. (Exs. 7-f and 7-g to Pennsylvania-Santa Fe application, R. 174-176) Obviously the minority shares would be worth less than majority control. If the Commission had power to approve a price negotiated at "arm's length" in May, 35% higher than the price negotiated at "arm's length" between the very same parties in April, then at a minimum it was incumbent upon the Commission to explore the transactions and to set out the considerations upon which it relied. One of the Commissioners who wrote the report in this case forgot his previous warning that, even in arm's length bargaining, the "desire to eliminate a competitor" may well induce a buyer to pay an excessive price. *Graves Truck Line, Inc., Purchase - Whitworth*, 59 M.C.C. 601, 606-607 (1953) (concurring opinion).

(b) The Commission asserted that if $135 per share were a proper price for Minneapolis to pay, it would automatically be fair and reasonable for the Pennsylvania-Santa Fe group. (R. 42) Based on the 1954 figures used at the hearing, the Pennsylvania-Santa Fe purchase was predicated on average annual earnings of Western of some $641,000, whereas the Minneapolis offer to pay the same price was predicated, as a result of the proposed economies, on average earnings of Western of some $1,279,000, after deducting the payment of interest on the bonds to be sold by Minneapolis to finance the purchase.

(R. 1253-1254) How those two can be equated, the Commission's report does not reveal. Nor was the extent to which the purchase price reflects the vital factor of curtailment of competition explored by the Commission.

The Pennsylvania-Santa Fe motion to affirm seeks to make capital of the fact that in its petition for reconsideration before the full Commission, Minneapolis requested inclusion in the ownership group if the Pennsylvania-Santa Fe application were approved. That request, of course, was made not for investment but as a matter of desperate defense necessity, reflecting the ruinous effect which unfettered Pennsylvania-Santa Fe ownership would have on the traffic and income of Minneapolis.

(c) The price-earnings ratio, embraced in the Pennsylvania-Santa Fe proposal, far outstripped the price-earnings ratios of all other railroads in the United States, as shown by the public markets. Although Western's earnings had risen during the litigation, the price earnings ratio reflected by the purchase price on the date of the Commission's report was considerably higher than that of any blue chip railroad traded on the New York Stock Exchange. It was 41% higher than the Santa Fe ratio and almost three times the Pennsylvania ratio. These data passed unnoticed and their significance was not appraised. In the District Court both the Commission and the successful applicants attempted to shore up the Commission's fallacious conclusions as to the purchase price by decrying the "speculative test of potential earnings". In so doing, they ignored the principle that "the commercial value of property consists in the expectation of income from it", *Galveston, Harrisburg, etc. Ry. v. Texas*, 210 U.S. 217, 226 (1908). To the same effect

are *Consolidated Rock Products Co.* v. *DuBois*, 312 U.S. 510, 526 (1941); *Group of Investors* v. *Milwaukee R. R.*, 318 U.S. 523, 540 (1943).

5. On the prospective promotion of the Peoria gateway, the Commission omitted findings of undisputed facts and made findings directly contrary to the sworn testimony of officers of the successful applicants.

(a) No finding was made of the fact that, by the use of competing gateways, Pennsylvania and Santa Fe are in full and complete competition with the Peoria gateway. (R. 398) Conversely, Minneapolis relies exclusively on the Peoria gateway which constitutes its lifeline. (R. 27-28, 1011, 1101) The testimony shows that the Minneapolis traffic program was directed toward improved, unified service and added connections to meet the competition through the larger terminals. (R. 1101-1104, 1177-1184, 1229-1234)

(b) Neither Pennsylvania nor Santa Fe has heretofore solicited for the Peoria gateway because economic self-interest has dictated the longer haul through St. Louis and Chicago for Pennsylvania and through Chicago for Santa Fe. (R. 401, 475-476, 479, 528-529, 571, 582) The Commission found that all this would change, that Santa Fe "intends to place Lomax on a parity with Chicago from a solicitation standpoint" and, while "Pennsylvania will continue to solicit its long haul to St. Louis, Effner and Chicago will be on a parity." (R. 34) *This is simply not true.*[17] It runs counter to

[17] Even if it were true, it would be unenforceable and meaningless. The comments about parity were never more than indications of intent, in the guise of benevolent paternalism. They were never commitments and were not in any way binding.

the sworn word of Symes, President of Pennsylvania, who testified that the past solicitation policy had been for St. Louis first, Chicago next, and Effner (for the Peoria gateway) last, and that after acquisition of Western, the policy would not "change very much". (R. 521-522)

Some Santa Fe-Pennsylvania witnesses were less candid. But they all made it clear that parity does not mean equality in traffic solicitation. It is a deceptive term, intended only to express absence of active opposition. The Traffic Vice-President of Pennsylvania explained the term, "We will as heretofore, solicit via the gateway giving us the longest haul, but . . . we will not *work against*" the Western connection. (R. 571) Traffic Vice-President Duffy, of Santa Fe, indicated that parity does not mean equal solicitation (R. 483), and then went on to say that any diversion of traffic from Chicago would come not from Santa Fe's solicitation but only from Western's.[15] (R. 496) He conceded that unrouted traffic would be sent through Chicago for the longer haul, making it perfectly clear where the Santa Fe preference lay. (R. 506)

President Coulter, of Western, appearing as the final witness for Santa Fe and Pennsylvania, actually punctured the whole parity balloon. Putting Effner on a parity with Chicago, he said, would yield no change in the existing policy of benevolence; Pennsylvania would still seek its long haul to Chicago or St. Louis. (R. 1600)

[15] The mental reservations attaching to the term "parity" are illustrated by Gurley's testimony. He expressed the intention of putting Lomax on a parity with Chicago, and Nemo on a parity with Lomax. When asked whether that meant that Nemo would go on a parity with Chicago, he replied excitedly, "no, no, no." (R. 402, 418) To compound the confusion, Gurley's subordinate, Duffy testified that Nemo would cease to be on a parity with Lomax. (R. 496)

Solicitation for Effner by Pennsylvania could add to Western traffic but, as Coulter put it, "they are not going to do it". (R. 1601) Nor does the Santa Fe intend soliciting for Lomax. (R. 1609) Finally, he conceded that "parity" and a "benevolent attitude toward a gateway" are precisely synonymous. (R. 1609) With the semantic covers cut away, the evidence reveals that neither Santa Fe nor Pennsylvania will solicit one pound of freight for Western. (R. 1600-1601, 469, 1287) On the other hand, the traffic organization of Minneapolis, with agencies in 36 cities (in 16 of which Western presently has no representation) would be joined with the Western traffic solicitors to sell Peoria gateway routing. (R. 1185-1186)

At the best, the Commission simply failed to realize that the use of the term "parity" gave no promise of equality of solicitation or any enhancement of Western's traffic. At the worst, the use of that term was a hoax, designed to mislead the Commission. Promotion of traffic through the Peoria gateway is a vital factor in this proceeding. The self-interest of Pennsylvania and Santa Fe weighs heavily against such promotion.[19] The self-interest of Minneapolis is to maximize the use of the Peoria gateway. The finding of the Commission that Pennsylvania and Santa Fe intend to promote traffic through the Peoria gateway is contradicted by the testimony of their own witnesses as well as by their own economic incentives.

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[19] Atkinson of the Wabash, Pennsylvania's huge subsidiary, made it clear that Pennsylvania's self-interest would be to get the longest haul "and that means St. Louis or Chicago over their own railroad". Only if that were not possible, would Pennsylvania choose between the Ettner interchange and the Wabash Logansport interchange (using the Decatur gateway). (R. 1280)

The preference of the two successful applicants for Chicago also contradicts the Commission's conclusion that "Santa Fe and Pennsylvania are just about as well off financially when handling traffic via Western as they would be on the long haul through Chicago". (R. 34) True, there was a self-serving generalization to that effect in the testimony, but if the Pennsylvania-Santa Fe partners were to sustain the notion that their financial advantage lay in the shorter rather than in the longer haul, they had the duty of supplying specific data and figures to establish that startling fact. This Court has long recognized the contrary to be true. In *United States* v. *Southern Pacific Co.*, 259 U.S. 214, 231 (1922), this Court said:

> "Self-interest dictates the solicitation and procurement of freight for the longer haul by the Southern Pacific lines."

Furthermore, the Commission, with its asserted expertise, must have been aware, as is any thoughtful businessman, of the lower incremental costs and the higher margins of profit arising from more intensive utilization of yard facilities such as the two successful applicants operate in the major competing gateways. Subsequent to the Commission's determination, Santa Fe announced the opening of a "high-speed, 'push-button' railroad freight yard" in Chicago (see footnote 3, above). That announced investment of $20 million in improvements to double the working capacity and to automate and speed-up the facility in Chicago effectively belies the notion of equality for the short haul through Peoria.

(c) The Commission expressed confidence that the Pennsylvania-Santa Fe acquisition would improve West-

ern's car supply. (R. 47) That is an expression of faith, not fact. The undisputed evidence shows that both lines experienced car shortages in their own operations and that the Minneapolis, as the Commission conceded, was one of the "bright spots" in the country in car ownership and supply. (R. 27, 487, 592, 1233-1237) In terms of bad order ratio, reflecting the portion of the freight car fleet in disrepair, Minneapolis' 1955 experience was two to three times more favorable than Santa Fe and five to ten times more favorable than Pennsylvania. (R. 1238)

(d) Similarly unwarranted is the Commission's confidence that "the backing of the Santa Fe and Pennsylvania" made Western's industrial development prospects bright. (R. 46) Both carriers expressed preference for the location of industry on their own lines so as to yield the greatest revenues. Traffic Vice-President Duffy of Santa Fe and Traffic Vice-President Carpi of Pennsylvania each made it crystal clear that he would bring an industry to Western only if he could not locate it on his own line. (R. 493-494, 583, 584)

6. The findings of the Commission with respect to shippers and local officials brought to the witness stand by Pennsylvania-Santa Fe omit any consideration of the following undisputed facts:

(a) The witnesses were assembled as part of a large-scale publicity and promotional campaign. (R. 458, 626, 637, 644, 674, 748-750, 800-801, 802, 884, 1505-1507) Cross-examination revealed that the witnesses had not been advised, and, with one or two exceptions, were not even remotely aware, of the considerations underlying the Minneapolis application. (R. 615,

626-627, 659, 669, 751, 791, 822) A baker's dozen of these assembled witnesses cited the abandonment of the Iowa branch of Western as the basis for opposing the Minneapolis application—although, as the Commission expressly found, Minneapolis has no intention of abandoning that west end branch. (R. 615, 750, 759, 773, 846-847, 861-862, 923, 929-930, 958, 962; 31)

(b) All of the shippers testified that their interest was solely in good service. Not one expressed opposition to the elimination of duplicate facilities, the acceleration of train service or the addition of more trains and connections. Every shipper who had ever used Minneapolis testified to the excellence of its service and his satisfaction with the way Minneapolis operated. (*e.g.*, R. 614-615, 627, 732, 775, 853, 862, 871) A mine owner called to support the Pennsylvania-Santa Fe application admitted that Western had experienced shortages of coal cars and that Minneapolis had kept his competitor supplied. (R. 669)

(c) Finally, the Commission erred in failing to recognize that its treatment of the testimony of the shipper witnesses should have been confined to the economic substance of that testimony. Instead, the Commission concentrated on the number of witnesses produced by the free-spending Pennsylvania-Santa Fe promotion as though the proceedings before it were a popularity contest. In a more responsible vein, the Commission recently pointed out that the burden of proof upon the applicant and the responsibility of expert inquiry by the Commission are in no respect lessened by the absence of protests or intervenors. *Transcon Lines—Purchase—B&M Express, Inc.*, 70 M.C.C. 796 (1958).

7. The Commission denigration of the Minneapolis program of integration, because it would result in the replacement of some employees, ignored controlling considerations with respect to which no findings were made nor explanation offered:

(a) Integration and economy are express aims of the National Transportation Policy, and these aims can seldom, if ever, be accomplished without a reduction in employment. They can, however, be accompanied by a protective cushioning program such as the program offered by Minneapolis in the present case. (R. 289, 1032-1033, 1078-1079, 1186, 1220, 1229, 1242, 1377, 1397) Both the Commission and the courts have approved acquisitions designed to effect economies and better utilization of facilities, even though employment is reduced and a headquarters moved from a particular community. *City of Nashville, Tennessee v. United States*, 155 F. Supp. 98 (M.D. Tenn. 1957), *aff'd.* 355 U.S. 63 (1957).

(b) The only true ultimate guarantee of job security lies in economic, efficient, profitable operations such as proposed by Minneapolis, with emphasis on augmented and improved service through the Peoria gateway. Featherbedding cannot last forever, and jobs cannot be secure when based on uneconomical operations. Nor can job security be invulnerable to a drying up of the gateway.[20]

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[20] The vulnerability of railroad jobs to a decline in traffic volume is shown by the recent history of the industry. During the 25 years preceding 1958, railroad employment declined from 1,857,674 to 861,928. For the 5 years ended March 1958, there was an average decrease of 5,800 employees per month. (Sen. Rep. 1647, 85th Cong., 2d Sess. 8 (1958).) If this trend is to be reversed, and if the railroads are to

(c) Minneapolis explained fully how minimal the impact on the employees would be because of the time consumed in integration, the transfer to vacancies arising from attrition, the full observance of the Washington Job Protection Agreement of 1936, and other factors. (R. 1032-1033, 1078-1079, 1186, 1220, 1229, 1242, 1377) At the outset, Minneapolis voluntarily offered to abide by the Washington Job Protection Agreement, assuring displaced employees a minimum of 60% of their regular compensation for a period up to five years and permitting an employee to obtain a separation allowance amounting, in the case of seniority of five years or more, to twelve months' pay. (R. 289) These undertakings are designed both to assist affected employees and to encourage the carrier to minimize displacement and provide substitute employment wherever possible. While the Commission noted that 256 jobs would be affected by the integration, it ignored the fact that the actual displacement would be only a small fraction of that total.[21] This expectation rests upon the firm ground of experience. The mechanization of the Minneapolis accounting department yielded a sizeable reduction in the number of jobs, but by careful utilization of attrition vacancies, all of the incumbents were transferred to other Minneapolis positions, except for two or three who moved to other railroads. (R. 1032-1033)

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secure their fair share of an expanding economy, more economical and efficient operations must be sought. When that is ensured, true employment will increase to take care of the increased business. Retention of employees in unnecessary, duplicating positions can only be self-defeating in the long run.

[21] A detailed schedule disclosed that during the period of integration a considerable number of job openings would become available through normal attrition, including the retirement of many of the 350 Minneapolis employees then aged 60 or over. (Ex. H-44, R. 1917-1924, 1379)

8. The Commission made no findings of fact with respect to any of the elements to be considered on the key issue of the violation of section 10 of the Clayton Act (15 U.S.C. § 20). It did not report the interlock nor identify the interlocking directors. It made no findings with respect to the preference which Pennsylvania-Santa Fe enjoyed in the negotiations as a result of the interlocking directorate. It made no finding with respect to the exclusion of Minneapolis from the negotiations as a consequence of the interlocking directorate relationship. Finally, if section 5(11) of the Interstate Commerce Act (49 U.S.C. § 5(11)) could be read—we think misread—to permit condonation of a past violation of section 10, the Commission failed to make any findings of the considerations in the public interest which would warrant such condonation.

9. The findings with respect to anti-competitive consequences of the Pennsylvania-Santa Fe acquisition were wholly inadequate to sustain the grant of immunity from antitrust prosecution.

(a) The Commission report does not mention either section 1 of the Sherman Act (15 U.S.C. § 1) or section 7 of the Clayton Act (15 U.S.C. § 18), or indicate how the Pennsylvania-Santa Fe proposal could possibly be reconciled with the statutory interdictions.

(b) Although the Commission discussed (without findings) some possible consequences *within the Peoria gateway*, it gave no consideration to the power of the two railroad colossi to cut off competition *by drying up the Peoria gateway in its entirety*, and their economic incentive so to do. The record is devoid of evidence and findings that they could not and would not do so and

would not profit by sending traffic through their larger gateways precisely as the Pennsylvania and Burlington had done during the many years they owned Western.

(c) The Commission placed great weight upon the fact that Pennsylvania and Santa Fe are Western's two largest connections. (R. 46) How assignment of control of Western to such connections equates with the public interest is not explained. This non sequitur is particularly significant since the Commission's own findings make it abundantly clear that Western's business—the very interchanges with Santa Fe and Pennsylvania—were obtained primarily through the aggressive solicitation of its own traffic department, in active competition with the solicitation by Pennsylvania and Santa Fe for their longer haul gateways. (R. 35) And, by way of contrast, there is the aggressive solicitation for Peoria gateway routing by Minneapolis. (*e.g.*, R. 27-28, 284, 1011)

(d) The Commission accepted at face value the successful applicants' easy assurance that Western's aggressive traffic solicitation policies would be continued. Yet that assurance, conflicts with their own self-interest, and, as we have pointed out above, derives solely from a private agreement between the two partners, which by its express terms was not for the benefit of, or enforceable by, any outside party. The Commission thus rested its ultimate standard of public interest upon the shifting sands of a private arrangement between the two partners completely beyond the control of the Commission, shippers or other carriers.

In similar circumstances, the Commission has shown itself to be less naive. *ICC* v. *Baltimore & O. R. R.*, 152 I.C.C. 721, 735-6 (1929). Rejecting the Santa Fe

bid for a St. Louis gateway, the Commission thought that even a condition of the order—as distinguished from a pious promise revocable at will—would not "maintain present routes or . . . prevent the loss of traffic by other railroads". *Chicago, B. & Q. R. R. Control*, 271 I.C.C. 63, 163 (1948)

Time and again the Commission selected a single element upon which to predicate a finding, without taking into account the total record. This presents a facade of plausibility but does not conform to the command of this Court in *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951):

> "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight."

Compliance with the Administrative Procedure Act in terms of both adequate findings and regard for the totality of the record would have rendered impossible the conclusion reached by the Commission.

III.

The purchase of Western shares by Pennsylvania constituted a direct violation of section 10 of the Clayton Act which the Commission and the District Court were powerless to condone.

Section 10 of the Clayton Act prohibits any carrier from having any dealings in securities, articles of commerce or contracts amounting to more than $50,000 in any one year with a corporation with which it has directors or managing officials in common, except upon competitive bidding under regulations prescribed by the Commission.

The statutory prohibition is comprehensive in scope and absolute in terms. Absent competitive bidding, the dealings in the stock of Western between Pennsylvania and Wilmington Trust Company fall squarely within the ban of the statute. The record discloses that during the pertinent period, Lammot duPont Copeland, a director of Wilmington Trust Company, was also a director of Pennsylvania and a wholly-owned subsidiary of Pennsylvania. Three other directors of Wilmington Trust Company were concurrently directors of wholly-owned subsidiaries of Pennsylvania.

That the control of competitive bidding may lie in other hands does not relieve the carrier of the ban imposed by the statute. *In re Missouri Pac. R. R.*, 13 F. Supp. 888 (E. D. Mo., 1935) The Missouri Pacific Railroad had there entered into a contract for the instalment purchase of securities from a subsidiary of Allegheny, with which the carrier had a director in common. During the receivership, the Reconstruction Finance Corporation sought to annul the contract as violative of section 10 of the Clayton Act. Holding the transaction invalid and subject to rescission, Circuit Judge Faris said (13 F. Supp. at 892-893):

> "Counsel for the debtor contend that the proviso as to competitive bids covers securities, and that if in the very nature of the situation bidding for the sale of securities is not possible—*and they insist it was not here possible*—then the statute has no application, and one corporation may freely buy securities from another regardless of interlocking directorates and regardless of the statute. To my mind such a construction utterly destroys the beneficent intention held in mind by Congress when it passed the Clayton Act, of which section 10 is a part. As forecast, I think it rather clearly provides that when interlocking directorates exist between a railroad which is engaged in

> interstate commerce, and another railroad, or corporation, then unless competitive bids are obtained, such corporations are forbidden to deal with each other. And if, as already said, in the situation existing here, no competitive bids are possible, then the statute forbids the deal absolutely. If this is not what Congress intended, then Congress did a vain and futile act when it enacted the statute, so far as concerns the control of the buying and selling of securities, and as is known by all men such buying and selling has long constituted a crying financial evil in railroad annals." (Emphasis in original)

In the instant case the Commission held that because the final contract was taken only in the name of Santa Fe—which thereafter assigned one-half of the shares to its partner, Pennsylvania—"the issue before us does not involve a purchase by the Pennsylvania from the Wilmington Trust". It held further that upon approval of the transaction, section 10 of the Clayton Act became inoperative under the terms of section 5(11) of the Interstate Commerce Act (R. 44)

The District Court completely rewrote the statute saying (1) bidding was not required because this is not "a situation where interlocking directors may be enriched by reason of dealings in their securities", (2) "the common directorate which existed between the Wilmington Trust Company and the Pennsylvania Company was not the kind intended by the Congress to be covered by the prohibition", and (3) the statute "does not appear to cover the sale of stock held by a trust company to a common carrier." (R. 98-99) How the plain language of the statute could be twisted into such tortured knots of interpretation is a mystery into which neither the District Court nor any of the appellees has ventured to delve.

The motions to affirm previously filed in this Court depart from the reasoning of both the Commission and the District Court. The Pennsylvania-Santa Fe motion denies that Pennsylvania engaged in "dealings in securities". The Department of Justice—I.C.C. motion asserts that section 10 of the Clayton Act was designed "to prevent a railroad from buying at too high a price" and that the Commission had here expressly found the purchase price to be reasonable.

A. The negotiation and execution of the contracts for the purchase of Western's stock constitute prohibited "dealings in securities" between a carrier and a corporation having directors in common.

With respect to dealings in securities—the precise language of the statutory prohibition—the record establishes three facts, each of which is sufficient to taint the transaction with a badge of illegitimacy:

1. Pennsylvania and Wilmington Trust Company carried on active negotiations with respect to the acquisition of the Western shares. In fact, the President of Pennsylvania testified that he was approached by Wilmington Trust Company at the outset, and that he was interested but wanted no part of any competitive negotiations. (R. 512, 529, 535)

2. By letter agreement of April 15, 1955, Wilmington Trust Company agreed to sell 26% of the Western stock to the Pennsylvania Company, a wholly-owned subsidiary of Pennsylvania, at a price of $100 per share. Concurrently a similar agreement was made with Santa

Fe. (Exs. 7-f and 7-g to Pennsylvania-Santa Fe application, R. 174-176)

3. The May 26, 1955 agreement for the sale by Wilmington Trust Company and its co-trustee of their Western stock to Santa Fe at $135 per share was followed shortly by the agreement of Santa Fe to sell one-half of the shares so acquired to the Pennsylvania Company. (Exs. 7 and 7-d to Pennsylvania-Santa Fe application, R. 150-153, 165-169) This was a continuation of the joint venture, reserving to Pennsylvania its rights against the McNear trustees.

These contracts and the negotiations leading up to them adequately bring the conduct of Pennsylvania and Wilmington Trust Company within the statutory prohibition of dealings in securities. At least one of the successful applicants agrees. On April 14, 1958, Pennsylvania Company instituted suit against the trustees of the McNear trust, seeking specific performance of the April 15, 1955 contract to sell 26% of Western's stock at $100 per share, or, in the alternative, damages for the breach of that contract in the amount of $819,000. *Pennsylvania Company* v. *Wilmington Trust Company*, Civil Action 969, Court of Chancery, New Castle, Delaware. That lawsuit is presently pending.

The suggestion by the appellees that section 10 reaches only a consummated purchase of securities runs afoul of the statutory language. Had Congress intended such restricted scope, it could hardly have couched its purpose in less appropriate language. The selection of the term "dealings" evidences an intent comprehensively to encompass all business activities with respect to the enumerated subject matter. This Court has recently given to the statu-

tory term "dealing" a broad connotation. *NLRB* v. *Cabot Carbon Company*, — U. S. —, 3 L. Ed. 2d 1175, 1180-1182 (1959).

Nor is there any basis for assuming that the adequacy of price was the sole consideration to which Congress addressed its attention. Public bidding opens the transaction to a wholesome public scrutiny not attendant upon back-room deals. In any event, Congress specifically prescribed the method by which related corporations might deal with one another. That is competitive bidding under prescribed regulation. The statute leaves no room for substitution of other procedures, even though undertaken in good faith and for proper purpose—virtues not here readily apparent.[22] This record is testimony to the wisdom of the Congressional enactment and to the scope of its prophylactic purpose. The negotiations reveal an unusual anxiety by the corporate trustee to sell the shares held in the trust estate to Pennsylvania and its partner, Santa Fe. There was an absence of the normal process of pitting prospective buyers against each other in an effort to obtain the highest possible price. While we are not here concerned with the fiduciary conduct of Wilmington Trust Company as trustee, the circumstances reveal the extraordinarily close relationship between the corporate trustee and Pennsylvania, which may reasonably be attributed to their interlocking directorates.

The consideration of section 10 by the tribunals below was shallow and inhospitable. The Commission thought

[22] The government argued that the purchase was "remote from the evils against which Section 10 was directed" because it was subject to approval by the Commission entailing a determination that the purchase price was reasonable (Motion to Affirm, p. 11). No authority is cited for such limited statutory purpose or to warrant the after-the-fact substitution of Commission review of price for the unequivocal statutory bidding procedure.

that taking the second contract in the name of Pennsylvania's partner, with a subsequent division of the shares, shielded the transaction from the statute. Equally transparent is the District Court's rewriting of the statute and its intimation that evasion might have been accomplished by Pennsylvania's acting through its wholly-owned subsidiary.[23]

The unpleasant odor of such intimations is not dissipated by the suggestion made by the Department of Justice to this Court that there is at most a technical breach of section 10. Rather, this case presents, with all the ugly brush strokes highlighted, a vivid picture of the nation's largest railroad carrier using the influence of an interlocking directorate to crush the natural expansion of a small carrier —and doing that for the deliberate purpose of suppressing competition. The purpose and effect have been to flout the public policy of the antitrust laws.

Apart from the legal authority to condone a violation of section 10 is the warrant for the exercise of a purported discretion by the Commission. Immunization from antitrust laws may not be conferred by edict or fiat, unaccompanied by disclosed considerations in the public interest dictating such exercise of discretion. Here the Commission was called upon to determine whether a transaction conceived in illegality and dedicated to the suppression of competition, was so vital to our national transportation system that the violators of the law should be clothed with

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[23] Their application itself shows that the successful applicants were quite realistic on both counts (R. 129-130):

"1. The proposed transaction for which approval is sought is the *joint acquisition* of control of TP&W by Santa Fe and Pennsylvania *Railroad* through purchase of its capital stock in equal amounts by Santa Fe and by Pennsylvania Company, a wholly-owned subsidiary of Pennsylvania Railroad." (Emphasis supplied)

immunity to preserve their illegal gains. No such overriding public interest appears in the record or the findings.

In two recent instances, the Commission refused to stamp with approval acquisitions that had been made in violation of law. In one, the Commission refused to permit the applicant to retain "the fruits of its unlawful conduct," for to sanction such conduct would be to encourage and welcome disregard of the law by others. *Central of Georgia Ry. Control*, 307 I.C.C. 39 (1958). The basic principle enunciated in that case was:

> "The public interest is concerned not only with improvements in transportation service, but also with the maintenance of respect for and the observance of the law."

With respect to the acquisition of a truck facility, the Commission held that transactions rooted in illegality "should not be blessed by approval". *L. Nelson & Sons Transportation Co.—Control and Merger—Gilbertville Trucking Co., Inc.*, 75 M. C. C. 45 (1958).[24]

B. The Interstate Commerce Commission is without authority to condone antitrust violations occurring prior to the entry of the Commission's order.

The present transaction cannot be immunized from the interdiction of section 10 of the Clayton Act. Section 5(11) of the Interstate Commerce Act is designed to facilitate the consummation of transactions approved by the Com-

[24] These decisions are in complete accord with the history of Sherman Act enforcement, where this Court has been vigilant to see that, "Those who violate the Act may not reap the benefits of their violations" or avoid an undoing of their unlawful projects. *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189 (1944). *Schine Chain Theatres* v. *United States*, 334 U. S. 110, 128 (1948). *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 152 (1948).

mission. Carriers are relieved from the operation and restraints of the antitrust laws "insofar as may be necessary to enable them to carry into effect the transaction so approved." We are here concerned not with an offense against the antitrust laws in carrying out a transaction approved by the Commission, but rather a violation antedating the proceedings before the Commission.

Pennsylvania had carried on its dealings in securities in disregard of the Clayton Act. Thereafter the transaction rooted in illegal conduct was brought to the Commission for its approval. The statute may be searched in vain for authority to confer retroactive condonation of such violation.

By its very terms the statute operates *in futuro* and not in retrospect. The exception to the antitrust laws is precise and limited. There is no authority to purge the taint of a transaction illegal at the time it was brought to the Commission.

Construing an earlier statutory version of what is now section 5(11), Commissioner Eastman said, in a concurring opinion:

> "Plainly there is nothing in this provision which in any way modifies the antitrust statutes, and nothing which suspends their operation until we have made an order. In that event the operation of these statutes is suspended with reference only to *future* acts authorized or required by the order. In no way is it suspended with reference to unauthorized acts pending our subsequent approval or disapproval, such suspension to continue if we approve and to cease if we disapprove. If that had been the intent of Congress it could very easily have been expressed, but there is no language which even remotely suggests such an intent." *ICC* v. *Baltimore & O. R. R.*, 152 I.C.C. 721, 740 (1929).

IV.

The Pennsylvania-Santa Fe acquisition was specifically designed and calculated materially to restrain competition between the Peoria gateway and the major east-west gateways of St. Louis and Chicago, and to afford monopolistic power to the successful applicants in their own service areas. Immunization of the acquisition from the operation of the antitrust laws was an abuse of the Commission's statutory power.

The order under review, carrying with it under section 5(11) of the Act, immunization from the antitrust laws in its consummation, cannot stand in the absence of clear-cut transportation advantages to the general public of such character and magnitude as to outweigh the public harm attendant upon violation of the antitrust laws. The vice of the order here assailed is the absence of consideration of the nature and scope of the antitrust violations, particularly in respect of the east-west gateway competition, the failure to cite any benefits to the public outweighing the destructive effect upon competition of the Pennsylvania-Santa Fe acquisition, and the availability of the alternative Minneapolis application that promotes both the transportation and the antitrust policies of the Congress.

Section 1 of the Sherman Act prohibiting contracts and combinations in restraint of trade, and section 7 of the Clayton Act prohibiting acquisitions of stock or corporate assets where the effect may be substantially to lessen competition or to tend to create a monopoly, are both offended by the successful applicants in two major respects. The first is a restraint of trade, lessening of competition and monopolization in east-west gateways. This element the Commission did not consider at all. The second relates to

the effect upon commerce in the respective service areas of Pennsylvania and Santa Fe." This the Commission touched upon lightly with neither comprehensive survey nor decisive determination. The Commission apparently felt, as the District Court held, that "It is not the function of the Commission to determine whether the acquisition of Western by these two railroads will violate the antitrust laws." (R. 101) The Court then noted, what is perfectly true, that the Commission made no effort to conduct such an inquiry. The Commission simply abdicated its duty to consider free competition as a pertinent factor in the public interest.

The Commission apparently did not realize how intimately its functions are touched by the antitrust laws. The Commission could determine public interest only by accommodating the reach of the antitrust laws with that of the Interstate Commerce Act. With respect to carriers, the Commission has a statutory duty to enforce section 7 of the Clayton Act and other antitrust provisions. Its responsible concern with free competition is an essential concomitant of the immunity from antitrust laws attendant upon compliance with the Commission's orders. We had thought it clear that due regard for antitrust consequence was a duty transcending the Commission's discretion. *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 86 (1944). Neither transportation policy nor protection of free competition occupies a superior position in the public interest. If the Commission is to function with an eye single to that public interest, these two fundamental policies must be accommodated, one to the other, on the basis of candid and rational reasons. In effecting that statutory accommodation, it was necessarily incumbent upon the Commission to consider the alternative application of Min-

neapolis which would further the National Transportation Policy and at once conform to the antitrust laws.

Pennsylvania, the nation's largest carrier, enjoys a preeminent position in the St. Louis and Chicago gateways, and, through its subsidiary, the Wabash, in the Decatur gateway. Santa Fe occupies a preeminent position in the Chicago gateway which, since the hearing before the trial examiner, has been enhanced by a huge, modern transfer facility. Both carriers aggressively compete with Western. (R. 398) In addition to that competition, the President of the Wabash testified that his railroad ran parallel to Western across the State of Illinois, at times running "side by side." (R. 1288-1289) The competition is so direct that improved service over the Wabash to Kansas City diverted traffic previously handled over Western and Santa Fe. (R. 1294) Among all the carriers in the United States, Pennsylvania and Santa Fe are two of the largest originators of traffic, and, as such, are able to exercise a tremendous influence over the routing of traffic. To allow control of a competing gateway—Peoria—to pass into the hands of the Pennsylvania-Santa Fe combine would place them in a powerful position to strangle Peoria gateway competition to the advantage of their preferential positions in Chicago, St. Louis and Decatur. That the fear is not idle is apparent from the admission by the President of the Pennsylvania that "we could destroy" the Effner connection.[25] Lurking in the record, too, is the historical fact that for a third of a

[25] Speaking of the Effner interchange at the east end of Western, President Symes testified: "That is what I mean when I say we made it, if anything here does harm to it, we could destroy it. That is not a threat, I don't mean it that way but I could very well do it from the standpoint of economics." (R. 547) While the President of the Santa Fe anticipated no bad relations with Western if his application were disapproved, he took occasion to warn that the possibility "should not be disregarded." (R. 434)

century the Peoria gateway did in fact dry up to the benefit and enhancement of Western's then owners' preferential interests in the competing gateways.

Many years ago this Court analyzed and condemned the very evils which the Commission and the District Court have here elected to sanction. In *United States v. Southern Pacific Co.*, 259 U.S. 214, 230 (1922), the Court stated:

> "Such combinations, not the result of normal and natural growth and development, but springing from the formation of holding companies, or stock purchases, resulting in the unified control of different roads or systems, naturally competitive, constitute 'a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected.' "

This principle was then applied to the very considerations which will inevitably influence the Pennsylvania-Santa Fe group in the instant case:

> "Self-interest dictates the solicitation and procurement of freight for the longer haul by the Southern Pacific lines. While many practices, formerly in vogue, are eliminated by the legislation of Congress regulating interstate commerce, and through rates and transportation may be had under public supervision, there are elements of competition in the granting of special facilities, the prompt carrying and delivery of freight, the ready and agreeable adjustment and settlement of claims, and other elements which that legislation does not control." (259 U.S. at 231)

Ill-concealed by the loose references to parity and benevolence is the fact that Santa Fe and Pennsylvania promise only to lessen their resistance to Western's solicitation for the Peoria gateway. But as the Commission's order stands,

Western's solicitation will be controlled by these very carriers. Can it be assumed that their own economic self-interests will actually be submerged and sacrificed? Would Santa Fe be content with 52% of the revenues on a shipment routed through Lomax which would yield Santa Fe 70% if routed through Chicago, even if one-half of the difference, remaining after expenses, could be realized through ownership in Western? Or would Pennsylvania be content with 26% of the revenues on shipments routed through Effner which would yield Pennsylvania 50% if routed through St. Louis, and would yield the combined Pennsylvania-Wabash 70%; even if some 11%, less expenses, were realized through ownership in Western? These queries are predicated upon the specific divisions for various traffic routings shown in the first table of Exhibit H-34. (R. 1769-1816, 1166) Economic self-interest and human nature being what they are, the Western traffic organization will be responsive to the best interests of the owners of Western. No Western solicitor would dare buck either Pennsylvania or Santa Fe in routing solicitation. Unless we are to retreat to Alice-in-Wonderland fantasy, we must face the fact that the self-interest of the controlling carriers will be a primary consideration in traffic solicitation. The gateways which yield them the greater return will necessarily be favored over the competitive route of Western.

In *ICC* v. *Baltimore & O. R. R.*, 152 I.C.C. 721, 735, 736 (1929), the Commission pointed out that (a) the effective competition in the solicitation of the acquired carrier could not survive the acquisition because "knowledge of its relationship to its controlling lines would deprive it of force as a competitor for their traffic", and (b) the motivation of the acquiring carriers "to prevent the consumma-

tion of the plans for a competing through system" should not be ignored.

The Commission has here deviated from the realistic standards by which it has tested previous comparable situations. *Chicago, B. & Q. R. R. Control*, 271 I.C.C. 63, 162-163 (1948); *ICC* v. *Baltimore & O. R. R.*, 152 I.C.C. 721, 735-736 (1929). Recently the District Court quoted with approval certain statements of the Commission rejecting the applications of Northern Pacific, Great Northern and Milwaukee to acquire the Spokane International Railroad. *Canadian Pacific Ry.* v. *United States*, 158 F. Supp. 248, 253-254 (D. Minn. 1958). These statements are equally apposite here. When the word "Western" is substituted for the words "Spokane International", they read:

> " '. . . Such ownership, involving as it does the principal competitors of the Western, would result in a conflict of interests which inevitably would lead to a stalemate in matters of policy, solicitation of traffic, physical improvements, and industrial development. The competitors would be more interested in their wholly-owned lines than they would be in the part ownership of the Western. Divided ownership and responsibility, particularly where the interests of those in control may be somewhat opposed, would not be conducive to harmonious results. Any plan calling for control by its competitors offers little or no prospect that the Western's properties would continue to be operated vigorously in the solicitation of rail traffic as they are now. . . .' "

The motives of the Pennsylvania-Santa Fe group did not concern the Commission although the evidence was clear, convincing and uncontradicted. (R. 454-455, 533, 535, 539-540, 597, 1022-1023) Even the most ingenuous of optimists ought to be convinced by the admission made by President Symes of Pennsylvania under oath that his pur-

pose in seeking control of Western was to block the competitive outer-outer belt line around Chicago.[26]

The Commission, the District Court and the appellees are unanimous in their disregard of the competition-stifling intent of Pennsylvania and the history of the negotiations. If the mere suspicion of a scheme to suppress competition was sufficient to evoke disapproval in the *Baltimore & O. R. R.* case, how much more forceful is the demand for judicial condemnation in the present case, where the pernicious purpose was admitted under oath by the prime movers.

The duty of the Commission with respect to granting immunity under the antitrust laws was spelled out by Mr. Justice Rutledge, speaking for this Court in *McLean Trucking Co. v. United States*, 321 U.S. 67, 86-88 (1944):

> "Congress however neither has made the antitrust laws wholly inapplicable to the transportation industry nor has authorized the Commission in passing on a proposed merger to ignore their policy. Congress recognized that the process of consolidating motor carriers would result in some diminution of competition and might result in the creation of monopolies. To prevent the latter effect and to *make certain that the former was permitted only where appropriate to further the national transportation policy*, it placed in the Commission power to control such developments.
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> * * * * *
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> "In short, the Commission must estimate the scope and appraise the effects of the curtailment of the competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower

[26] The President of the Santa Fe reflected little public interest in his explanation for opposing the Minneapolis when he made the statement already quoted above, that "the brief answer is that we prefer to own it." (R. 455)

> costs, etc., to determine whether the consolidation will assist in effectuating the over-all transportation policy. . . . If the Commission did not exceed the statutory limits within which Congress confined its discretion *and its findings are adequate and supported by evidence*, it is not our function to upset its order." (Emphasis supplied)

In quoting from that opinion, neither the District Court nor any of the appellees has seen fit to include the first sentence quoted above. The obligation prescribed by this Court required the Commission to bring into rational focus the full thrust of both the National Transportation Policy and the antitrust laws. In doing so, the Commission may not deny hospitable acceptance to the antitrust laws nor may it substitute its own conclusory evaluation of competitive requirements for the dictates of those laws and the National Transportation Policy.

In its report the Commission did concede that the effect of the Pennsylvania-Santa Fe acquisition might be "some diversion of traffic". (R. 34) The Commission, however, was addressing itself solely to the narrow effect as among the several carriers within the Peoria gateway. What it failed to consider was the more important, much broader, question of the future of the Peoria gateway itself if entrusted to the powerful carriers whose primary interests lay elsewhere. The Commission ignored the fact that its order would place it within the unrestrained power of the Pennsylvania-Santa Fe group substantially to lessen the traffic through the Peoria gateway, for the benefit of the competing St. Louis and Chicago gateways, which, at least in respect of the Pennsylvania, was the very purpose of the acquisition. It is in this vital, sensitive area of the natural working of economic forces that the Commission was called upon to exercise the highest level of expertise analysis.

and it is in this very area that the greatest vacuum exists in the Commission's report.

A second aspect of the competitive problem, equally ignored by the Commission, is the over-all effect upon transportation of linking, and enlarging the sphere of influence of, two gigantic rail empires. The greatest tonnage in the east is captive to Pennsylvania; the greatest tonnage in the west is captive to Santa Fe. Their influence upon other carriers and industry dependent upon their services is monumental. Their traffic solicitation and operating coverage is enormous. Against this background, any enhancement of their competitive power increases the pressure upon, and the jeopardy to, their competitors in rail and other transportation. When it is remembered that the proposed addition joins these two giants, the perils are necessarily magnified. By any standard of measurement, the power of these two colossi of the railroad industry is already so tremendous that any further augmentation violates the language, spirit and national policy of the antitrust laws.

The President of Santa Fe insisted that as a matter of general policy "the applicant having the greatest exchange of traffic . . . should be preferred." (R. 384) The Commission wholeheartedly embraced that philosophy to the extreme. It awarded Western to the huge carriers enjoying the heaviest connections even though that traffic was interchanged despite, not because of, such connecting carriers. It made that award in the face of the conflicting self-interests, the condemnatory experience and the destructive competitive purposes. That underlying philosophy jeopardizes fair competitive practices in the transportation industry and is calculated to spill over into other areas. Our way of life does not contemplate that a government agency should make the big, bigger, and the small, weaker.

Since size itself is "an earmark of monopoly power",[37] Pennsylvania-Santa Fe could not sustain their application without an affirmative showing that the antitrust laws would not be transgressed. No such showing was made nor was it possible under the circumstances of this case.

Pertinent is the comment of the Commission in rejecting the application of Santa Fe and Burlington to acquire joint control of a small carrier affording access to St. Louis:

> "The fact that two of the strongest railroads in the United States propose to unite in an arrangement whereby they could attract to their lines from competing carriers a large volume of traffic and handle it at favorable operating costs, would, inure largely to their benefit and possibly to the benefit of some shippers, but ultimately, because of the power that might be exercised in an area where competition is so keen the transportation facilities in the entire Southwestern section of the country would probably be adversely affected. Traffic losses of other carriers, including the protesting railroads, unable to compete with such a powerful combination, might be so great as to result in curtailment of service or abandonment of substantial portions of their lines, either of which would be detrimental to the public interest." *Chicago, B. & Q. R. R. Control*, 271 I.C.C. 63, 162-163 (1948).

Promises to avoid such detriment, even if buttressed by conditions in the order, were regarded by the Commission as inadequate against the normal incentive of carriers for the long haul.

Santa Fe and Pennsylvania are both in active competition with Western. The power and self-interest of the successful applicants in curtailing competition with Western so as to promote their preferential long hauls is undeniable. It happened before, and it is not illogical to antici-

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[37] *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 174 (1948).

pate a repetition. The Commission has found that "mere representation" of one carrier on the board of another would "destroy the latter's neutrality" and may "substantially lessen competition." *New York, Chicago & St. L. R. R. Control*, 295 I.C.C. 131, 148 (1955). The consequences of control of a competitor are more far-reaching in terms of service, traffic data and solicitation. Mere access to Western's interchange reports would yield valuable competitive information as to the types, sources, volume and destinations of traffic moving via Western in conjunction with other connecting carriers. There is no reason to expect self-restraint on the part of Pennsylvania or Santa Fe in utilizing the competitive advantages in their own service areas which control of the strategic Western line can yield. The reasonable likelihood that the acquisition will result in a restraint of commerce is sufficient to invoke section 7 of the Clayton Act even were competition absent between the parties to the acquisition. *United States* v. *E. I. duPont deNemours & Co.*, 353 U. S. 586, 592 (1957). It is apparent that, in terms of both gateway competition and traffic competition in the Pennsylvania and Santa Fe service areas, the combination under scrutiny by the Commission would be unreasonably in restraint of trade.

In a proper case the Commission admittedly may determine that antitrust considerations should be subordinated to other considerations in the public interest. In order to make that determination, however, and to make it susceptible to the meaningful judicial review guaranteed by statute, the Commission must spell out the other interests—as it failed to do here. They cannot be assumed or implied from expertise.

No exploration of the antitrust problems could be com-

plete without consideration of the available alternatives. The Minneapolis application was ready at hand. Of all the carriers in the proceeding, Minneapolis alone has no conflict of interest with the Peoria gateway. Its program was calculated to foster and stimulate, rather than to stifle and lessen, competition. It contemplated promoting the use of the Peoria gateway in more spirited competition with the busier terminals. It carried with it, in the public interest, economy, integration and elimination of duplication and waste, improvement and acceleration of service, all objectives underscored in the National Transportation Policy. The Commission's criticism of the Minneapolis proposal on the ground that top management would no longer be located in Peoria has been shown to be a transparent sham in which the Commission can take little pride as an expert.

The record with respect to antitrust considerations required findings by the Commission (1) that the acquisition of Western by Pennsylvania-Santa Fe would, in telling and far-reaching respects, offend section 1 of the Sherman Act and section 7 of the Clayton Act, (2) that the disadvantages of the restraint are hardly overcome, so far as the public is concerned, by the illusory "independence" of Western, and (3) that the allowance of the Minneapolis application would be consistent with, and indeed promote, the national policy for the preservation of free competition.

V.

The restrictive consideration by the District Court constituted a denial of judicial review.

A rubber stamp approval of the Commission's report was sought by the appellees and given in the District Court. The government told the Court that "no case has been

found in which such an order has been held invalid on the merits." (D.C. Brief, Department of Justice and I.C.C., p. 10). The District Court summed up its concept in the extraordinary statement that "within the limits of the jurisdiction conferred upon it, the power of a Court or an administrative agency to decide questions is not confined to deciding them correctly." And then that tribunal applied that approach quite literally.

No invasion of the province entrusted to the Commission was sought in this case. We complained that looking down one side of the street and paying no attention to the other constituted a denial of a comparative hearing and was in keeping with the one-sided approach condemned by this Court in *Schaffer Transportation Co.* v. *United States*, 355 U.S. 83 (1957), handed down after the Commission had acted.

The whole subject of findings was left untouched in the District Court. Neither the omission nor the lack of adequate support was explored.

An unmistakable issue of law was raised with respect to section 10 of the Clayton Act. Refuge in expertise judgment was unavailable. To avoid reversing the Commission, the Court supplied its own concept of what the law ought to be, a concept so alien to the Congressional enactment that it was never urged or defended—either before or after the District Court opinion.

Finally, there were the broader antitrust aspects of the case. Seldom is a purpose to inhibit competition candidly announced. This case being an exception, one would have expected the Court to seize upon the confession of illegal purpose and question the failure of the administrative agency to take it into account. If the Court gave any thought to the adverse effect upon competition between the several

gateways, it was not expressed in the written word of the opinion. The judicial thinking was that since the general subject had been given some limited consideration by the Commission, Minneapolis was foreclosed from asking the Court to examine any phase of the issue. (R. 101)

Not without significance is the fact that this very District Court gave the same rubber stamp approval, almost at the same time, to a decision of the Commission denying competitive carriers—including large connections—authority to acquire a smaller carrier because of the harmful results competitively. *Canadian Pacific Ry.* v. *United States*, 158 F. Supp. 248 (D. Minn. 1958).

The perfunctory character of the review, manifest in the lower court's opinion, constituted an abdication of the functions designed to assure compliance with law by an administrative agency.

Conclusion

The considerations presented in this brief warrant relief by an order or orders:

1. Enjoining, annulling and setting aside the orders of the Interstate Commerce Commission dated May 31, 1957 and October 30, 1957 in Dockets 18991 and 18906.

2. Declaring that, on the undisputed evidence, the Interstate Commerce Commission should have made an order determining that the application of Minneapolis to acquire the capital stock of Western is in the public interest, serving to promote the National Transportation Policy because of efficiency, economy and improved service, the absence of unfair or destructive competitive practices, and the strengthening of Minneapolis as an integral part of the national transportation system.

3. Declaring that the Interstate Commerce Commission should have found that the application of Santa Fe and Pennsylvania to acquire the stock of Western is contrary to the public interest by reason of their conflicting interests in competing gateways, the absence of any improvement in service or provision for economies, Pennsylvania's violation of section 10 of the Clayton Act, and the fact that the acquisition would produce flagrant violations of section 1 of the Sherman Act and section 7 of the Clayton Act, which are neither balanced nor overridden by any considerations of public interest.

4. Declaring that upon this record and as a matter of law it is the duty of the Interstate Commerce Commission to enter an order approving the application of Minneapolis, authorizing the acquisition of the Western stock by Minneapolis and denying the application of Pennsylvania-Santa Fe.

5. Reversing the order of the District Court and remanding this proceeding to that Court with directions to take appropriate steps to effectuate the foregoing relief.

Respectfully submitted,

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APPENDIX A

Section 1 of the Sherman Act, as amended (26 Stat. 209, as amended, 15 U.S.C. § 1):

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction there-

of, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 7 of the Clayton Act, as amended (38 Stat. 731, as amended, 15 U.S.C. § 18):

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

"No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

"This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate

branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

"Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

"Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

"Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Com-

merce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79 of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Secretary, or Board."

Section 10 of the Clayton Act (38 Stat. 734, 15 U.S.C. 20):

"No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

"Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding, or shall do any act to prevent free and fair competition

among the bidders or those desiring to bid, shall be punished as prescribed in this section in the case of an officer or director.

"Every such common carrier having any such transactions or making any such purchases shall, within thirty days after making the same, file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions, it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

"If any common carrier shall violate this section, it shall be fined not exceeding $25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation, or who shall have aided or abetted in such violation, shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000 or confined in jail not exceeding one year, or both, in the discretion of the court."

National Transportation Policy (54 Stat. 899, 49 U.S.C. preceding § 1):

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical and efficient service and foster,

sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Section 5(2) of the Interstate Commerce Act, as amended (24 Stat. 380, as amended, 49 U.S.C. § 5(2))

"(2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

"(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person

which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

"(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by, any other such carrier, and terminals incidental thereto.

"(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties, of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 305(e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and, a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this chapter, or any person which is controlled

by such a carrier, or affiliated therewith within the mea
ing of paragraph (6), is an applicant in the case of a
such proposed transaction involving a motor carrier, t
Commission shall not enter such an order unless it fin
that the transaction proposed will be consistent with t
public interest and will enable such carrier to use servi
by motor vehicle to public advantage in its operations a
will not unduly restrain competition.

"(c) In passing upon any proposed transaction und
the provisions of this paragraph (2), the Commission sha
give weight to the following considerations, among other
(1) The effect of the proposed transaction upon adequa
transportation service to the public; (2) the effect upon t
public interest of the inclusion, or failure to include, oth
railroads in the territory involved in the proposed transa
tion; (3) the total fixed charges resulting from the propo
ed transaction; and (4) the interest of the carrier employe
affected.

"(d) The Commission shall have authority in the ca
of a proposed transaction under this paragraph (2) invol
ing a railroad or railroads, as a prerequisite to its approv
of the proposed transaction, to require, upon equitab
terms, the inclusion of another railroad or other railroa
in the territory involved, upon petition by such railroad
railroads requesting such inclusion, and upon a finding th
such inclusion is consistent with the public interest.

"(e) No transaction which contemplates a guaran
or assumption of payment of dividends or of fixed charge
shall be approved by the Commission under this paragra
(2) except upon a specific finding by the Commission th
such guaranty or assumption is not inconsistent with t
public interest. No transaction shall be approved und

this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Commission that such increase would not be contrary to public interest.

"(f) As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees."

Section 5(11) of the Interstate Commerce Act, as amended (24 Stat. 380, as amended, 49 U.S.C. § 5 (11)):

"The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with

the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority, and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State."

Section 8 (b) of the Administrative Procedure Act (60 Stat. 242, 5 U.S.C. § 1007(b)):

"In cases in which a hearing is required to be conducted in conformity with section 1006 of this title—

* * * * *

"(b) Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof."

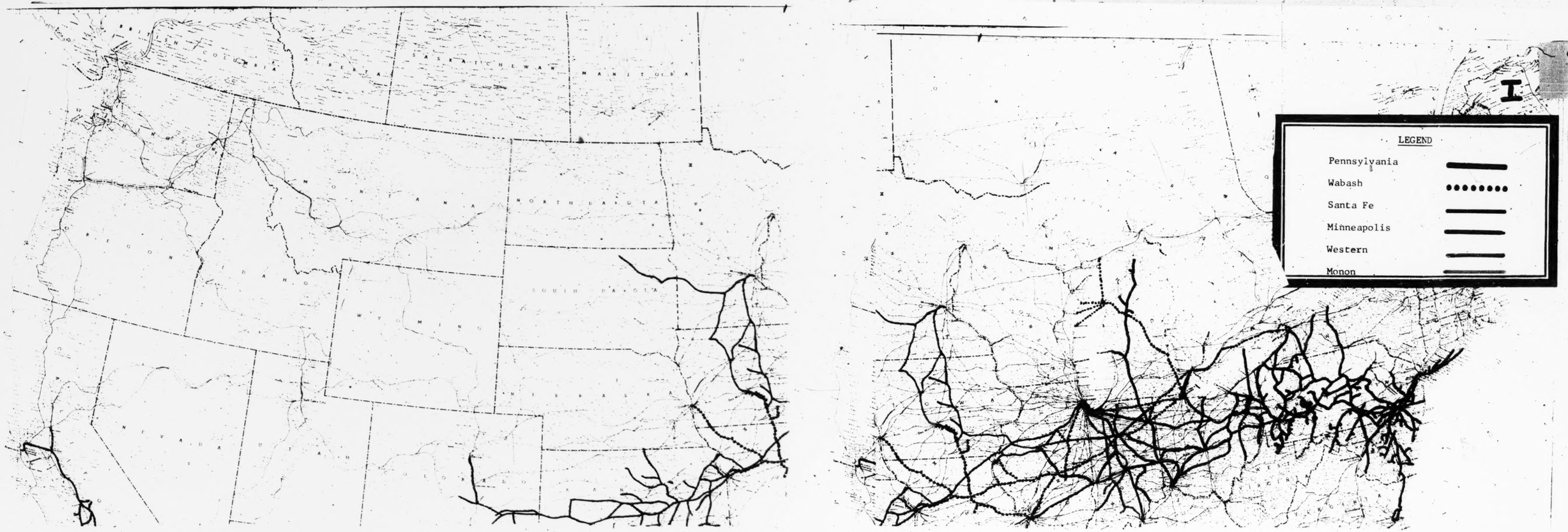
Section 10 (e) of the Administrative Procedure Act (6 Stat. 243, 5 U.S.C. § 1009 (e)):

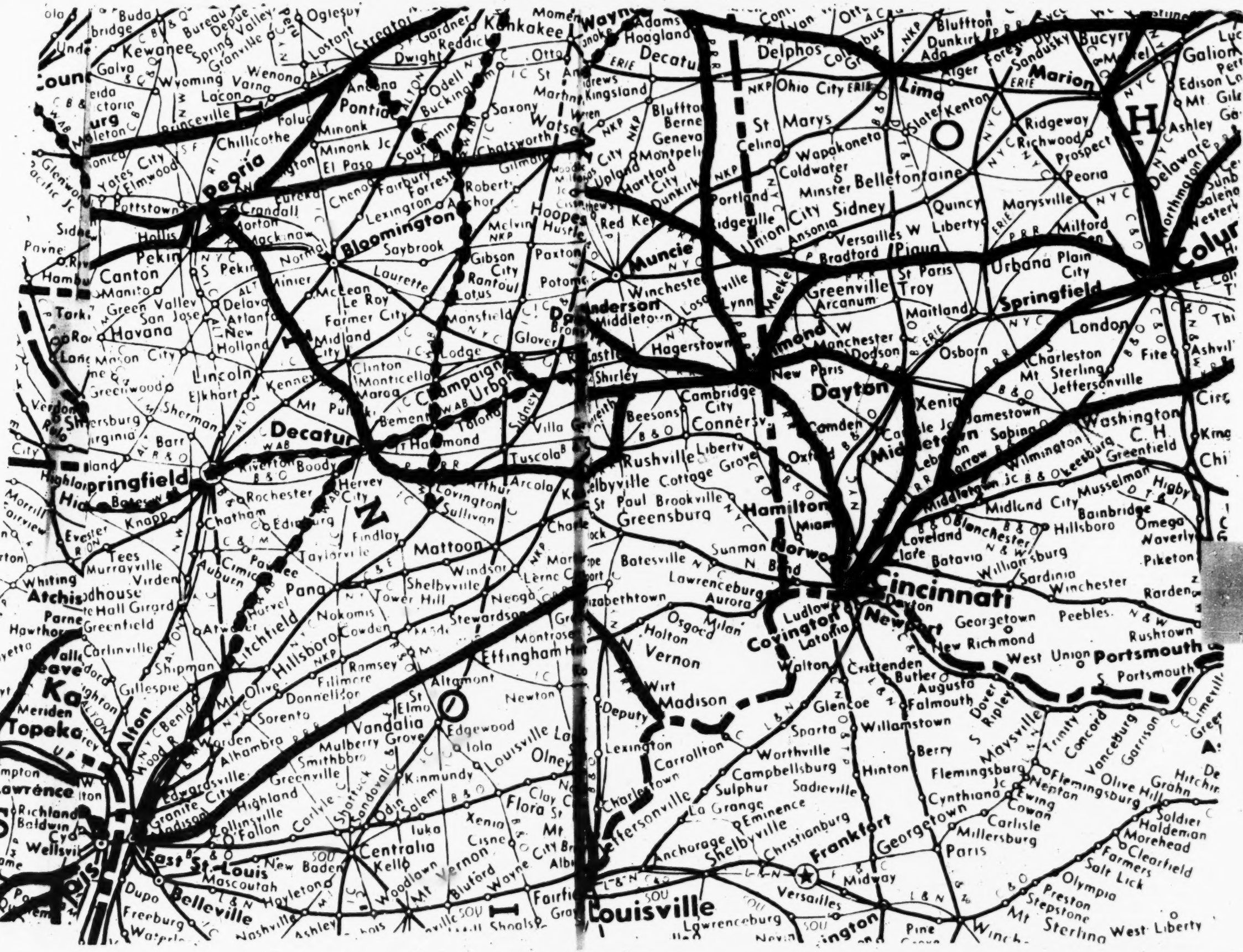
"Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion,

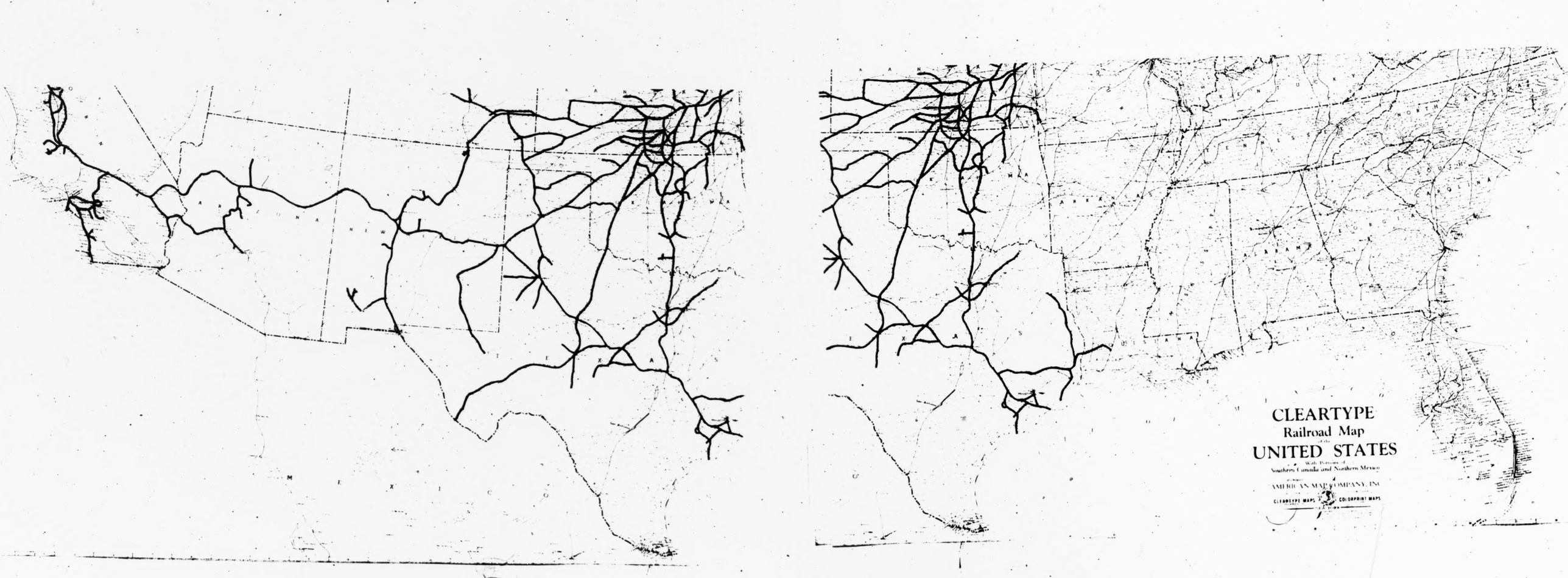
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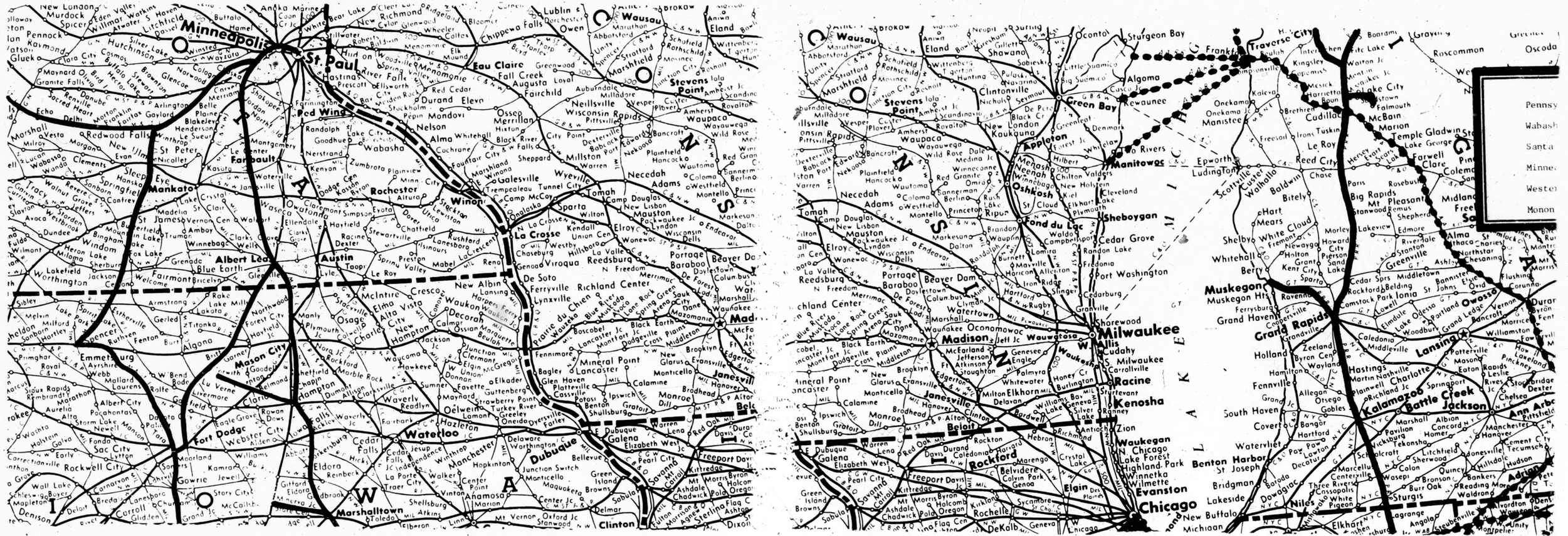
"(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provi-

sions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."


I
LEGEND
Pennsylvania
Wabash
Santa Fe
Minneapolis
Western
Monon


Kewanee
Galva
Wyoming
Lacon
Chillicothe
Peoria
Pontiac
Bloomington
Pekin
Canton
Havana
Lincoln
Decatur
Springfield
Kankakee
Watseka
Hoopeston
Champaign
Urbana
Danville
Mattoon
Pana
Litchfield
Hillsboro
Effingham
Centralia
East St. Louis
Belleville
Alton
Lawrence
Topeka
Atchison
Wayne
Decatur
Delphos
Ohio City
St Marys
Celina
Lima
Marion
Kenton
Ridgeway
Richwood
Prospect
Peoria
Wapakoneta
Coldwater
Minster
Belletontaine
Sidney
Quincy
Marysville
Milford
Versailles
Liberty
Piqua
Bradford
Greenville
Troy
St Paris
Arcanum
Urbana
Plain City
Springfield
Maitland
London
Osborn
Charleston
Mt Sterling
Jeffersonville
Fite
Xenia
Jamestown
Washington C H
Greenfield
Sabina
Wilmington
Leesburg
Middletown
Dayton
New Paris
Hagerstown
Manchester
Dodson
Muncie
Winchester
Lynn
Middletown
Anderson
Shirley
Cambridge City
Connersville
Beesons
Rushville
Liberty
Cottage Grove
St Paul
Brookville
Greensburg
Batesville
Lawrenceburg
Aurora
Hamilton
Sunman
Norwood
Cincinnati
Loveland
Batavia
Williamsburg
Sardinia
Winchester
Georgetown
Peebles
Rushtown
Portsmouth
West Union
New Richmond
Newport
Covington
Ludlow
Latonia
Dayton
Osgood
Milan
Holton
N Vernon
Madison
Deputy
Lexington
Carrollton
Worthville
Campbellsburg
Sulphur
Sadieville
La Grange
Eminence
Shelbyville
Christianburg
Frankfort
Georgetown
Paris
Millersburg
Carlisle
Cynthiana
Ewing
Cowan
Flemingsburg
Nepton
Olive Hill
Grahn
Hitchins
Maysville
Trinity
Concord
Vanceburg
Garrison
Ripley
Dover
Augusta
Falmouth
Glencoe
Sparta
Williamstown
Berry
Hinton
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In the Supreme Court of the United States

OCTOBER TERM 1959

No. 27

THE STATE OF SOUTH DAKOTA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

Appellants

VS.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

BRIEF OF APPELLANTS THE STATE OF SOUTH DAKOTA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

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Hayward-Court Brief Ptg. Co., Mpls. 15, Minn.

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OPINIONS BELOW

The opinion of the District Court for the District of Minnesota, 4th Division, is reported in 165 F. Supp. 893. The report of Division 4 of the Interstate Commerce Commission is reported in 295 I.C.C. 523. Copies of these opinions are printed in the consolidated record herein (R. 91-105, 17-49), covering this appeal and the companion appeals of The Minneapolis & St. Louis Railway Company

(No. 12) and of the State of Minnesota and the Minnesota Railroad and Warehouse Commission (No. 28).

JURISDICTION

This appeal is taken from the final order of the United States District Court for the District of Minnesota, entered September 16, 1958, dismissing several complaints, including the complaint in intervention of these appellants, and refusing to vacate the order of Division 4 of the Interstate Commerce Commission issued May 31, 1957, and the Order of the Interstate Commerce Commission of October 30, 1957. The Commission's Orders authorized The Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Railroad Company to acquire control, through stock ownership, of the Toledo, Peoria & Western Railroad Company, and dismissed the competing application for acquisition by The Minneapolis & St. Louis Railway Company.[1]

The State of South Dakota and the Public Utilities Commission of the State of South Dakota were intervenors before the District Court. The action was brought by Minneapolis to set aside the above mentioned orders of Division 4 of the Interstate Commerce Commission and of the Interstate Commerce Commission. It was heard by a District Court of three judges, as provided in 28 U.S.C. § 2284 and §§ 2321-2325. The final order of the District Court was entered September 16, 1958, and the appellants' Notice of Appeal was filed in that Court November 13, 1958 (R. 105, 114). The jurisdiction of the Supreme Court to

[1] Hereafter, as in the proceedings below, The Minneapolis & St. Louis Railway Company will be referred to as "Minneapolis", the Toledo, Peoria & Western Railroad Company as "Western", The Atchison, Topeka and Santa Fe Railway Company as "Santa Fe", and the Pennsylvania Railroad Company as "Pennsylvania".

review that decision by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b).

STATUTES INVOLVED

Section 1 of the Sherman Act, as amended (15 U.S.C. § 1); section 7 of the Clayton Act, as amended (15 U.S.C. § 18); the National Transportation Policy and sections 5(2) and 5(11) of the Interstate Commerce Act, as amended (49 U.S.C. preceding § 1, and §§ 5(2) and 5(11)); and sections 8(b) and 10(e) of the Administrative Procedure Act (5 U.S.C. §§ 1007 and 1009) are set forth in Appendix A of the Minneapolis brief and are incorporated herein by reference.

QUESTIONS PRESENTED FOR REVIEW

These appellants will present two questions which are of immediate and urgent concern to the State of South Dakota.

1. The Interstate Commerce Commission arbitrarily and erroneously failed to consider or to make any findings concerning the harm to the public which will result from loss of adequate rail transportation service on the branch lines of the Minneapolis in South Dakota. The findings refer to no off-setting or overbalancing benefits to the area served by the Santa Fe and the Pennsylvania which could result from their acquisition of Western. The public interest resulting from predicted abandonment of service is so directly related to the statutory criterion "*adequacy of transportation*" that absence of findings by the Commission on this controlling issue renders its decision void, and requires setting aside the Commission's Order.

2. In authorizing the Pennsylvania-Santa Fe acquisition, the Interstate Commerce Commission failed to give proper weight and consideration to the adverse competitive effect thereof on Minneapolis and to the antitrust policy and purposes of section 1 of the Sherman Act and section 7 of the Clayton Act.

STATEMENT OF THE CASE

As indicated above, the appeal to this Court of the State of South Dakota and the Public Utilities Commission of the State of South Dakota is a companion appeal to that taken by Minneapolis from the same final Order of the District Court. Therefore, we shall confine this brief to those facts and issues which directly affect the *public interest* of this State, and adopt by reference in the interest of brevity the Statement of the Case set forth in the brief of Minneapolis, mentioning here only those additional facts of special interest to this State.

The State of South Dakota and the Public Utilities Commission of the State of South Dakota have participated throughout, both before the Interstate Commerce Commission and in the District Court. These appellants have done so in order to protect the *public interest* of South Dakota in adequate rail transportation and to assure the integrity of the marginal branch lines of Minneapolis serving South Dakota and the several railroad stations located along such lines. Absence of competitive rail lines serving much of the area renders imperative continuance of the established rail service by Minneapolis.

The Minneapolis branch line entering South Dakota extends approximately 154 miles into the northeastern part of the state (R. 1166). It is an important link of rail transportation in the state, serving six counties and seventeen

cities and towns and the trade territory adjacent thereto (R. 1167). This area in South Dakota consists of 6,685 square miles of farm land, all under cultivation, with an annual average production of over $92,000,000 of agricultural commodities (R. 1168-1169; Ex. H-37, R. 1856-1866, 1173). Over a period of 27 years, an average of 136,581 tons of traffic originated on the South Dakota segment of the Minneapolis and 92,363 tons of freight terminated thereon (Ex. H-37, R. 1856-1866, 1173). That segment of rail transportation is a part of the less remunerative mileage operated by Minneapolis (R. 1170). Continuance of rail service on this segment is dependent upon the results of operations over the system as a whole (R. 1117, 1432).

Witness Swanson testified (R. 1117):

> "We have analyzed this traffic and have come to the conclusion that based upon 1954 figures we would suffer an annual loss of approximately $1,110,000 in the event the application of the Pennsylvania and Santa Fe were granted.
>
> "All of this business I have described as being vulnerable to loss to the M&StL, is very desirable traffic. It not only pays its way but lends substantial support to our entire system. *Without it our low density lines in South Dakota*, Western Minnesota, and Western Iowa *could not survive*." (Emphasis supplied)

The factual accounting basis for Mr. Swanson's estimate was in evidence and was not challenged (Ex. H-32, R. 1755-1767, 1166; Ex. H-33, R. 1768, 1166). His testimony was corroborated by that of other witnesses, including Dr. Edmund A. Nightingale, of the University of Minnesota, an independent, unquestioned authority on transportation and railroad traffic (R. 1431-1441). None of

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the testimony was controverted. The Commission refused to consider it.

The Interstate Commerce Commission had only this to say:

> "*State representations*—The States of Minnesota and South Dakota, along with their respective Public Service Commissions, intervened in support of the Minneapolis application. They fear that with Western under the control of the Santa Fe and the Pennsylvania, the Peoria route of the Minneapolis will deteriorate to the extent that its low density lines in Minnesota and South Dakota will be in danger of abandonment * * * Of course, there can be no abandonment of any line of railroad without the issuance by us of a certificate of public convenience and necessity permitting such abandonments. So far as the instant record is concerned, no abandonments are presently contemplated." (R. 42-43)

The District Court did even less. It did not even refer to the contentions of these appellants except to state that they supported the Minneapolis.

The Interstate Commerce Commission ignored the factors which are of primary importance to the State of South Dakota and which should be controlling. The District Court, in turn, simply by-passed the Commission's error of omission and commission thereby depriving these appellants of a full judicial review.

SUMMARY OF ARGUMENT

When it approved the Pennsylvania-Santa Fe application and dismissed the Minneapolis application, the Interstate Commerce Commission failed to strike a balance between the public benefits, on the one hand, and the loss or damage to the public, on the other hand. The Commission

ignored the sole dependence of Minneapolis on the Peoria gateway and brushed off the uncontroverted evidence of the serious consequences to this State which would flow from having Western pass into the hands of competitors lacking any comparable interest in the Peoria gateway. In the few instances where it did consider results, the Commission employed different standards to test the competing applications. Otherwise, it completely failed to make findings on the material issues. The Commission's action ignored the standards of the National Transportation Policy and the Interstate Commerce Act and the procedural requirements of the Administrative Procedure Act. In essence, the award constituted arbitrary action which should be reversed.

In authorizing the Pennsylvania-Santa Fe combine to take control of Western, the Interstate Commerce Commission did not even mention section 1 of the Sherman Act, section 7 of the Clayton Act, or the national antitrust policy. The Commission purported to give the successful applicants immunity from prosecution under those antitrust laws without any findings on the issues presented by the record and without stating any reasons why such immunity could be warranted in the public interest. If that determination stands, it will be contrary to the teaching of *McLean Trucking Co.* v. *United States*, 321 U.S. 67 (1944), and will amount to a holding that the antitrust laws are completely inapplicable to the conduct of the nation's transportation.

ARGUMENT

1. The Disregard of the Branch Lines in South Dakota.

The National Transportation Policy (49 U.S.C. preceding § 1) requires the Interstate Commerce Commission "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation". Section 5(2) of the Interstate Commerce Act (49 U.S.C. § 5(2)) commands the Commission to approve applications for control of a carrier only when the proposed transaction "will be consistent with the public interest", and orders the Commission to give weight to the effect of the proposed transaction upon adequate transportation service to the public. The meaning of the basic statutory criterion has been expressed as follows by Chief Justice Hughes in *New York Central Securities Corp.* v. *United States*, 287 U.S. 12, 25 (1932):

> "* * * the term 'public interest' * * * is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities. * * *"

In the instant case the evidence before the Commission established beyond question that the Minneapolis is solely dependent upon the Peoria gateway for its lifeblood (R. 1100-1102, 1413), whereas the Pennsylvania-Santa Fe combine has no comparable interest in the Peoria gateway (R. 497, 498-499, 506, 520-522, 546-547, 571, 590-591, 1126-1129); that ownership of Western by the Minneapolis would foster economy and efficiency (R. 1028, 1076-1077, 1186-1187, 1228-1229, 1239-1242; Ex. H-44, R. 1894-1924, 1379), whereas ownership by the Pennsylvan-

ia-Santa Fe combine would promote neither economy nor efficiency (R. 434-435, 437-439); that ownership by the Minneapolis would promote adequate transportation service (R. 1101-1104, 1184-1185, 1229-1231, 1231-1234), whereas ownership by the Pennsylvania-Santa Fe combine would do nothing toward that end (R. 457-458, 520-522, 571). The State of South Dakota and its Public Utilities Commission have a vital interest in strengthening the Minneapolis to preserve the adequacy of its transportation service on the branch lines in this State; they have an equally vital interest in seeing that the Minneapolis is not weakened, because the inevitable result of any such weakening will be felt first on the marginal branch lines in South Dakota (R. 1117, 1166-1167, 1168-1170, 1431-1441).

The record is replete with uncontroverted evidence of the vulnerability of the traffic presently carried by Minneapolis (R. 1112-1117, 1185, 1408-1409). Much of that highly competitive traffic is certain to be diverted by the powerful solicitation efforts of the Pennsylvania-Santa Fe combine (R. 1117, 1187-1188, 1408-1409). The Commission recognized that there might be some diversion of traffic, but concluded, "* * * such diversion would not jeopardize the maintenance of adequate transportation service by the objecting intervening carriers" (R. 34). That conclusion is empty, unexplained, unsupported and erroneous.

As indicated above, the Commission also brushed off the contentions of these appellants by stating that "no abandonments are presently contemplated" (R. 43). It is clear, however, that one of the first effects of drying up the Minneapolis traffic will be an application, at some future date, for abandonment of service on the marginal branch lines in South Dakota (R. 1117, 1169-1170, 1437). These

appellants are interested in preventive medicine now, not curative medicine in the future. A diminution of the Minneapolis revenues must be prevented now so that no reason can be given in the future for abandonment of the trackage in South Dakota. If the revenues are allowed to diminish and in consequence the branch lines in South Dakota become losing operations, then they will be a burden on interstate commerce and it will be the duty of the Commission to authorize the abandonment of those lines. That inevitable result was totally disregarded by the Commission in the instant case. The realistic danger faced by South Dakota stems from the inescapable economies; it is not limited, as the Commission lightly assumed, by "present contemplations".

The Commission's shocking prejudgment of this case is laid bare by the double standard it employed. The effect of the Pennsylvania-Santa Fe acquisition of Western was simply brushed aside and the future abandonments it would necessitate were deemed unimportant (R. 42-43). On the other hand, when considering the effect of an acquisition of Western by the Minneapolis, the Commission stated (R. 32):

> "Under the Minneapolis' unified-operation theory a new service route via Forrest would be established for such traffic which would imperil, or at least diminish the Wabash's participation therein, and possibly could result in the abandonment of the latter's Des Moines branch."

The record contains no support for the Commission's solicitude on behalf of the Wabash nor any explanation of the different treatment concerning abandonment between the competing applications. The unexplained contrast in the treatment makes a travesty of administrative justice.

A number of communities along the Western supported the Pennsylvania-Santa Fe application. Their intervention, however, was merely a result of a brief, intensive public relations campaign by the wealthy Santa Fe (*e.g.*, R. 637-638, 643-645, 673-674, 748-750, 751-752, 800-801, 821-822, 884, 1505-1506). In truth those communities would benefit from a Minneapolis acquisition and could suffer from a Pennsylvania-Santa Fe acquisition. Certain labor groups also supported the Pennsylvania-Santa Fe application. They also could not suffer from a Minneapolis acquisition; they are protected by the Minneapolis commitment to abide by the provisions of the Washington Job Protection Agreement of 1936 (R. 1032-1033). Furthermore, the record is clear that any labor economies to be effected by Minneapolis would come as the result of normal retirements, not discharges (R. 1032, 1033, 1078, 1242).

In reaching its arbitrary conclusion to approve the further aggrandizement of the two railroad giants and to overlook the harmful effects on these appellants and others, the Commission not only ignored the controlling statutory criteria but also violated the procedural requirements essential to due process. In reaching this conclusion, it did not, because it could not, make the findings required by section 8 of the Administrative Procedure Act (5 U.S.C. § 1007). Absent such findings, there was no basis on which the District Court could perform its duty of judicial review. These appellants were denied fair treatment by the Commission. They were then deprived of judicial review by the District Court.

The finding that an acquisition of one railroad by another is "consistent with the public interest" must show that full consideration has been given to the *public* benefits on the one hand versus the loss or damage to the *public*

on the other hand. There must be the striking of a balance between the public benefits, if any, and the public loss clearly articulated and spelled out so as to make clear the effectuation of the prescribed Congressional standards and criteria "*to promote safe, adequate, economical and efficient service and foster sound economic conditions in [railroad] transportation.*" In this the Commission failed.

The Commission's failure in this respect was not because its duty was not called to its attention. Professor William Leonard, Chairman of the Department of Economics, Hofstra College, summarized it in the following language (R. 1414):

> "The Commission is fortunate in this proceeding to have an affirmative choice between two applications, that of the Santa Fe and Pennsylvania, and that of the M&StL. Ordinarily, the Commission does not have the alternative of deciding whether a road should be acquired by one carrier or another in a case, comparing the benefits flowing from one proposal with those flowing from another, but only whether in a single application for control, the advantages outweigh the disadvantages. In this combined proceeding the Commission's choice is wider. Here, I believe, we have convincing proof that the gains to the Pennsylvania and Santa Fe and their shippers are minimal in comparison with the injury which could easily befall the M&StL, its shippers, and the area it serves.
>
> "As for possible injury to the Santa Fe and Pennsylvania from the proposed control by the M&StL of the TP&W, this would be negligible. Such control would be as injurious to these great systems as a gnat's bite would be to an elephant.
>
> "In the light of these considerations, I believe the application for control of the TP&W by the M&StL eminently meets the tests of public interest, and requires approval by the Commission."

As to what constitutes arbitrary action, in the case of *Baltimore & Ohio R.R. v. United States*, 264 U.S. 258, 265 (1924), it was stated:

> "To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."

2. The Antitrust Effect.

The Interstate Commerce Commission and the District Court sanctioned and approved what is in effect a gigantic railroad merger. The acquisition of Western gives the Pennsylvania-Santa Fe combine a third major gateway and unifies their operations from Tidewater on the east to Tidewater on the west.

In *McLean Trucking Co. v. United States*, 321 U.S. 67, 86 (1944), this Court announced:

> "Congress however neither has made the anti-trust laws wholly inapplicable to the transportation industry nor has authorized the Commission in passing on a proposed merger to ignore their policy."

Admittedly section 5(11) of the Interstate Commerce Act (49 U.S.C. § 5(11)) empowers the Commission in an appropriate case to give immunity from prosecution under the antitrust laws. That immunity, if it is to be granted, must be based on an explicit judgment that it is required by other factors in the "public interest". The size of the merging carriers cannot be wholly ignored as it was in the instant case. The powerful rail combine authorized by the Commission in this case dwarfs, by comparison, the few motor lines whose merger was authorized in the *McLean* case.

In this case the appellees have attempted to defend the Commission's action by asserting that conditions were included for the protection of other carriers. It is true that the Commission has power by statute to condition approval of any acquisition on "such terms and conditions" as it shall find to be just and reasonable (49 U.S.C. § 5(2)). But that limited power is here exceeded. The Commission has used unenforceable conditions to justify and immunize what would otherwise be a clear violation of the antitrust laws—the laws which this Court has said the Commission may not ignore. If allowed to succeed in this case, it can succeed in any case, and the Commission can always use the imposition of "terms and conditions" to justify its total disregard of all controlling statutory standards. We doubt that the power conferred by Congress on the Commission was ever intended to be so far-reaching as to permit the results which have occurred in this case.

The Pennsylvania-Santa Fe combine is a gigantic one, by any test. Its latent power is an enormous threat to any smaller competitors and to intervenors, like these appellants, who are dependent upon such small competitors. The monopoly or oligopoly sanctioned in this case has no precedent. There are no findings and there is no articulation of any reasons which could justify the creation of this colossus. If this Court affirms the result announced below, it will be holding, in essence, that the antitrust laws are wholly inapplicable to the transportation industry.

CONCLUSION

The Interstate Commerce Commission failed to perform its statutory duty. Its arbitrary conclusions have neither a rational basis nor supporting findings. It is respectfully sub-

mitted that the judgment of the District Court should be reversed and that that Court should be instructed to grant the relief sought by the complaints of the plaintiffs below.

Respectfully submitted,

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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1959

No. 28

THE STATE OF MINNESOTA and the MINNESOTA RAILROAD AND WAREHOUSE COMMISSION,

Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

BRIEF OF APPELLANTS

The State of Minnesota and the Minnesota Railroad and Warehouse Commission

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

BRIEF OF APPELLANTS

The State of Minnesota and the Minnesota Railroad and Warehouse Commission

OPINIONS BELOW

The opinion of the District Court for the District of Minnesota, 4th Division (R. 91-105), is reported at 165 F. Supp.

893. The report of Division 4 of the Interstate Commerce Commission (R. 17-49) is reported at 295 I.C.C. 523.

JURISDICTION

The jurisdiction of this Court to review the decision of the district court by direct appeal is conferred by 28 U.S.C., Sections 1253 and 2101(b). The final order of the district court was entered September 16, 1958 (R. 105), and the notice of appeal of the State of Minnesota and the Minnesota Railroad and Warehouse Commission was filed in that court on November 12, 1958 (R. 111). On March 9, 1959, this court entered an order noting probable jurisdiction and transferring this case together with the companion appeals of the Minneapolis and St. Louis Railway Company and the State of South Dakota to the summary calendar.

STATUTES INVOLVED

The statutes involved in this proceeding are section 1 of the Sherman Act, as amended (15 U.S.C. § 1), sections 7 and 10 of the Clayton Act, as amended (15 U.S.C. §§ 18 and 20), and the National Transportation Policy and sections 5 (2) and 5 (11) of the Interstate Commerce Act, as amended (49 U.S.C. preceding § 1, and §§ 5 (2) and 5 (11) and sections 8 (b) and 10 (e) of the Administrative Procedure Act (5 U.S.C. §§ 1007 and 1009). The pertinent text of these statutes are set forth in Appendix A to the Minneapolis[1] Brief in its companion appeal at Docket No. 12.

[1]The interested railroads will be referred to hereinafter as follows:
Minneapolis and St. Louis Railway Company — Minneapolis
Toledo, Peoria & Western Railroad Company — Western
The Pennsylvania Railroad Company — Pennsylvania
The Atchison, Topeka & Santa Fe Railway Company — Santa Fe.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the district court erred in failing to set aside the orders of the Interstate Commerce Commission on the grounds that the Commission failed to make adequate and proper findings and that the findings it did make were not supported by substantial evidence.

2. Whether the district court erred in failing to set aside the orders of the Interstate Commerce Commission on the grounds that the Commission's erroneous application and interpretation of the Interstate Commerce Act and the National Transportation Policy deprived the Minneapolis of a true comparative hearing thereby discriminating against its supporters including these appellants.

3. Whether the district court erred in failing to set aside the orders of the Interstate Commerce Commission on the grounds that the Commission erroneously interpreted and applied Section 5 (11) of the Interstate Commerce Act with respect to a violation of Section 10 of the Clayton Act occurring prior to the Commission proceedings.

4. Whether the district court erred in failing to set aside the orders of the Interstate Commerce Commission on the grounds that the Commission erroneously interpreted and applied Section 5 (11) of the Interstate Commerce Act with respect to Section 1 of the Sherman Act and Section 7 of the Clayton Act.

5. Whether the district court erred in failing to set aside the orders of the Interstate Commerce Commission because of the self-defeating scope of the review adopted by the district court.

STATEMENT OF THE CASE

This proceeding involves the future control and devel
ment of the facilities of the Toledo, Peoria and West
Railroad Company and, to that substantial extent it invol
the future control and development of the Peoria Gatew
Previously, the Western has been independently owned a
operated. As a result of this proceeding the Western will
owned and controlled by the Pennsylvania–Santa Fe co
bination, the Minneapolis, or a combination[2] of these a
other connecting carriers.

Because of the intimate association of the Minneapo
with the Western (R. 1010, 1014, 1111, 1112) and with
Peoria Gateway (R. 1011, 1101, 1440), the future devel
ment and stability of the Minneapolis is also involved
this proceeding. Many advantages would inure to the M
neapolis by approval of its application. These would inclu
direct access to interchanges with the numerous lines c
necting with the Western, longer hauls and greater abil
to render better service (R. 1232, 1435). All of these wo
strengthen the Minneapolis in terms of competitive posit
and more efficient operation. Also resulting would be
added stability from diversification of traffic to relieve
present heavy reliance upon agricultural and mineral sh
ments (R. 1099, 1100, 1436). On the other hand, appro
of the Pennsylvania–Santa Fe application would grav
injure the Minneapolis through the loss of traffic now h
dled by it between Peoria and Nemo. The extent of this l
has been estimated at approximately $1,100,000.00 annua
out of $7,000,000.00 potentially vulnerable traffic reven

[2]The case for multiple ownership was summarily rejected by
Commission and that position is not represented in this appe

along that line (R. 1117, 1437). Diversion of this profitable traffic from the Minneapolis could very well affect its ability to provide service on the less profitable segments of its system in Minnesota and South Dakota (R. 1117, 1437).

Because of its duty to insure adequate transportation service within its boundaries the State of Minnesota also has a direct interest in the fate of the Minneapolis. The Minneapolis performs an important transportation role in the State and its main line connection with the Peoria Gateway adds to that importance its role in the National Transportation System. In those parts of the state where no other rail service is offered, its service is obviously indispensable. As the prime expositor of service through the Peoria Gateway, Minneapolis promotes for the State of Minnesota a second gateway to the Eastern Territory providing many additional connections to the South and to the East.

The Peoria Gateway, next to the Chicago Gateway, is the most important to the State of Minnesota (R. 1440). This importance stems from the necessity of connection with Official Territory railroads, with the Ohio River Gateways into the Southern Territory and connection through St. Louis, Missouri or Thebes or Cairo, Illinois into the Southwestern Territory (R. 1439). The Minneapolis line between the Twin Cities and the Peoria Gateway is the main line of that railroad (R. 1439). A further consideration of the importance of the Peoria Gateway to the State of Minnesota, involving the national defense as well, is the additional reliance upon that gateway which would be necessary during any period of national emergency (R. 1440).

These statements of Dr. Edmund A. Nightingale, the state's expert witness at the hearing, point up the position

of the State of Minnesota which was attempted to be communicated to the Commission;

> "The State of Minnesota and the Minnesota Railroad and Warehouse Commission are vitally interested in the provision and continuance of adequate, economical and efficient transportation service for the people of that state. This objective is consistent with those of the National Transportation Policy, as stated in the Inter-State Commerce Act. If the petition of the M&StL, the future interests of which are here at stake, is denied, the adverse effects upon the objectives stated above are likely to include curtailment or withdrawal of rail service from certain communities on light-traffic lines of the M&StL in western and southern Minnesota and South Dakota.
>
> "Possibility of curtailment of service or abandonment on mileage of low-density lines of the M&StL is not something remote. In I.C.C. Finance Docket No. 15619, the M&StL sought authority and permission to abandon 40.66 miles of line between St. James, Minnesota, and Estherville, Iowa, some 36 miles of which is in Minnesota (see Ben W. Heineman's map in either Exhibit No. H-10 or H-21). A hearing was held at St. James, Minnesota in July 1947. By [fol. 1664] stipulation among the parties to that proceeding, passenger service was withdrawn and carload freight service was reduced to a tri-weekly basis. * * * (R. 1432-1433)
>
> "According to the 'Interstate Commerce Commission's Sixty-eighth Annual Report on Transport Statistics in the United States for the Year Ended December 31, 1943', total assets of the T. P. & W. are $9,893,197, those of the Pennsylvania Railroad are $2,455,547,988, and those of the Santa Fe are $1,484,889,559, and those of the M. & St. L. are $37,807,778. The T. P. & W. assets in relation to the combined assets of almost $4,000,000,000 for the Pennsylvania-Santa Fe combination are hardly

visible at only 0.025 per cent of this huge total. Viewed in broad perspective, the effect therefore of adding the 1943 net income and assets of the T. P. & W. to those of the Pennsylvania-Santa Fe group is negligible, or about that of a peanut tossed by a child at a zoo to a hippopotamus.

"M. & St. L. freight revenue losses in the Peoria-Nemo traffic and that through Peoria to or from other gateways in [fol. 1671] the event the application of the Pennsylvania-Santa Fe combination were granted, have been estimated by Witness James A. Swanson at approximately $1,110,000 in his Exhibit H-32, Schedule 1, and testimony. His estimate of potentially vulnerable traffic revenue is $7,000,000. Highly desirable traffic like that between Peoria and Nemo not only pays its way but gives substantial support to the entire M. & St. L. system. It is highly doubtful that the grant of authority to acquire control of the T. P. & W. to the Pennsylvania-Santa Fe group which would further reduce the already thin cushion which enables the M. & St. L. to provide needed service on thin-traffic lines, is consistent with the National Transportation Policy and the requirements of Section 5(2) of the Interstate Commerce Act. * * *" (R. 1436-1437)

His analysis was confirmed on the record by Mr. Oliver Ossanna of the Railroad and Warehouse Commission (R. 1445). The State's position, while it rested upon unimpeached expert testimony, was brushed aside by the Commission and the district court with these comments by the Commission and the district court respectively:

"State representations — The States of Minnesota and South Dakota, along with their respective Public Service Commissions, intervened in support of the Minneapolis application. They fear that with Western under the control of the Santa Fe and the Pennsylvania, the Peoria

route of the Minneapolis will deteriorate to the extent that its low density lines in Minnesota and South Dakota will be in danger of abandonment. On the other hand, the State of Illinois opposes the application of the Minneapolis because of the possibility that the portion of Western's line west of Peoria may be abandoned, and the further reason that such control would have a devastating effect upon the economy of the city of Peoria and the State of Illinois generally. Of course, there can be no abandonment of any line of railroad without the issuance by us of a certificate of public convenience and necessity permitting such abandonment. So far as the instant record is concerned, no abandonments are presently contemplated." (R. 42-43)

"Minneapolis, supported by the Minnesota and South Dakota plaintiffs, contends, in effect, that, under the evidence [fol. 106] and the applicable law, the Commission could not approve the acquisition of the control of Western by the Pennsylvania and the Santa Fe, and should have approved the application of Minneapolis, which would have resulted in a consolidation with increased efficiency and economy in management. * * *" (R. 95)

The success of the Minneapolis like that of the Western has been in developing public acceptance of service through the Peoria Gateway rather than through the Chicago Gateway (R. 1010, 1413). The Minneapolis is the sole railroad serving Minnesota to the East whose gateway connections are only with the Peoria Gateway (R. 1408). The use and development of the Peoria Gateway is essential to the future development of both the Western and the Minneapolis. In direct contrast is the situation of both the Santa Fe and the Pennsylvania. The self-interest of the Pennsylvania lies primarily in the development of service through the St. Louis Gateway and the Chicago Gateway (R. 1406, 1435, 1440).

The self-interest of the Santa Fe lies in the development and use of the Chicago Gateway under Pennsylvania-Santa Fe control (R. 1406, 1435, 1440). This division of interest in the Peoria Gateway would prevent the Peoria Gateway from ever competing successfully with the St. Louis and Chicago Gateways which afford the longest hauls over Western's proposed owners. The control of the Peoria Gateway by the Pennsylvania and Santa Fe would result in greater control by them of the Chicago, Peoria and St. Louis Gateways. Any resulting loss in vitality of the Peoria Gateway would, because of the presence of the Great Lakes, force the state to rely entirely upon the Chicago Gateway for shipments to the East.

In addition to the foregoing statement particularly relating to the interests of the State of Minnesota, the state adopts by reference the Statement of the Case contained in the Minneapolis brief.

SUMMARY OF ARGUMENT

These appellants contend that the Interstate Commerce Commission erroneously assumed that it must, or could, decide between the competing applicants on the basis of a single standard of public interest and further that the Interstate Commerce Commission erroneously considered that the Minneapolis did not have a transaction which could be considered by the Commission and that as a result of these fundamental errors, the Commission did not make findings as required by law or compare the advantages of the public interest of the competing applications as required by law and that the district court merely because it found substantial evidence in the record to support the conclusions of the Commission, failed to correct any of these errors.

ARGUMENT

1. The Failure of the Commission to Make Proper Findihgs

The requirement of the Administrative Procedure Act for the findings to be made by administrative agencies, including the Interstate Commerce Commission, are set forth in Section 8(b) of the Act which provides as follows:

> "(b) Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof. * * *".

In comparative hearings the requirements for proper findings have been described in *Johnson Broadcasting Co. v. F. C. C.*, 175 F. 2d 351 (D.C. Cir. 1949), where it was stated:

> "The principles which govern the interplay of administrative and judicial functions in a comparative consideration are basically the same as those which govern in the determination of the qualifications of a single applicant. The Commission has wide powers and discretion,

but upon appeal the courts must determine whether its action was within its statutory authority and applicable constitutional limitations, and the findings, conclusions and decision must be such that the courts can exercise the jurisdiction. But the essentials to legally valid conclusions differ, as the two problems, one of bare qualification and the other of comparative qualifications, differ. In respect to comparative decisions, these are the essentials: (1) The bases or reasons for the final conclusion must be clearly stated. (2) That conclusion must be a rational result from the findings of ultimate facts, and those findings must be sufficient in number and substance to support the conclusion. (3) The ultimate facts as found must appear as rational inferences from the findings of basic facts. (4) The findings of the basic facts must be supported by substantial evidence. (5) Findings must be made in respect to every difference, except those which are frivolous or wholly unsubstantial, between the applicants indicated by the evidence and advanced by one of the parties as effective. (6) The final conclusion must be upon a composite consideration of the findings as to the several differences, pro and con each applicant."

The controversy involved herein is one of great importance not only to the participating parties but also to large segments of the public in the areas directly affected. Such a case demands sufficient attention of the Commission that it exercise care in preparing findings purporting to support the ultimate findings which it makes. The Commission is amply protected in its judgments on matters of discretion because of its presumed expertise. The decisions of the Commission should not be immunized by condoning such judgments to be buried in general recitals and discussions, without findings, so that they cannot be properly reviewed. Because of

the limited scope of review of Interstate Commerce Commission decisions, it is all the more necessary that the Commission's findings be clear cut and ready for immediate judicial inspection. It is apparent that the findings in this case do not measure up to the importance of the matter involved, nor to the complicated nature of the issues involved and do not resolve "all material issues of fact, law, or discretion" as required by Section 8(b) of the Administrative Procedure Act. The Commission's report amounts to little more than a summary of the proceedings. The report describes, with varying accuracy, the contentions of the several parties but in few instances are the contentions resolved by an appropriate and unequivocal finding of fact. Only the Commission's ultimate findings appear with "unambiguous clarity."

"* * * A Commission having defined and limited delegated power must justify the exercise of that power by findings that support it and by evidence that supports the findings. When regard is had for the complicated technical nature of the problems and the voluminousness of the records in the important cases that come before the Commission, a fair discharge of its functions precludes casting upon a reviewing court the task of quarrying through a record to find for itself adequate evidence to permit the effectuation of orders of the Commission.

"The precise function of findings is to make practicable scrutiny by the courts in order to determine whether the Commission has kept within the bounds legislatively defined. To be sure, the Commission's findings are not binding in the sense that attack cannot be made on them for lack of evidence. Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U.S. 88, 91-94, 33 S. Ct. 185, 186, 188, 57 L. Ed. 431. The Commission cannot — it has not purported to do so here — pass on to the Court an unanalyzed summary of a long proceeding and call it findings. While findings need not be formulated in an enumerated sequence, helpful as that would be, they must at least appear in a Commission's decision with unambiguous clarity, and they must be logically related to its conclusion. * * *" (Dissenting opinion — *Denver & Rio Grande West R. Co. v. Union Pac. R. Co.*, 351 U.S. 321 (1956).)

They are these:

> "We find, subject to the conditions for the protection of railway employees and the maintenance of existing routes and channels of trade referred to herein, that acquisition by the Atchison, Topeka and Santa Fe Railway Company and the Pennsylvania Company, and through the latter by the Pennsylvania Railroad Co. of control of the Toledo, Peoria & Western Railroad Company through ownership of capital stock, in equal amounts, as described herein, is a transaction within the scope of section 5(2) of the Interstate Commerce Act, as amended; that the terms and conditions proposed are just and reasonable; and that the transaction will be consistent with the public interest.
>
> "We further find that the application of the Minneapolis & St. Louis Railway Company for authority to acquire control of the Toledo, Peoria & Western Railroad Company, through ownership of capital stock, should be dismissed." (R. 49)

It is significant that these alone are the ultimate findings made by the Commission. No ultimate finding was made that the Minneapolis application was inconsistent with the public interest or that it should be denied. The ultimate finding that the Minneapolis application should be dismissed rests exclusively upon the fact that Minneapolis lacked a contract for the purchase of the controlling stock of the Western.

The finding that the Santa Fe-Pennsylvania application would be "consistent with the public interest" rests almost entirely on the finding that the public interest requires the Western to be continued as a "separate and independent" carrier. This latter finding, itself being in the nature of an ultimate finding, must be supported by subsidiary findings and substantial evidence. In fact, this standard must

have been an assumption rather than a conclusion for its factual or logical basis is nowhere developed by the Commission. The conclusive standard adopted is not one of the standards specifically mentioned in the Interstate Commerce Act or the National Transportation Policy nor is the standard justified in terms of those statutory standards, rather it is justified only on the basis of support for the standard by various interested parties. We submit that the finding of widespread support for the standard which automatically excludes the Minneapolis application does not alone justify its use. Considering the standard itself, neither the Minneapolis nor the State of Minnesota or the State of South Dakota advocated the disappearance of the Western as an independently owned and operated carrier. The decision of the trustees of the McNear estate to sell control of the Western alone advocates the disappearance of the Western as an independent railroad. The analysis of the Commission in relying upon the form of ownership and control of the Western is superficial. It appears, therefore, that the Commission not only adopted a standard which has no particular significance in the public interest as defined by the law, but also one which is not realistic and is not satisfied by any of the applicants.

2. The Failure of the Commission to Afford a True Comparative Hearing

(a) *Erroneous adoption of a single standard of public interest*

Mere simultaneous consideration and disposition of the applications does not satisfy the requirements for a comparative hearing. The statement of the Commission at the

outset of its report that "we, in such proceeding as this *must* arrive at *a standard* of public interest" is patently erroneous. It was also fatally prejudicial since the single standard adopted, the continuance of the Western as a separate and independent operation, automatically excluded the Minneapolis proposal from any possibility of approval.

It is apparent that this statement of the Commission was literally applied and followed. As hereinbefore discussed the standard was adopted without proper findings to support it. There were many areas in which the competing proposals presented strong contrasts. The Commission should have established criteria or standards for these areas for the purpose of considering the extent to which each of the applications on a comparative basis would have fulfilled the standards so established. Thereupon proper findings of fact should have been made in relation to each of the criteria. In the absence of this kind of analysis and evaluation there is no sound basis for the Commission's final reliance upon one criterion as the conclusive basis for its determination. In, FCC Criteria for Evaluating Competing Applicants, 43 Minn. Law Review 479 (1959), by H. Gifford Irion, an analysis of the weight to be given any one criterion was made as follows:

> "An analysis of the weight given to any one criterion, or an evaluation of all in the aggregate, is somewhat difficult because the language of decisions has not always been as explicit as might be desired. In some cases it would appear that each area of comparison has been treated as a distinct mathematical unit, and that the final result has been reached by tallying up points of preference. In its more reflective decisions, however, the Commission has expressly deplored this practice and has referred to the criteria as 'guideposts'. It should be clear to anyone seriously interested in judicial rea-

soning that an isolated area of preference, such as local ownership, is virtually meaningless unless it is considered in connection with a number of other factors. For example, the fact of residence must be tempered by the record of stockholders in civic participation and by the degree to which the owners will participate in management. Otherwise it would have no significance as an indication that knowledge of the community would result in better programming for its needs.

"At this point it is fitting to state emphatically that no application of the criteria can ever be successful when it loses sight of the basic philosophy which accounts for their existence. Using the phrase 'public service' as an approximate expression of this philosophy, it becomes evident that no one of the criteria should be determinative unless it tends to form a pattern with other evidence concerning an applicant's knowledge of the community, his ability and sincere efforts to perform promises and his general imagination and resourcefulness. The assessment which must thus be made of the areas of comparison is admittedly difficult. It should not be done in any mechanical fashion but requires a most conscientious use of judicial discretion. There can be no question that value judgments are called for. They are sometimes attacked as being 'subjective judgments,' and this is perhaps true if we regard a judgment that is not made by slide-rule as being subjective."

It is obvious that the sole criterion used by the Commission does not equate with "public interest" and it is doubtful that its determinative effect can be justified on the basis that it tends to form a pattern with other evidence conclusively proving its qualifications in the public interest.

(b) *Erroneous interpretation of the "transaction" requirement under Section 5 (2) of the Interstate Commerce Act*

While the Act does require the submission of a "transaction" for the approval of the Commission, it is plain from the facts presented, and the Commission should have found, that Minneapolis could acquire the stock held by the trustees of the McNear estate, as well as the stock held by the minority share holders, all of whom would have no reason for refusing to sell to the Minneapolis. In fact on the very day that the contract of sale was made to the successful applicants, counsel for the trustees had prepared an acceptance of the Minneapolis offer (Exhibit H-76, R. 1956-1957, 1445). If any doubt did exist on that question, the Commission could fully protect its decision in favor of the Minneapolis application by limiting the time within which the Minneapolis would be permitted to acquire the stock pursuant to the decision. It would seem that any case involving two carriers competitively seeking to purchase the stock of a third carrier would involve the same question, since only one of them could have a contract for the purchase of the stock at the time it presented its transaction for the Commission's approval. If the limited view taken by the Commission is supported, it would appear that cases arising under Section 5(2) could never have the benefits of a comparative hearing. The undesirability of such a result is obvious from the fact that the comparative hearing process is greatly in aid of the administrative process to determine the presence of public interest. Thus, it was recognized in *Midwestern Gas Transmission Co. v. F. P. C.*, 258 F. 2d 660, 669, 670, (D.C. Cir. 1958), that comparative hearings have the effect of raising issues of public interest and that it is important to have

a great number of such issues not only presented but considered. Just as the Commission should have looked through the form of the transaction to see the substance of the Pennsylvania-Santa Fe control, so also this Court should look through the form of the Commission's decision purporting to afford a comparative hearing.

That the Commission's comparative consideration was at most halfhearted, is apparent from this statement following a description of the Minneapolis proposals:

> "Other benefits and advantages claimed by the Minneapolis in the matter of adequate car supply and the coordinated service which would result if Western were controlled by the Minneapolis are of record, but in view of our findings herein with respect to the disposition of its application, the details thereof need not be specifically described. * * *" (R. 33)

It is absolutely clear from this statement that the Commission did not make a true comparative analysis of the two competitive applications. To undertake a true comparative analysis, the Commission would have had to consider every material advantage claimed by Minneapolis in support of its application. Obviously, since the Commission was deciding the case on other grounds, it felt no need to make a comparative analysis and it did not.

3. The Failure of the Commission Properly to Interpret and Apply the Applicable Anti-trust Provisions

Strong arguments have been urged by the Minneapolis throughout this controversy questioning the Commission's disposition of its claims based upon violations of the Anti-trust Laws. While these matters are left to the Minne-

apolis for argument, the State of Minnesota is very much concerned that its interests not be prejudiced by condoning improper actions so as to reward the actors with the fruits of wrong and, also, that the likelihood of monopolistic competitive practices not be ignored as a factor in the Commission's decision in this proceeding. If the economy of the State of Minnesota is to suffer as a result of a Commission determination that the Pennsylvania-Santa Fe anti-trust violations are to be condoned and subordinated to other considerations in the public interest, then, at the very minimum, the people of this state are entitled to a clear, logical explanation of what those other considerations are and why the national anti-trust policy is being subordinated to them.

THE SCOPE OF REVIEW BY THE DISTRICT COURT

The error of the District Court relative to its scope of review consisted in its observation that the existence of substantial evidence to support the conclusion reached by the Commission in itself prevented further judicial inquiry into any facet of the Commission's action. If the Commission's reasoning was based on correct interpretations of the law, and if its actions were not arbitrary and capricious, then its application of the law to the particular proposals would be free from second guessing by the Courts and this is properly so. But where the Commission's reasoning is faulty, its orders cannot be sustained, even if the Court could substitute correct theories which the Commission might have used to reach the same result. This principle[1] was established in *S. E. C. v. Chenery Corp.* 318 U.S. 80 (1942), where the court stated:

[1]See also Davis, Administrative Law Treatise, 1958, Volume 2, Sections 16.05 and 16.09.

"Congress has seen fit to subject to judicial review such orders of the Securities and Exchange Commission as the one before us. That the scope of such review is narrowly circumscribed is beside the point. For the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review. If the action rests upon an administrative determination—an exercise of judgment in an area which Congress has entrusted to the agency—of course it must not be set aside because the reviewing court might have made a different determination were it empowered to do so. But if the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law. In either event the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained. 'The administrative process will best be vindicated by clarity in its exercise.' Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 197, 61 S. Ct. 845, 853, 85 L. Ed. 1271, 133 A.L.R. 1217. What was said in that case is equally applicable here: 'We do not intend to enter the province that belongs to the Board, nor do we do so. All we ask of the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it. This is to affirm most emphatically the authority of the Board'. Ibid. Compare United States v. Carolina Carriers Corp., 315 U.S. 475, 488, 490, 62 S. Ct. 722, 729, 730, 86 L. Ed. 971. In finding that the Commission's order cannot be sustained, we are not imposing any trammels on its powers. We are not enforcing formal requirements. We are not suggesting that the Commission must justify its exercise of administrative discretion in any particular manner or with artistic refinement. We are not sticking in the bark of words. We merely hold that an ad-

ministrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained."

This must be particularly so in a comparative hearing, for erroneous assumptions by the Commission in such a hearing would necessarily deprive the affected competitive applicant of a fair consideration of its proposal. The substantial evidence test is not very meaningful when, according to the District Court apparently, there is evidence sufficient to support any of the contentions before the Commission.[3] Thus, following the terminology used in *Johnson Broadcasting Co. v. F. C. C.*, supra, so far as the evidence is concerned all of the applicants satisfy the bare qualifications for its proposal and it is only the comparative qualifications which determine the ultimate result. Since the Commission's ultimate finding was not that the Santa Fe-Pennsylvania proposal most fully promoted public interest but only that such proposal was "consistent with the public interest," it is obvious that the Commission's findings were inadequate if it erroneously found that the Minneapolis application did not meet the bare qualifications for lack of "transaction".

[3] "The Commission might have granted the application of Minneapolis for sole control and ownership, which was strenuously opposed by all those carriers who wanted Western to remain independent and neutral. The Commission might have authorized the Rock Island and the Nickel Plate to join the Pennsylvania and the Santa Fe in joint ownership and control of Western. The Commission concluded that the application of Pennsylvania and Santa Fe was consistent with the public interest and should be granted. That we think, under the evidence and the law, it had power to do; even if that conclusion was wrong, it cannot be said to be arbitrary or capricious and is therefore binding upon this Court." (R. 104-105)

In the judicial review of the Commission's order the competitive nature of the proceeding involved cannot be ignored. Consideration now of the Pennsylvania-Santa Fe proposal cannot proceed as if Pennsylvania and Santa Fe were the only applicants for control of the Western merely considering whether there is substantial evidence which would support that application. If the Commission erred in any of the respects contended, then its decision must be set aside so that a true comparative consideration of the applications could be made.

CONCLUSION

It is submitted that the Orders of the Interstate Commerce Commission which appellants sought to have set aside, annulled and suspended by the District Court are unlawful and based upon erroneous interpretation of the law and that the District Court should have so decided. The decision of the District Court should be reversed accordingly.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

Nos. 12, 27, 28.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, ET AL.,

Appellants,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

BRIEF ON BEHALF OF THE STATE OF ILLINOIS.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

BRIEF ON BEHALF OF THE STATE OF ILLINOIS.

STATEMENT.

This controversy, while directly involving the judicial review of an order of the Interstate Commerce Commission, basically concerns the question of the acquisition by the Pennsylvania and Santa Fe of the stock of Western[1]

1. The interested railroads will be referred to hereinafter as follows: Toledo, Peoria and Western Railroad Company as "Western." The Pennsylvania Railroad Company as "Pennsylvania." and The Atchison, Topeka and Santa Fe Railway Company as "Santa Fe," and Minneapolis & St. Louis Railway Company as "Minneapolis".

under the statutory standards of Sec. 5 of the Interstate Commerce Act (49 U. S. C. Sec. 5). That section requires that any acquisition "be consistent with the public interest". While initially there were four alternatives presented to the Interstate Commerce Commission,[2] the issue has now been narrowed to two, namely: (1) does the public interest lie in preserving Western's existing transportation function as a bridge-line through the Peoria Gateway by stock ownership in Western's two largest connecting lines, or (2) does the public interest lie in making the future operation of Western a part of Minneapolis' railroad and substantially altering Western's present operation and transportation function?

Western Is an Illinois Railroad.

The State of Illinois has a substantial interest in this proceeding. Western lies almost entirely within Illinois. Its executive and general offices, yards and shops are located in Illinois. Western's employees reside in Illinois. Although Western is primarily a bridge-line, it provides an essential transportation service upon which the communities along its line are completely dependent.[3] Its function as a bridge-line provides the communities along its line a type of service which would otherwise not be

2. They included: (1) joint control by Santa Fe-Pennsylvania (2) sole control by Minneapolis, (3) multiple ownership, and (4) denial of both applications or dismissal of Minneapolis' application.

3. All of the communities along the line of Western intervened in the proceedings before the Interstate Commerce Commission and the United States District Court in support of Santa Fe-Pennsylvania control. These communities are: the City of Peoria, the City of East Peoria, the City of Bushnell, the City of Canton, the City of LaHarpe, the Village of Lomax, the City of Warsaw, the City of Forrest, the City of Fairbury, the City of Gridley, the City of Gilman, the City of Sheldon, the City of Watseka, the City of Eureka, the Village of Secor, the City of Washington and the City of Chenoa.

economically justified. This is particularly true as to the line west of Peoria.

The interests of the States of South Dakota and Minnesota involved in this proceeding are, at best, remote and indirect. They are based upon the unwarranted assumption that Minneapolis' traffic would be diverted under Santa Fe and Pennsylvania's control of Western. Unlike the conditional nature of these interests, the interests of the State of Illinois are directly and immediately affected by the admitted loss of existing benefits which would result from the absorption of Western into the operations of Minneapolis. Such losses are involved in the alteration of Western's existing transportation function, the abandonment of Western's executive and general offices and shops at Peoria, the substantial reductions in employment, and the cutbacks in spending within the State of Illinois.

The State of Illinois Interests in Western

Illinois has a direct interest in the economy of the area of Central Illinois served by Western. That interest is manifest in the continued agricultural and industrial development of that area, in the economy of the City of Peoria and the Peoria area, the further development of railroad service to the communities along Western's line, the development of Peoria as a major rail gateway, and finally—but of major consequence—in Western's employees. Each of these interests are directly related to the preservation of Western's existing transportation function and its continued development as a bridge-line in transcontinental traffic. The disadvantages inuring to each of these points of interest by altering Western's existing transportation function under the proposal of Minneapolis is apparent and compelled the participation by the State of Illinois in this proceeding before the Interstate Commerce Commission, the District Court and now this appeal.

Since this brief is in answer to both the brief of Minneapolis in docket No. 12 and the briefs of South Dakota and Minnesota in Nos. 27 and 28, we shall devote the first Section to the contentions of Minneapolis and the second to the position of our sister states, South Dakota and Minnesota.

SUMMARY OF ARGUMENT.

1. The criterion upon which the Commission's decision rests relates to the preservation of Western's unique transportation function. This is reflected in the finding that Western's present policies must "in all respects" be continued. This finding is, in turn, based upon adequate subsidiary findings which establish the national and local importance of retaining Western's function as a "short line connection" for the sixteen carriers with which its function is interrelated.

2. The finding bearing upon the preservation of Western's transportation function and the subsidiary findings upon which it is based, all have a direct relation to the relevant legislative standards as expressed in Sec. 5 and the National Transportation Policy, and the decision falls within the scope of the Commission's discretionary authority under those standards. The specific benefits accruing to the public as a consequence of Santa Fe and Pennsylvania control are, moreover, consistent with the objectives of Sec. 5 as reflected in previous Commission decisions.

3. The Commission's decision reflects that a fair hearing was accorded Minneapolis and its proposal to substantially alter Western's transportation function. The Commission's findings indicate that due consideration was given to the nature and scope of the Minneapolis proposals. Adequate findings were made, reflecting the basis for the Commission's rejection of the Minneapolis proposal and these findings fall within the scope of the authority conferred.

upon the Commission under the legislative standards of Sec. 5 and the National Transportation Policy.

4. The Commission's decision fully reflects the basis upon which the two competing proposals were weighed and evaluated. The findings upon which the Minneapolis proposal was rejected are supported by substantial evidence. Judicial review of Commission orders are limited to a determination of whether the essential basis of the Commission's judgment is disclosed and the findings upon which that determination was made are fully supported by the record.

5. The interest of the employees of Western are substantial and must be considered under any Section 5 proposal. Such interest cannot be relegated to the acceptance of a dole under the Washington Job Protection Agreement.

6. The improvement of the financial position of Minneapolis in order to protect marginal lines in South Dakota and Minnesota at the expense of ruining a strong railroad in Illinois is not in the public interest. The Commission also found, based upon substantial evidence, that there will be no diversion of traffic from Minneapolis by reason of the Santa Fe-Pennsylvania control of Western.

ARGUMENT.

I.

ANSWER TO THE CONTENTIONS OF MINNEAPOLIS

A. The Commission's Order Awarding Control of Western to Santa Fe and Pennsylvania Is Based Upon Adequate Findings.

The basic structure of Minneapolis' argument concerning the alleged inadequacy of the Commission's findings is based upon the premise that the Commission adopted as the basic finding, upon which the proceeding turned, the need for "separate and independent management" of Western.

The complete answer, in brief, to this entire argument is that the proceeding was not resolved by the Commission upon the basis of a "standard" concerning the "separate and independent management" of Western. No finding concerning the "separate and independent management" of Western was in fact made by the Commission anywhere in its report. The alleged "standard," moreover, of "separate and independent management" of Western bears no reasonable relationship to any of the findings which were in fact made by the Commission, whether ultimate, subsidiary or evidentiary. No such "standard" was expressed in the actual language of the report nor may it reasonably be inferred.

Minneapolis' creation of a fictitious "standard," upon which the proceeding was allegedly resolved, its attempt to relate this "standard" to the Commission's alleged prejudgment of the proceeding, and other devices which it has employed in presenting the issues to this court,

constitute an ill conceived attempt to avoid a logical and analytical treatment of the issues relative to the adequacy of the findings. Nowhere in its entire discussion of the issues relative to the adequacy of the findings does Minneapolis come to grips with the findings which were in fact made by the Commission or the theory upon which the decision of the Commission is based. The Commission's report and the opinion of the District Court, are completely ignored.

The justification for the failure of Minneapolis to deal with the findings which were made and the theory upon which the decision rests apparently lies in its contention that its proposal was excluded from the Commission's consideration at the inception of the hearing. A review of the findings and of the District Court's interpretation of the findings is therefore essential to demonstrate the error of Minneapolis and to show the basis for the Commission's approval of Santa Fe-Pennsylvania control of Western.

The Commission's ultimate findings are that the Santa Fe-Pennsylvania proposal to preserve Western's existing transportation function is "consistent with the public interest," (the statutory standard of Sec. 5(2)) and that the benefits to be derived from the operation of Western under Santa Fe-Pennsylvania's proposal would be "in furtherance of the overall National Transportation Policy declared by the Congress" (R. 49, 39). These ultimate findings were the result of the subsidiary finding that the public interest required that Western's existing transportation function "in all respects" be preserved (R. 45).

The need for retaining Western's existing transportation function as expressed in such basic subsidiary finding, in turn, rests upon the following evidentiary findings: (1) that Western occupies a geographically strategic

position as a "direct east-west line" (R. 21); (2) that Western performs a strategic function as an overhead bridge carrier for transcontinental traffic operating through the Peoria Gateway, bypassing the congested terminals of Chicago and St. Louis (R. 21); (3) that Western's function as an overhead carrier and its existing traffic policies of (a) maintaining strict neutrality between its sixteen connecting lines and (b) attempting to participate in a haul of traffic no matter how slight, are a natural result of and are directly related to Western's strategic geographic position and the function which it performs and accounts for Western's success (R. 21); (4) that Western's successful operation originated with the utilization of its plant as a bridge carrier between the Santa Fe at its western terminus and Pennsylvania at its eastern terminus (R. 21); (5) that, as a consequence of Western's strategic position, the function which it serves, and its traffic policies, Western has assumed national importance in the Nation's railroad system as a "vital direct link" supplying the "short-line connection" for east-west traffic (R. 45); (6) that Western's existing function and its traffic policies thus make available Western's natural advantages to the maximum number of its connecting railroads (R. 21, 31, 45); and that (7) the retention of Western's existing transportation function and the preservation of its existing policies have significant consequences both to the railroad industry as well as the public generally (R. 45). The Commission found furthermore, that, with the exception of Minneapolis and the States of South Dakota and Minnesota, its conclusion that the retention of Western's existing function was essential to the public interest was shared by all of the parties to the proceeding, including all of the railroad intervenors, all of the communities served by Western and all of the shippers who appeared in the proceeding as witnesses (R. 31).

A significant quotation from the Commission's order which contains a recital of decisive facts indicates most clearly the rationale for the Commission's decision:

"Situated as it is between the Santa Fe at Lomax on the west and the Pennsylvania at Effner on the east, Western receives its long haul and provides a vital direct link essential to the type of through service which is becoming increasingly important not only to the shipping public but to the railroads as well. Fast, strong, and reliable through transportation service is necessary in order for the railroads adequately to compete with the other modes of modern transportation, and Western, as a direct east-west line, supplies the short-line connection for providing this through service with a minimum of delay.

"Public interest demands that the present policies of Western in all respects be continued." (R. 45.)

The District Court recognized the significance of this finding in its analysis of the issue regarding their adequacy. The Court stated (R. 104):

"The Commission specifically found that 'public interest demands that the present policies of Western in all respects be continued.' It concluded that this result would be attained if the two carriers which had contributed the greatest volume of traffic with Western, one from the East and one from the West, should be accorded joint ownership. As stated, it appears that some 70% of Western's interline traffic is exchanged with these two railroads. This constitutes about two-thirds of Western's total traffic. * * * It is entirely reasonable to expect that the two carriers which are largely responsible for the excellent condition of Western today, will, by sheer self-interest continue with the same incentive in the future."

It should be noted that, if any single finding may be termed to constitute a decisive determination in this proceeding, it is the finding referred to and quoted by the District Court, *i.e.*, that "Public interest demands that the pres-

ent policies of Western in all respects be continued.'" This concept includes all of the aspects of the findings enumerated above which relate basically to the preservation of Western's unique transportation function. The retention of this transportation function is of vital interest and importance to the State of Illinois.

B. The Findings Upon Which the Commission Based Its Award of Control to Santa Fe and Pennsylvania Bear a Direct Relation to Section 5, the Objectives of the National Transportation Policy and Are Consistent With Other Commission Decisions.

Minneapolis' argument that the concept of "separate and independent management" is unrelated to the standards of Sec. 5 of the Interstate Commerce Act or the objectives of the National Transportation Policy is again the red herring conjured up completely outside the language and the intent of the Commission's order. The Commission's decision rests squarely upon the findings referred to above which relate to *the best use* of Western's transportation plant, the function which it is to perform and its orientation within the complex network of the American railroad system.

The statutory standard of Sec. 5 requires that the Commission give specific consideration to (1) "the effect of the proposed transaction upon adequate transportation service to the public * * *" and (2) "the interest of the carrier employees affected." This court has held that Section 5 requires the "best use of transportation facilities," *New York Central Securities Co.* v. *United States*, 287 U. S. 12, 25, and that specific requirement was determined as expressed by the Commission in finding that Santa Fe-Pennsylvania control maintained the "best use of [Western's] transportation facilities." Moreover, the

Santa Fe-Pennsylvania proposal was consistent with "the interest of the carrier employees affected."

The finding that Western's existing transportation function must be preserved and the findings upon which that ultimate finding is based all have an obvious relation to the objectives of the National Transportation Policy which deal with the promotion of "safe, adequate, economical and efficient service," the fostering of "sound economic conditions in transportation" without "unjust discrimination, undue preferences or advantages or unfair or destructive competitive practices."

Apart from the general considerations which led the Commission to conclude that the preservation of Western's present policies was essential to the public interest, the Commission also found that certain specific advantages would accrue to the public as a result of Santa Fe-Pennsylvania control of Western. These benefits included (1) the continued access of the public to local management (R. 33); (2) the economic stimulus such ownership would afford the area served by Western's lines (R. 82); (3) the promotion of industrial development along Western's lines (R. 33); (4) expanded industrial markets (R. 33); (5) an increase in Western's car supply (R. 33); (6) the realization of economies in operation by Western and (7) the technical and managerial assistance afforded by Santa Fe-Pennsylvania to Western (R. 33). These benefits have been consistently held by the Commission to provide the significant factors in other proceedings involving the application of Sec. 5 and the National Transportation Policy. *Niagara Junction R. Co. Control*, 267 I. C. C. 649, 660 (1947); *Pacific Coast R. Co. Control*, 282 I. C. C. 607, 609 (1951); *Savannah & Atlanta Ry. Co. Control*, 282 I. C. C. 39, 51 (1951); *Wabash R. Co. Control*, 247 I. C. C. 365, 370 (1941); *Wheeling & L. E. Ry. Co. Control*, 267 I. C. C. 163, 183 (1946).

C. Minneapolis Was Accorded a Fair Hearing.

Minneapolis, by creating a mythical "standard" upon which the Commission is said to have "prejudged" the proceeding, ignored the rationale upon which the Commission actually based its decision as expressed in specific findings. Ignoring the Commission's analysis of the need for preserving Western's existing transportation function because its proposal obviously did not coincide with this objective, Minneapolis argues that the relative merits of the two proposals "should have" been decided on the basis of a "comparative" evaluation of certain other criteria.

1. Minneapolis' Argument Reflects a Misunderstanding of the Function of Judicial Review.

The argument of Minneapolis is based upon a fundamental misconception of the function of judicial review of a proceeding such as this. It is not the function of this court to examine the evidence to determine whether it will permit a finding more favorable to Minneapolis. The review function of this court is discharged if the "essential basis" of the Commission's judgment is sufficiently disclosed so that the court can satisfy itself that the Commission had performed its function. *Alabama Great Southern R. Co.* v. *United States*, 340 U. S. 216, 227. In analyzing the adequacy of the findings, the court must review the report on the basis upon which the decision rests, not just on the basis of the evidence adduced by Minneapolis or the factors upon which it relied. The findings, moreover, essential to support the validity of an order will vary with the context of the situation presented. *United States* v. *Pierce Auto Lines*, 327 U. S. 515, 532, (1954). However, it is not necessary for the Commission to comment on all of the evidence produced. In speaking

bout the adequacy of findings and the evidence the Illi-ois Supreme Court in *Atchison, Topeka & S. F. Ry. Co. v. ommerce Commission*, 335 Ill. 70 said at page 95:

> "It does not follow because evidence appearing in the record was not commented upon in the order that it was not considered by the commission. The question for a judicial review of the order is whether the findings of the commission on which the order is based have substantial support in the evidence."

ikewise, in *Chicago Junction Ry. Co. v. Commerce Commission*, 412 Ill. 579, it was held at page 584:

> "We believe that the findings of fact by the commission, *which need not recite each bit of evidence which leads to the conclusion of fact*, are sufficient to support the order, and are, in compliance with the terms of the statute." (Emphasis added.)

In this proceeding the Commission expressed the "essen-al basis" of its judgment in its report and made all the ecessary findings to support its judgment consistent with e relevant legislative standards.

The Commission's Rejection of the Minneapolis Proposal Fell Within the Scope of Its Discretionary Authority Under Section 5 and the National Transportation Policy.

Minneapolis argues that, if adequate findings had been ade relative to its proposal, a decision favorable to nta Fe-Pennsylvania would have been "impossible" der the standards of Sec. 5 and the National Transporta-n Policy as a matter of law.

This argument raises a basic question regarding the rpose of Sec. 5 and the scope of the Commission's dis-tion in its application. What Minneapolis is saying that, under Sec. 5 and the National Transportation licy, the Interstate Commerce Commission could not fully approve a proposal for stock control of a carrier

involving the retention of the carrier's corporate identity and separate operation of the controlled carrier when afforded the alternative of what is, in effect, a corporate merger allegedly resulting in large scale economies and "expanded" rail service. Emphasis is placed upon alleged "economies" and "expanded" rail service, which are said by Minneapolis to be determinative of the issues and the criteria of Sec. 5 and the National Transportation Policy.

While the term "public interest" in Sec. 5 has been defined to relate to "conditions of economy," it also was deemed to embrace "appropriate provision and best use of transportation facilities." *New York Central Securities v. United States*, *supra*, p. 25. This interpretation, we submit, substantially broadens the concept and permits the broadest area of administrative judgment in the application of the standard. No single objective or group of objectives of the National Transportation Policy, moreover, may be said to be determinative of all proceedings under Sec. 5, since these objectives have been held to be mutually inconsistent in their application to the context of particular proceedings. *Schaffer Transportation Co. v. United States*, 355 U. S. 83, at pp. 94-95. That the achievement of economies and establishment of "expanded" rail service are not absolute but relative objectives of Sec. 5 is reflected in Sec. 5(2)(c), which directs the Commission to give consideration to the effect of a proposal upon the "carrier employees affected," as well as to its effect upon "adequate transportation service to the public." The application of this mandate is illustrated in the Commission's findings in this proceeding. The Commission found that Minneapolis' proposed "expanded" rail service would be "extremely harmful" to other carriers and to the ability of such carriers to continue to provide adequate rail service to the public (R. 32), and also found that the economies which might be achieved by Minneapolis would be *offset*

at the expense of Western's employees (R. 32). The achievement of Minneapolis' overall objectives were, moreover, incompatible with the Commission's basic objective of preserving Western's existing transportation function which the Commission recognized as essential (R. 30). The achievement of large-scale economies, such as allegedly would result from a merger, would be more than offset by separate operation of Western which the Commission found to be essential to the preservation of Western's transportation function. The kind of "improvement" and "expansion" of rail service via Western, which was proposed by Minneapolis was also incompatible with the retention of Western's present traffic policies upon which the preservation of its transportation function was completely dependent and the Commission so found (R. 30).

There is no basis to support the argument of Minneapolis that a decision based upon the retention of the corporate identity and separate operation of a controlled carrier constitutes an abuse of the Commission's discretion under Sec. 5 or the National Transportation Policy, either in an absolute or a "comparative" sense. Separate operation of a controlled carrier is recognized to be consistent with the objectives of Sec. 5 since Sec. 5(2) specifically provides for acquisition of control through stock purchases.

3. Adequate Findings Were Made Relative to Minneapolis' Proposal for Control of Western.

Minneapolis' argument that it was denied a comparative hearing rests finally upon the alleged inadequacy of findings with respect to the evidence which Minneapolis adduced at the hearings. It argues that "no" findings were made with respect to the (1) economies and (2) service proposals which it advanced (Brief, p. 33), (3) its economic motivations (Brief, p. 35), and (4) that the Commission "brushed off" the evidence of its traffic losses

which would result from Santa Fe-Pennsylvania's control of Western (Brief, pp. 30-31).

The case of Minneapolis was predicated upon certain affirmative proposals, all of which related in one way or another to the achievement of economies arising out of its absorption of Western and the establishment of certain operating changes which would affect the combined service of Western and Minneapolis as a merged operation. While these objectives may otherwise be generally regarded as consistent with the relevant legislative standards, the Commission found that their application under the circumstances involved in this proceeding would be disadvantageous. Specific findings were made which indicate that Minneapolis' service proposals would be "extremely harmful" to other carriers (R. 32) and that the alleged economies would be effected "at the expense of Western's employees" (R. 32). Minneapolis' economic motivations in prosecuting its application for control were, moreover, not "ignored" by the Commission, for it specifically found that Minneapolis sought to acquire control in order to enhance its financial stability (R. 30). Moreover, the mere fact that the Commission did not comment about the evidence of Minneapolis to the extent that Minneapolis might desire does not mean that the Commission did not give it full and thorough consideration. *Mobilgas, Topeka & S. F. Ry. Co. v. Commerce Commission*, supra; *Chicago Junction Ry. Co. v. Commerce Commission*, supra.

Minneapolis' case was also predicated upon certain defensive considerations which it contended made its control of Western imperative. These arguments related to the alleged diversion of its traffic which it asserted would result from Santa Fe-Pennsylvania control. The Commission's detailed and comprehensive consideration of this evidence can hardly be characterized as a "brushing off" of the issue. The Commission considered this issue to be

vital significance in the proceeding and devoted four pages of its report to an analysis of appellant's claims of loss of revenue through traffic diversion (R. 33-37).

It is, therefore, apparent that adequate findings were made with respect to the essential elements of Minneapolis' proposal.

4. The Commission Balanced the Factors Upon Which This Decision Rests.

A comparative evaluation of Minneapolis' case with that of the other railroad intervenors and the Santa Fe-Pennsylvania proposal did not require findings in the form in which Minneapolis asserts, nor does it require that any special technique be employed in arriving at the findings. The "essential basis" of the Commission's judgment is sufficiently disclosed so that this court can intelligently discharge its function of judicial review. *Alabama Great Southern R. Co. v. United States*, *supra*, at pages 227-8. This, in the final analysis, is the only function of findings. The form which the findings take and the techniques employed in arriving at the findings are not significant as long as the "essential basis" of the Commission's judgment is disclosed. The balancing of the factors upon which the decision rests, required by *Schaffer Transportation Co. v. United States*, *supra*, was fulfilled in this proceeding. The Commission considered the advantages of the economies and new service routes but found that these advantages would be initially outweighed by the interests of shippers and the economic consequences of the service routes on other rail carriers (R. 32). Finally, Minneapolis' proposal to abolish Western as a separately operated carrier was found to be outweighed by the need for preserving Western's existing transportation function under its present policies (R. 30, 45).

D. The Findings Upon Which the Commission Based Its Rejection of Minneapolis' Proposal Are Supported by Substantial Evidence.

The Commission made three significant findings regarding the merits of Minneapolis' proposal which reflect the basis upon which its plan for control was held not to be in the public interest. The Commission found that the proposal of Minneapolis "unequivocally" contemplated the abandonment of Western's policy of neutrality as to its 16 connecting lines (R. 30). It also found that Minneapolis' proposed service policies would be "extremely harmful" to Western's other connecting carriers (R. 32), and that any economies secured by Minneapolis' absorption of Western would be at the expense of Western's employees (R. 32). While Minneapolis has attacked the substantiality of the evidence as to each of these findings, yet there was more than sufficient evidence to support these basic findings.

1. The Finding that Minneapolis' Absorption of Western Would Result in Materially Altering Western's Transportation Function is Supported by Substantial Evidence.

One of the fundamental determinations upon which the decision rests is the need for retaining Western's existing policies (R. 45). These policies include the maintenance of strict neutrality between its connecting lines and soliciting for a haul of traffic no matter how slight (R. 21). The Commission found that Minneapolis' proposal "unequivocally" contemplated the disappearance of Western as a "neutral connection for the other 15 carriers with which it presently works" (R. 30). This subsidiary finding was decisive in this proceeding because it reflects the basis upon which Minneapolis' proposal was ultimately rejected. The importance of the finding lies in the fact that the retention of Western's policies of neutrality towards its

connecting carriers is essential to the preservation of Western's transportation function as a bridge line which the Commission found to be the "best use" of Western's transportation facilities.

Recognizing this to be a fact, Minneapolis now contends that it too would maintain a policy of neutrality with respect to Western's connections because, "as a matter of survival," it "could not do otherwise" (Brief, p. 31). Although it attempts to avoid a direct attack upon this finding, Minneapolis, in effect, is challenging the basis for the Commission's finding that its proposal "unequivocally" would abolish Western's policies of neutrality as to its connecting lines. To support its contention, Minneapolis points to its dependence upon the Peoria Gateway and upon bridge traffic, but ignores the comprehensive and detailed outline of its traffic program offered by Mr. Nelson, its Traffic Vice President, which was specifically predicated upon the diversion of traffic from Western's other connections to the combined route resulting from the merged operations. Mr. Nelson's testimony clearly reveals that Minneapolis, with Western merged, expressly proposed to pursue a policy of aggressive solicitation to divert traffic and short-haul Western's other connecting lines (R. 1177-1184). The carriers which Minneapolis' Traffic Vice President admitted would be short-hauled under his policy are all existing connections of Western and include the Illinois Central (R. 1195), the G. M. & O. (R. 1197), the C. & E. I. (R. 1197), the Wabash (R. 1198), the Milwaukee (R. 1198) and the North Western (R. 1198). Traffic would also be diverted from the Minneapolis-Chicago lines of the Burlington, Rock Island, Milwaukee and North Western (R. 1198, 1200).

Western's transportation function would also be materially altered by the limited use that Minneapolis would make of Western's facilities. Minneapolis' plan for diverting

the traffic of Western's connecting lines through the establishment of new interchanges and service routes did not involve Western's line west of Peoria (R. 1178-84). Minneapolis' line west of Peoria parallels the route of Western and the economies of Minneapolis' control would require the consolidation of the Santa Fe traffic which presently is interchange at Lomax to the Minneapolis interchange at Nemo. This Santa Fe traffic is practically the sole support of railroad service presently being afforded the communities along the west end of Western. Western's function as contemplated by the Minneapolis traffic program would substantially alter the present traffic route of Western and would be disadvantageous to the interests of the State of Illinois and to the communities which are entirely dependent upon Western for rail service.

2. The Finding that Minneapolis' Absorption of Western Would Be Harmful to Western's Connecting Lines Is Supported by Substantial Evidence.

The Commission found that the traffic policies proposed by Minneapolis under its "unified operation theory" would be "expremely harmful to other carriers" (R. 32). Minneapolis argues that this finding is not supported by substantial evidence since it is based upon a "confused claim" of "one witness" (Brief, p. 31). This broad finding, however, is not based solely upon the testimony of Mr. Atkinson, the President of the Wabash. The Rock Island introduced evidence which tended to show that $6,000,000 of its freight revenue annually was susceptible to diversion under Minneapolis' control of Western (R. 1545). The Nickel Plate estimated that a "substantial" portion of its Peoria traffic would be susceptible to diversion under Minneapolis' unified operations with Western (R. 1325), and Minneapolis itself, made it clear that its traffic program was based upon diverting traffic from Western's connecting lines (R. 1184).

3. The Finding that Any Economies Effectuated Under Minneapolis' Absorption of Western Would be Secured at the Expense of Western's Employees Is Supported by Substantial Evidence.

The State of Illinois has a substantial interest in the 527 families residing in the State of Illinois which could be displaced either by layoffs or transfers through Minneapolis' merger of Western. The interests of these men and women, who have built a pattern of living within a community, constitute a vital part of the public interest and we submit that their interests were properly weighed by the Commission against the alleged economies in its finding that economies would be secured at the expense of Western's employees (R. 32).

This finding is based upon Minneapolis' comptroller's testimony that, of the estimated $1,770,945 reduction in annual operating expense allegedly accruing from the merging of Western, $1,327,062 would result from the elimination of at least 256 positions now held by Western's employees (R. 1377, 1379). Minneapolis attacks this finding by emphasizing the importance of economies as an objective of the National Transportation Policy (Brief, p. 46) but ignores that, under Sec. 5(2)(c)(4), the Commission is specifically enjoined to consider "the interest of the carrier employees affected." Appellant also attacks the finding with the assertion that "ultimate job security" lies only in "efficient" operation; that "featherbedding" and "uneconomical operations" cannot provide a basis for job security. There is no evidence of record to support the contention that the separate operation of Western is either "inefficient" or "uneconomical" or that the retention of Western's employees constitutes "featherbedding" in any sense of the term. Quite to the contrary, the Commission found that Western is a successful railroad operation performing a vital public service (R. 21, 44).

Finally, Minneapolis attacks the finding on the basis that the impact of its proposal would be "cushioned" by Minneapolis' abidance with the Washington Job Protection Agreement, which would provide for payments of 60% of regular compensation for five years and severance pay equal to one year's earnings for the employees whose positions would be terminated. This argument is irrelevant to the finding. The payment of compensatory allowance does not alter the fact that $1,327,062 of the estimated economies would be secured by the elimination of at least 256 positions. The Commission's duty to give consideration to the interests of employees is not discharged by simply providing for compensatory allowances to dismissed personnel for a limited period pursuant to the provisions of Sec. 5(2)(f)[5]. These provisions make such compensatory allowances mandatory only after a transaction subject to Sec. 5(2) has been determined to be "consistent with the public interest." Thus, before the Commission reaches Sec. 5(2)(f), it has a prior obligation with respect to employees, to consider their interests in making a public interest determination under Sec. 5(2)(c)[6]. This is precisely what the Commission did in this proceeding as reflected by the finding.

5. It would be no argument against the Commission's prescription of safety facilities to say that the employee can get compensated by an F. E. L. A. action if he is hurt.

6. This is reflected in the Commission's decision in *Fort Worth & D. C. Ry. Co. Lease*, 247 I. C. C. 119 (1942), where the Commission indicated that, while it theretofore had given consideration to the interest of the carrier employees affected to the extent of imposing appropriate conditions, it was now required under Sec. 5 (2) (c) "*to give consideration to the interest of such employees in determining whether the transaction is consistent with the public interest*" (p. 127). (Emphasis supplied.)

II.

ANSWER TO SOUTH DAKOTA AND MINNESOTA.

A. South Dakota's Contentions.

1. South Dakota's Branch Lines.

South Dakota's argument that the Santa Fe-Pennsylvania "combine" would adversely affect the branch lines of Minneapolis in South Dakota assumes that the only public interest lies in the economic benefit to Minneapolis (Brief, p. 9). The benefit to South Dakota through the creation of a theoretically stronger railroad which could then support the low density marginal branch lines in that State through either the destruction of a strong main line railroad in Illinois or by converting it into a branch line is not necessarily in the public interest. Besides, it is the very function of the Commission to weigh and determine the evidence. As this court so aptly said in *Baltimore and Ohio R. Co.* v. *United States*, 298 U. S. 349 at page 359:

> "The Commission alone is authorized to decide upon weight of evidence or significance of fact."

In this case, the Commission found that the acquisition by Santa Fe-Pennsylvania "will be consistent with the public interest" and the record substantiates that finding. The evidence clearly shows that the status of Western as a strong transcontinental bridge carrier will remain the same through the acquisition by Santa Fe and Pennsylvania, while it would be greatly changed through Minneapolis' ownership. The Commission obviously felt that the preservation of the existing service provided by Western's operation in Illinois was of the greater importance in the over all public interest. And this is the function of the Commission with which the court, in the absence of arbitrariness, should not interfere. In *Georgia Public Service*

Commission v. *United States*, 283 U. S. 765, Mr. Justice Brandeis speaking for a unanimous court stated at page 775:

> "It is not our province to inquire into the soundness of the Commission's reasoning, the wisdom of its decisions, or the consistency of its conclusion with those reached in similar cases."[7]

South Dakota's argument regarding the possible abandonment of the Minneapolis branch line is, moreover, predicated upon the assumption that Minneapolis' traffic would be diverted by the Santa Fe and Pennsylvania "combine". The record is said to be "uncontroverted" with respect to the vulnerability of the Minneapolis' traffic and the Commission is said to have "brushed off" this evidence (S. D. Brief, p. 9). This contention is fully answered by our reply to the similar contention of Minneapolis at pages 16-17 *supra*, and the four pages of the Commission's order devoted to the contention of Minneapolis on traffic diversion (R. 33-37).

It should be pointed out that South Dakota and Minnesota, whose interests in this proceeding are predicated entirely upon the alleged effect of such diversion of traffic, have only made the most general and sweeping attack upon the specific findings made by the Commission.

While completely unrelated to its branch line argument, South Dakota attacks the intervention of the communities along Western's line and the Railway Labor Executives Association which intervened in support of Santa Fe-Pennsylvania control of Western (S. D. Brief, p. 11). The significance of the unanimous public support accorded Santa Fe-Pennsylvania acquisition by the municipalities,

7. While this case involved the determination of rates, there should be no difference in standards for court review of just and reasonable rates in the public interest and acquisitions and mergers consistent with the public interest.

business associations and shippers along Western's line cannot be dismissed with the assertion that these interests have been victimized by a Santa Fe public relations campaign. If the communities have been victimized, so also has the State of Illinois and the active participation by the State in this proceedings from the inception refute any "public relations victimization". Actually, no reply need be made to this assertion since South Dakota does not indicate how these interests (municipalities and shippers) will be hurt by Santa Fe-Pennsylvania control. Furthermore, it would seem that the communities and shippers along Western's line would be better able to judge their own interest than South Dakota.

Our answer to Minneapolis' similar contention (*supra*, page 22) is a complete reply to South Dakota's statement that labor would not "suffer" under Minneapolis absorption of Western since it is protected by the Washington Job Protection Agreement. It seems rather presumptuous for South Dakota to advocate the reduction of fully employed persons in Illinois to the position of a dole under a job protection agreement.

2. The Anti-Trust Effect.

The argument that Santa Fe and Pennsylvania's joint control of Western would violate the anti-trust laws is based upon the assumption that the proposed transaction constitutes a "gigantic railroad merger" which "unifies" the operations of the Santa Fe and Pennsylvania from "tidewater" to "tidewater" (S. D. Brief, p. 13). Joint control of another carrier is not in any sense a merger of the owning roads. This is particularly true where, as here, they are an eastern and a western carrier subject to the checks and balances inherent in such control. The Commission expressly recognized this factor in its order:

"* * * No greater protection could be afforded to

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Nos. 12, 27 and 28.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,
vs. *Appellant,*
UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

STATE OF SOUTH DAKOTA AND PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA,
vs. *Appellants,*
UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

STATE OF MINNESOTA AND MINNESOTA RAILROAD AND WAREHOUSE COMMISSION,
vs. *Appellants,*
UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

BRIEF FOR APPELLEES, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY AND PENNSYLVANIA COMPANY.

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carriers interchanging traffic with Western than to have ownership divided equally between the largest connecting carrier in the east and the largest one in the west. Under this built-in system of checks and balances, it is inconceivable for the Santa Fe to permit impairment of service or discriminatory solicitation with respect to eastern connections, or the Pennsylvania with respect to western ones, * * *" (R. 46).

B. Minnesota's Contentions.

Minnesota's brief is manifestly no more than a reiteration of the arguments advanced by Minneapolis. Minnesota's arguments relative to the alleged inadequacy of the findings (Brief, pp. 10-14), the alleged failure of the Commission to accord Minneapolis a comparative hearing (Brief, pp. 14-19) and the alleged erroneous interpretation by the District Court of the scope of judicial review (Brief, pp. 19-22) have been fully treated in our answer to the contentions of Minneapolis in the first section of this brief.

CONCLUSION.

We therefore respectfully submit that the decision of the District Court entered on September 16, 1958 should be affirmed.

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Dated: Oct. 22, 1959.

LAKE TOC DIVELIFTS, IN
DIVISION TOPEKA AND SANTA FE
RAILWAY COMPANY, THE PENNSYL-
VANIA COMPANY.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 12.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

No. 27.

STATE OF SOUTH DAKOTA AND PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA,
Appellants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

No. 28.

STATE OF MINNESOTA AND MINNESOTA RAILROAD AND WAREHOUSE COMMISSION,
Appellants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

BRIEF FOR APPELLEES, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY AND PENNSYLVANIA COMPANY.

This brief is submitted jointly by The Atchison, Topeka and Santa Fe Railway Company, The Pennsylvania Railroad Company and Pennsylvania Company, appellees herein, the successful applicants in the proceeding before the Interstate Commerce Commission which is here under review. The three cases to which this brief is addressed (Nos. 12, 27 and 28) are direct appeals by Minneapolis & St. Louis Railway Company and the States of South Dakota and Minnesota and their respective utility commissions from the order of the District Court for the District of Minnesota, Fourth Division, dismissing the complaint in *Minneapolis & St. Louis Ry. Co.* v. *United States*, 165 F. Supp. 893 (R. 91-105).[1] By its decision the District Court in effect sustained the order of the Interstate Commerce Commission in *Toledo, Peoria & Western R. Co. Control*, 295 I. C. C. 523 (R. 17-49), authorizing Santa Fe and Pennsylvania, through its subsidiary, Pennsylvania Company, to acquire joint control of Western by purchase of its stock and dismissing appellant's application to acquire control.

1. The respective parties and other railroads involved will be referred to hereafter as follows:

The Atchison, Topeka and Santa Fe Railway Company	Santa Fe
The Pennsylvania Railroad Company	Pennsylvania
Minneapolis & St. Louis Railway Company	Appellant or Minneapolis
Toledo, Peoria & Western Railroad Company	Western
The New York, Chicago & St. Louis Railroad Company	Nickel Plate
Chicago, Rock Island & Pacific Railroad Company	Rock Island
Chicago, Burlington & Quincy Railroad Company	Burlington
Wabash Railroad Company	Wabash
The Monon Railroad	Monon

STATEMENT OF THE CASE.

The statement of the case in appellant's brief (pp. 4-14) is more of an argument than a statement of the facts. It seems necessary, therefore, to describe briefly the factual background of the case and the proceedings below.

Western's Transportation Function.

Western's line is about 240 miles in length extending across Illinois from Effner at the Indiana border through Peoria to Lomax, Illinois, and Keokuk, Iowa (See Map, Appendix A). Western's general offices, as well as its shops and yards, are at East Peoria.

Western connects at Effner with the line of the Pennsylvania to Logansport, Indiana, and east. It is, in effect, merely an extension of that line. On the west it connects with the main line of the Santa Fe at Lomax and with the Rock Island and Burlington at Keokuk. In the Peoria area, it connects with a number of railroads, including the Burlington, Rock Island and Minneapolis from the west and the Nickel Plate and New York Central from the east. It has connections with a total of 16 railroads (See Exhibit 6 to Santa Fe-Pennsylvania application: R. 149).

Western's line through Peoria forms a short, direct bridge route between the east and the west, bypassing the congested terminals of Chicago and St. Louis (R. 21). Western has capitalized upon its strategic location by maintaining a policy of strict neutrality between all its connections and rendering fast, dependable service as a bridge carrier (R. 21). As a result, more than two-thirds of its revenues are derived from bridge traffic (R. 22). In another recent case Western was described as "a valuable link for transcontinental shipments" occupying "a

particularly important position in the Nation's transportation system". See *Illinois-Missouri Terminal Ry. Co. Purchase*, I. C. C. Finance Docket No. 18752 (sheets 43-44 of mimeographed report, dated April 2, 1956).

Relationship with the Competing Applicants.

Western's relations with all its principal connections are in part complementary and in part competitive. This is true of Santa Fe and Pennsylvania—and Minneapolis, as well.

Santa Fe's line extends to Chicago, but does not reach Peoria or St. Louis. Pennsylvania serves both Chicago and St. Louis. Although they have ordinarily solicited for their long hauls through Chicago and St. Louis, both Santa Fe and Pennsylvania have realized the value of Western's route and have played a major part in its development (R. 34). Western provides a vital link for fast, through service between the lines of the Santa Fe to the Southwest and Pacific Coast and the lines of the Pennsylvania extending throughout the industrial East (R. 45). Western's success as a bridge line dates from the construction of its connection with the Santa Fe at Lomax in 1927 (R. 21). It is undisputed that since that time—for more than 30 years—Santa Fe and Pennsylvania have cooperated with Western in coordinating their schedules and services to provide a fully competitive service via Western's route (R. 21-22). The value of their contribution to the development of Western's route was recognized by a number of large shippers using this route (R. 46); and it was demonstrated by the greatly increased use of their connecting services during World War II (Ex. H-5, pp. 11-12; R. 46, 1644-45). As a result of this cooperation Western's interchange with Santa Fe and Pennsylvania accounts for about 70 per cent of its interline traffic and revenues and two-thirds of its total traffic (R. 22).

Western receives its long haul on traffic interchanged with the Santa Fe and Pennsylvania at Lomax and Effner, but most of its interchange with its other connections is at Peoria near the center of its line (R. 45, 21). Minneapolis, which connects with Western at Peoria, competes with the latter for traffic moving west of Peoria (R. 1207-08). Its line is complementary only to that part of Western's line extending east from Peoria to Effner. There are several other routes through the Peoria gateway which do not include Western's line; and the traffic Minneapolis handles via the competitive routes formed by its line and the Nickel Plate and New York Central (Peoria and Eastern), respectively, is more than double that which it interchanges with Western (Ex. H-128, pp. 1-3; R. 1590, 2001-04).

Negotiations for the Purchase of Western's Stock.

Appellant's treatment of the negotiations for purchase of Western's stock is in no sense a statement of the facts. It is not only argumentative, but it makes no reference to the findings of the Commission which are in direct conflict with much of what is said. Nor does it refer to the evidence on which those findings are based.

Appellant's arguments with respect to these matters are dealt with fully in our reply to the contention that the stock purchase negotiations involved a violation of Section 10 of the Clayton Act (15 U. S. C. 20). It should be sufficient here to point out that Santa Fe, on May 25, 1955, and shortly thereafter, entered into contracts to purchase all of Western's stock from the holders thereof. These contracts were expressly made subject to the approval of the Interstate Commerce Commission.

Proceedings before the Interstate Commerce Commission.

Having contracted to buy all of Western's stock, Santa Fe on June 28, 1955, agreed, subject to Commission approval, to sell 50 per cent of Western's stock to Pennsylvania Company, a wholly owned subsidiary of the Pennsylvania. Thereafter Santa Fe, Pennsylvania and Pennsylvania Company filed a joint application seeking Commission approval under Section 5(2) of the Interstate Commerce Act (49 U. S. C., Sec. 5), for Santa Fe and Pennsylvania Company each to acquire and hold 50 per cent of the Western stock.

Minneapolis filed a similar application seeking Commission approval of its proposal for sole acquisition of Western's stock.

The two applications were considered at a consolidated hearing before a Commission examiner at Peoria, Illinois. The hearing was an extended one, from February 1 to 14, 1956. Numerous witnesses were heard and many exhibits received in evidence. Several other railroads intervened in the consolidated proceeding to protect their interests. Four of these, the Rock Island, Nickel Plate, Burlington and Wabash, sought authority, under varying circumstances, to participate equally in the ownership of Western with any carrier or carriers that might be authorized to acquire it.

The examiner issued a proposed report recommending approval of the Santa Fe-Pennsylvania acquisition and rejection of appellant's application.

Thereafter, upon exceptions and replies to exceptions to the proposed report, the case was argued orally before Division 4 of the Commission (Commissioners Mitchell, Arpaia, and Winchell). Division 4 issued a comprehensive report approving the application of Santa Fe-Pennsylvania and rejecting that filed by appellant.

The Commission was confronted, for present purposes, with two diametrically opposed plans. Santa Fe-Pennsylvania proposed the continued operation of Western as a separate carrier under its present service and traffic policies so as to preserve Western's unique function as a short, direct east-west bridge carrier. It was supported by many interveners, including the cities and towns served by Western from one end of the line to the other,[2] leading civic and business organizations, shippers located in the area served by Western, and The Railway Labor Executives Association (representing Western's employees). Other shippers, both local and off-line, appeared and testified in support of the Santa Fe-Pennsylvania application.

Appellant's application, on the other hand, contemplated a complete departure from the policies on which Western's success was based. Instead of operating as a separate bridge carrier working closely with all its connections, Western would be integrated into Minneapolis for ownership, management and operation and its headquarters and shops would be moved from Peoria. The traffic policies of the combined operation would be aimed at increasing the volume of traffic moving over the Minneapolis line extending northwest from Peoria.

Appellant's proposal was supported only by the states of Minnesota and South Dakota. It was strongly opposed by the State of Illinois. No shippers or local community interests lent their support.

In approving the Santa Fe-Pennsylvania application, the Commission found that "public interest demands that the present policies of Western in all respects be continued" (R. 45). Those policies would only be continued under the

2. Communities which intervened were Keokuk, Iowa, and Warsaw, LaHarpe, Lomax, Bushnell, Canton, Peoria, East Peoria, Eureka, Secor, Gridley, Chenoa, Fairbury, Forrest, Gilman, Watseka and Sheldon, Illinois.

Santa Fe-Pennsylvania plan. In rejecting the Minneapolis application the Commission found that it contemplated "the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works" (R. 30); that the policies contemplated by Minneapolis "would be extremely harmful to other carriers" (R. 32), and that most of the proposed economies "would be effected at the expense of Western's employees" (R. 32).

Appellant's petition for reconsideration was denied by the full Commission.

Proceedings in the District Court.

The description in the appellant's brief (pp. 13-14) of the proceedings in the District Court is neither complete nor accurate. It fails to point out that the State of Illinois, the City of Peoria, the Peoria Association of Commerce, as well as the municipalities and their civic and commercial organizations along Western's entire route, intervened to defend the Commission's order.[3] And the characterization of the District Court's opinion is both argumentative and inaccurate.

Appellant raised four main contentions before the District Court. In its opinion dismissing the complaint, the District Court rejected these contentions, holding: (1) that Section 10 of the Clayton Act (15 U. S. C. 20) did not appear to be applicable to the situation here involved and that, in any event, it was not a bar to approval because the authority of the Commission in the premises is made exclusive and plenary, regardless of the anti-trust laws, by express provision of Section 5(11) of the Interstate Commerce Act (R. 98-99); (2) that the Commission gave due consideration to the effect of the acquisition on the com-

3 These interests are now appellees in this Court.

petitive situation in the light of this Court's ruling in *McLean Trucking Co. v. United States*, 321 U. S. 67 (R. 99-102, 103-104); (3) that the advantages and disadvantages of the two competing applications were weighed and considered in the light of the public interest and that the Minneapolis application, therefore, was not denied comparative consideration (R. 102-103); and (4) that the Commission's order was based on adequate findings supported by substantial evidence (R. 105).

QUESTIONS PRESENTED

Appellant's statement of the "Questions Presented" is nothing more than an outline of argument. Briefly, the questions presented are:

1. Is the Commission's decision consistent with the standards of Section 5 of the Interstate Commerce Act and the National Transportation Policy and was appellant accorded a fair hearing under the circumstances of the case?

2. Is the Commission's order based upon adequate findings and are the findings supported by substantial evidence?

3. Do any of the considerations involved in Section 1 of the Sherman Act and Section 7 of the Clayton Act require judicial rejection of the Commission's order?

4. Is Section 10 of the Clayton Act a bar to Commission approval of the Santa Fe-Pennsylvania application?

5. Was appellant accorded an adequate review by the District Court?

SUMMARY OF ARGUMENT.

1. The Commission's approval of the Santa Fe-Pennsylvania application to acquire control of Western was a proper exercise of its administrative discretion and within the scope of its statutory authority. The report recognizes Western as a successful working organization which has proved itself by rendering a valuable public service to the communities it serves, to the shippers who use its services, and to the 16 railroads with which it connects. Western today plays an important part in the nation's transportation system as a short, direct east-west bridge line working closely with all its connections to provide a vital link for the fast through service which is becoming increasingly important not only to shippers, but to the railroads as well, in meeting the competition of other modes of transportation. By its decision the Commission has recognized the "valuable transportation service" provided by Western and the important part Santa Fe and Pennsylvania have played in its development. It has concluded that separate operation of Western under their joint control will insure the continuance of this vital service in the pattern and under the policies that have proved so successful in the past and with excellent prospects for future growth and development. These public benefits can be assured without adversely affecting the service or economic welfare of other railroads; and the interests of Western's employees will be fully protected.

Thus the Commission's determination reflects full consideration of the effect of the proposed acquisition on adequate transportation service, on other carriers and on Western's employees as required by Section 5 of the Interstate Commerce Act. It also squares with the National Transportation Policy and its objectives of fostering "sound economic conditions in transportation and among

the several carriers" and of "developing, coordinating and preserving" an adequate national transportation system.

The Commission's report reflects consideration of the interests of all parts of the public directly concerned with Western's future, including the interests of appellant. Appellant's competing application was fully considered. The alleged benefits of appellant's plan for integrating Western into its own operations, including the proposed economies and service changes, were weighed against the adverse effects on Western's employees and on the other railroads connecting with Western. These considerations and the fact that appellant's plan contemplated the disappearance of Western as a separate and neutral connection for the other 15 carriers with which it presently works, led to the rejection of the Minneapolis application. The District Court properly held that the balancing of these factors is for the Commission, not the courts.

The Commission's conclusion that Western's present policies toward its connections will be continued under Santa Fe-Pennsylvania control is supported by findings which demonstrate that it will be in the self-interest of Santa Fe and Pennsylvania to continue such policies and by the checks and balances which the Commission found to be inherent in the control of an east-west bridge carrier, such as Western, by an eastern and a western railroad, respectively. Appellant's assertion that it would maintain a policy of neutrality if permitted to gain control of Western is belied by its specific plan to divert traffic from Western's other connections to its own line extending north and northwest from Peoria.

2. Appellant's argument that the Commission failed to make findings on material issues simply ignores the findings actually made. The Commission specifically recognized the benefits Santa Fe and Pennsylvania receive from Western's route, their economic interest in its future develop-

ment and the major part they have played for over 30 years in providing the connecting services which have made its present development possible—to the point where today the traffic interchanged with Santa Fe and Pennsylvania amounts to about two-thirds of Western's total traffic.

Appellant also attacks a number of unrelated findings on the ground that they are not supported by the record. In doing so appellant ignores or misconstrues the substantial evidence on which these findings are based. This is discussed in some detail in Section II of the Argument.

3. The decision of this Court in *McLean Trucking Co.* v. *United States* makes it clear that the Commission is not required to measure a proposed acquisition under Section 5 of the Interstate Commerce Act by the standards of the antitrust laws. Pursuant to the Court's ruling in that case the Commission analyzed the effects of the proposed acquisition on the competitive situation in practical and concrete terms and concluded that the benefits to be derived from the operation of Western under the control of Santa Fe and Pennsylvania will be in furtherance of the overall national transportation policy and that there will be no undue curtailment of competition. More than one-third of the report is devoted to a discussion of the various factors bearing on the competitive situation.

Appellant's charge that the acquisition of Western by Santa Fe and Pennsylvania will lead to the monopolization of east-west gateways and suppression of the Peoria gateway is without support in the record. There are too many available routes through the Chicago, St. Louis and Peoria gateways to permit monopolization. The suggestion that Santa Fe and Pennsylvania would use their control of Western to suppress the Peoria gateway to the advantage of the other gateways is contrary to the evidence and the Commission's findings. Any attempts at suppression of Western would only divert Western's traffic to other avail-

able routes. Moreover, in view of the benefits Santa Fe and Pennsylvania receive from Western's route and their record of 30 years' cooperation with Western in developing traffic over that route, it is only common sense to conclude that the future of Western under their joint control will be one of continued growth and development. It defies common sense to assert, as does appellant, that having spent 30 years in helping to build up Western to its present position, the Santa Fe and Pennsylvania are now seeking to acquire control of Western in order to destroy it.

The charge that the joint acquisition of Western by Santa Fe and Pennsylvania will increase their "monopolistic power" is also without support in the record. There is no evidence of monopolistic power; and no combination or merger of Santa Fe and Pennsylvania is involved in such acquisition. As an eastern and a western railroad, respectively, they cannot afford to work together to the detriment of their other respective connections on the east and on the west.

4. Section 10 of the Clayton Act is not applicable to the transaction here involved and even if it were applicable, it would not constitute a bar to the Commission's approval of the acquisition of Western by Santa Fe and Pennsylvania. The Commission's authority under Section 5 of the Interstate Commerce Act is exclusive and plenary and neither the antitrust laws nor any other provisions of law can operate as a bar to the consummation of a transaction which has been approved by the Commission.

ARGUMENT.

I.

THE COMMISSION'S DETERMINATION OF THE PUBLIC INTEREST REFLECTS FULL CONSIDERATION OF THE TWO COMPETING APPLICATIONS. IT IS CONSISTENT WITH THE STANDARDS OF SECTION 5 AND THE NATIONAL TRANSPORTATION POLICY AND DID NOT DEPRIVE MINNEAPOLIS OF A FAIR HEARING.

Appellant says that the Commission adopted the "false" standard of "separate and independent management" to determine the public interest; that this standard collides with the National Transportation Policy; and that it was a "predetermined" standard which "automatically" excluded Minneapolis and deprived it of a fair hearing.

The term "separate and independent management" is set out in quotation marks in appellant's brief, but it appears nowhere in the Commission's report. What the Commission referred to was "separate and independent *operation*" (R. 31, 26), a well-understood concept in the railroad field. The distinction may seem slight, but it is significant.

By coining this term here for the first time,[4] appellant creates a straw man, which it proceeds to demolish by pointing out that the management of a controlled carrier cannot be entirely independent of its owners. Of course, no such contention was ever advanced.

The concept of "separate and independent operation" does not have its source, as appellant contends, in the contract between Santa Fe and Pennsylvania. Nor is it true,

4. In its Jurisdictional Statement (p. 23), appellant used the correct term: "separate and independent operation".

as appellant states, that it cannot be found in any "published authority" (brief, p. 19). The concept is not a new one and it is reflected in the published reports of the Commission. In a number of cases, which reflect its experience over the years in the administration of Section 5 of the Interstate Commerce Act, the Commission has recognized that separate operation of a controlled carrier under its own local management is an effective factor in preserving existing traffic relationships with connecting lines and insuring continued neutrality in service.[5] This has been demonstrated by actual experience in the case of the Wabash as the Commission noted in *Detroit, Toledo & Ironton R. Co. Control*, 275 I. C. C. 445, 490 (1950). And as far back as 1924 the Commission imposed a condition requiring separate operation of the Clinchfield Railway, which like Western, was a bridge line connecting with a number of other railroads. *Clinchfield Ry. Co. Lease*, 90 I. C. C. 112, 132-133 (1924).

But the Commission's concept of the controlling public interest in this case was not just separate operation as such. It went much deeper than that as a review of the Commission's report will show.

A. The Report Shows that in Arriving at Its Determination of the Public Interest the Commission Gave Full Consideration to the Two Competing Applications, As Well As to the Other Interests Involved.

The Commission was confronted with two radically different proposals for the future operation of Western's line. Santa Fe and Pennsylvania proposed the continued operation of Western as a separate carrier under its present local

5. *Wheeling & L. E. Ry. Co. Control*, 267 I. C. C. 163, 176 (1946); *D. T. & I. R. Co. Control*, 275 I. C. C. 455, 490, 491-92 (1950); *Pacific Coast R. Co. Control*, 282 I. C. C. 600, 607 (1951); *Spokane International R. Co. Control*, 295 I. C. C. 425 (1956).

management and its present service and traffic policies. The Minneapolis proposal for integrating Western's line into its own operations in the interest of economy involved the disappearance of Western as a separate and neutral connection for the other 15 carriers with which it presently works. In addition to these two proposals the Commission had to consider the applications of four other railroads, the Nickel Plate, Rock Island, Burlington and Wabash, for inclusion in the transaction under varying circumstances (R. 25).

The problem, then, was what should be done with Western—under which proposal would it best serve the nation's transportation system? In resolving this problem the Commission was to be guided by the specific statutory standards of Section 5(2) of the Interstate Commerce Act and by the more general provisions of the National Transportation Policy.

The standard of Section 5(2) (b) is the broad one of consistency with the public interest; and in passing on any proposed transaction the Commission is specifically directed by Section 5(2)(c) to give weight to: (1) its effect on adequate transportation service; (2) the effect of including, or failing to include, other railroads; and (3) the interest of the carrier employees affected. 49 U. S. C. § 5 (2) (b) and (c).

Objectives of the National Transportation Policy, which are relevant here, are: (1) the promotion of safe, adequate, economical and efficient service; (2) the fostering of sound economic conditions in transportation and among the several carriers; and (3) the encouragement of fair wages and equitable working conditions—all to the end of developing, coordinating and preserving an adequate national transportation system. 49 U. S. C. preceding § 1.

In applying these broad standards to a given case the

Commission, as "the agency that is expert in the field," must resolve such conflicts as may exist in the light of the overall public interest. *Schaffer Transportation Co.* v. *U. S.*, 355 U. S. 83, 92 (1957). A brief review of the Commission's report will show that that is what was done in this case.

The report begins by describing Western; the important place it occupies in the nation's transportation system as a strategically located east-west bridge route; the policy of neutrality toward all its connections by which it attained that position; its excellent local management; and the important part Santa Fe and Pennsylvania have played in Western's development (R. 20-22).

The report then describes the principal railroads involved, their relations with Western and the various proposals for control of Western (R. 25-30).

Following this the report turns to the Minneapolis and reviews in detail its plan for integrating Western's line with its own railroad, the substantial economies which Minneapolis expects to achieve, and the plan for establishing new service routes east of Peoria which is designed to divert traffic from Western's other connections to the Minneapolis line extending north and west of Peoria. The report points out that the Minneapolis proposal unequivocally contemplates the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works. It also states that most of the proposed economies will be at the expense of Western's employees and that the proposed new service routes would be extremely harmful to the other carriers (R. 30-33).

Turning to the Santa Fe-Pennsylvania proposal for continued operation of Western as a separate carrier under its present local management and present policies, the report analyzes the claims of traffic diversion by Minneapolis

and others and concludes that Santa Fe-Pennsylvania control would be in furtherance of the overall national transportation policy and would not jeopardize the traffic of the other carriers or unduly curtail competition (R. 33-39). The report notes the valuable transportation service Western is now furnishing, the support of the Santa Fe-Pennsylvania application by Western's employees, the general insistence by shippers and by the communities along its line that its present status be maintained and the importance to Western of the connecting service of Santa Fe and Pennsylvania in providing a fast transcontinental route competitive with other modes of transportation and concludes that the public interest demands "that the present policies of Western in all respects be continued" (R. 44-45).

The request of other carriers for inclusion in the control of Western is rejected because diffusion of control would lessen the incentive of Santa Fe and Pennsylvania for the future development of Western and because it is not necessary to protect their traffic. In this connection the report points to the opportunities for future development of Western's territory and other advantages flowing from Santa Fe-Pennsylvania ownership and concludes finally that on the basis of all the considerations disclosed in the report the application of Santa Fe and Pennsylvania should be granted in preference to that of Minneapolis (R. 45-49).

From this outline of the report it is apparent that the controlling consideration in the Commission's view of the public interest was the need for preserving Western's status as a separately operated bridge line working closely with all its connections. The key finding, as the District Court recognized (R. 104), was that "Public interest demands that the present policies of Western in all respects be continued" (R. 45).

This was not a "predetermined conclusion" reached "at the outset" to automatically exclude Minneapolis as the

latter contends (brief, pp. 19-32). As the District Court pointed out, the report shows that this conclusion was reached after consideration of the evidence and the contentions of all parties to the proceeding, including Minneapolis (R. 102-104).

B. The Findings on Which the Commission Based Its Approval of the Santa Fe-Pennsylvania Application Are Consistent With the Standards of Section 5 and the National Transportation Policy.

The Commission's conclusion that the public interest will best be served by the continued operation of Western as a separate carrier under its present policies is supported by a number of specific findings throughout the report. These findings reflect the unique part Western plays in the nation's transportation system and the general insistence, by all parts of the public most directly concerned, that Western's separate operating status and present policies be continued.

Thus the Commission found that Western has capitalized on its strategic location as an east-west bridge carrier through Peoria by its policy "to maintain strict neutrality between all connections, and to participate in any haul of traffic no matter how slight" (R. 21). More than two-thirds of its revenues are derived from bridge traffic (R. 22). "Western, as a direct east-west line, supplies the shortline connection" for providing the type of through service which is becoming increasingly important "not only to the shipping public but to the railroads as well" in competing with "the other modes of modern transportation" (R. 45).

This is not the first time that the Commission has recognized the important part Western plays in the nation's transportation system. In *Illinois-Missouri Terminal Ry.*

Co., Purchase, I. C. C. Finance Docket No. 18752 (1956), the Commission described Western as follows:

> "Although only 231 miles long, *the Toledo, Peoria & Western occupies a particularly important position in the Nation's transportation system* as it forms a short, direct bridge route between the east and west which avoids the congested areas of Chicago and other major gateways. Modern equipment, dependable and convenient schedules, connections with all main lines, and complete icing and livestock facilities make the Toledo, Peoria & Western a valuable link for transcontinental shipments * * *" (Sheets 43-44 of mimeographed report, dated April 2, 1956). (Emphasis supplied.)

Thus Western, as presently constituted, has proved itself as a "well-managed, independently operated railroad furnishing a valuable rail transportation to the public" (R. 44). Those who have a real stake in its future have insisted, therefore, that its present pattern of operation and its present policies must be continued.

This is true of the intervening railroads, which are among its principal interchange connections (R. 31). It is true of the off-line shippers who use Western as a bridge line for through traffic (R. 31, 46); and the communities and local shippers along Western's line who benefit from the present ready access to local management and the excellent local service which has been made possible by Western's success as a bridge line (R. 31, 44-45, 46-47, 369). It is true of the cities in the Peoria area which have a direct and vital interest in the retention of Western's headquarters and general offices in East Peoria and in preserving employment for their citizens (R. 31, 21, 47). It is true of Western's employees whose jobs are at stake (R. 32, 44). Only Minneapolis and its two supporting intervenors, South Dakota and Minnesota, advocated "the disappearance of Western as a separate and independent operating carrier" (R. 31).

The proposed acquisition of Western by Santa Fe and Pennsylvania is entirely consistent with the concept of the overall public interest expressed in the above findings. This is demonstrated by many specific findings relating to the Santa Fe-Pennsylvania plan for the future operation of Western.

Under their proposal Western would continue to function as a separate carrier under its present local management and under the traffic and service policies which have contributed so much to its success (R. 24). This plan reflects the natural community of interest resulting from the geographical location of Western as an important link between the Santa Fe on the west and the Pennsylvania on the east in providing fast through service via the Peoria gateway (R. 45).[6] Thus Western receives its long haul on traffic interchanged with Santa Fe and Pennsylvania, while its interchange with most of its other connections, including appellant, is in the Peoria area at the center of its line (R. 45, 21). Much of Western's success as a bridge line dates from the construction of Western's connection with the Santa Fe at Lomax in 1927 (R. 21). Since that time Santa Fe and Pennsylvania have cooperated with Western in coordinating their schedules and services to provide a

6. This natural community of interest was recognized by the various railroad consolidation plans which generally allocated Western to a system based on Pennsylvania and, in one instance, divided it between Pennsylvania and a system based on the Santa Fe (Ex. II-14, pp. 9-11; R. 566, 4694-96). It was also recognized by the Office of Defense Transportation which seriously considered having Santa Fe and Pennsylvania take over a strike-bound Western during World War II (R. 363-64).

The importance of the Santa Fe—Western—Pennsylvania route was convincingly demonstrated by the greatly increased use of Santa Fe and Pennsylvania's connecting services in World War II. Between 1939 and the peak war year, 1944, Western's total traffic increased 62 per cent; its overhead or bridge traffic increased 91 per cent; and its interchange with Santa Fe increased 142 per cent and with Pennsylvania, 105 per cent (Ex. II-5, pp. 11-12; R. 462, 644-45).

fully competitive service over Western's route (R. 21-22, 46). Service, as the Commission found, is the most important factor affecting the routing of traffic (R. 34). As a result, Santa Fe and Pennsylvania account for about 70 per cent of Western's interline traffic and revenues (R. 22).

The Commission noted the strong shipper support for the Santa Fe-Pennsylvania application based on this long record of superior service in connection with Western, as well as the support by the communities along Western's line and by Western's employees (R. 46, 47, 44). The Commission thoroughly analyzed the effect of the acquisition on competing carriers and concluded that there would be no undue curtailment of competition (R. 33-39). It found that the self-interest of Santa Fe and Pennsylvania would provide assurance that Western's solicitation and service policies would be continued (R. 35, 39). It found that the checks and balances inherent in the control of Western, as an east-west bridge line, by Santa Fe and Pennsylvania, together with prescribed routing conditions, would protect Western's other rail connections from impairment of service or discriminatory solicitation (R. 46, 40-41).

The Commission found other advantages in Santa Fe-Pennsylvania control. These included increased traffic for Western under the joint applicants' plan to place Effner and Lomax, where they connect with Western, on a association parity with Chicago (R. 34); stimulation of industrial development in the area served by Western (R. 46, 47); technical assistance in the realization of economies in operation, advantages in purchasing and the assurance of a more adequate supply of freight cars for Western (R. 47).

In the light of the findings outlined above the District Court properly concluded that it could not substitute its judgment for that of the Commission on the broad policy

question of the public interest. The "wisdom and experience" of the Commission, not of the courts, must determine whether the proposed transaction is in the public interest. *McLean Trucking Co. v. United States*, 321 U. S. 67, 87-88 (1944).

As the Commission's report shows, Western is not just a corporate entity or a physical plant. It is a successful working organization which has proved itself by rendering a valuable public service to the communities it serves, to the shippers who use its services and to the 16 railroads with which it connects. By its decision the Commission has recognized the "valuable transportation service" provided by Western and the important part Santa Fe and Pennsylvania have played in its development. It has concluded that separate operation of Western under their joint control will insure the continuance of this vital service in the pattern that has proved so successful in the past and with excellent prospects for future growth and development. These public benefits can be assured without adversely affecting the service or economic welfare of other railroads. And the interests of Western's employees will be fully protected.

These considerations provide ample justification for the Commission's ultimate finding that the control of Western by Santa Fe and Pennsylvania will be consistent with the public interest. Certainly this determination is within the permissible scope of the broad authority granted to the Commission by Section 5(2)(b) of the Interstate Commerce Act. It reflects full consideration of the effect of the proposed transaction on adequate transportation service, the effect on the other carriers, and the interests of the affected employees, as directed by Section 5(2)(c).

The decision to preserve Western's important function in the nation's transportation system as a separately operated bridge railroad linking the east and the west and

working closely with all its connections squares with the National Transportation Policy and its objectives of fostering "sound economic conditions in transportation and among the several carriers" and of "developing, coordinating and preserving" an adequate national transportation system. It is also consistent with this Court's statement in *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25 (1932), that the broad criterion of the public interest has direct relation to the "best use of transportation facilities".

C. The Alleged Advantages of the Minneapolis Application Were Appropriately Balanced Against the Other Factors Bearing on the Public Interest.

Appellant characterizes the Commission's concept of the public interest as a "false, artificial and meaningless" standard which was "selected in advance" and "calculated from the outset" to secure the award to the successful applicants. This "one-sided" procedure is said to be similar to that condemned in *Schaffer Transportation Co. v. United States*, 355 U. S. 83 (1957), where an application for a proposed new truck service was denied solely on the ground that the existing rail service was adequate. But what this Court condemned in *Schaffer* was the failure to balance the alleged advantages of the proposed service against the other factors bearing on the issue of public convenience and necessity in the light of the National Transportation Policy. There was no such failure here.

Appellant lays great stress on the economies that could be effected under its plan to integrate Western's line with its own operations, but these were not ignored. The Commission described them in considerable detail, but found that they would be largely at the expense of Western's employees (R. 32). It also found that the plan of integra-

tion which was essential to the realization of these economies meant the disappearance of Western as a separate and neutral connection for the other 15 carriers with which it presently works (R. 30).

Economies are an important consideration in determining the public interest but they are not of "controlling importance". *Virginian Ry. Co. Control*, 117 I. C. C. 67, 75 (1926). Section 5(2)(c) of the Interstate Commerce Act specifically directs the Commission to give weight to the interest of employees in determining consistency with the public interest. This is wholly apart from the obligation, imposed by Section 5(2)(f), to attach specific conditions relating to job protection or dismissal pay to any order of approval. *Fort Worth & D. C. Ry. Co. Lease*, 247 I. C. C. 119, 125-27 (1941). In *Florida East Coast Ry. Co. Reorganization*, 267 I. C. C. 295, 325 (1947), the Commission said that the interests of employees in "changes of management, ownership and operation" of companies by which they are employed are of public as well as private interest.

In this case the interest of Western's employees in the retention of their jobs at Peoria coincides with the interests of the shipping public, the communities served by Western and Western's other rail connections in its continued operation as a separate carrier under its present management and its present policies. Certainly the balancing of these interests against the economies which could be realized from the unified operation of Minneapolis and Western is a task committed to the Commission, not to the courts. The District Court so held (R. 103).

Again in considering the service aspects of the Minneapolis plan the Commission also considered the interests of the other carriers connecting with Western. The Minneapolis plan for establishing new service routes via Western was admittedly designed to divert traffic from Western's other connections to the Minneapolis line extending north

and northwest from Peoria. This would be a complete departure from Western's policy of working closely with all its connections and the Commission found it would be extremely harmful to the other carriers (R. 30, 31-32).[7] Again, as the District Court held, the balancing of these interests was for the Commission (R. 102-103).

Appellant stresses its financial difficulties prior to its reorganization more than 20 years ago and suggests that the Commission should have permitted it to acquire Western in order to strengthen its line (brief, p. 28). South Dakota and Minnesota join in this contention. Inefficient operation and excessive debt, however, were the causes of appellant's earlier difficulties. See *Associated Rys. Co. Acquisition and Securities*, 228 I. C. C. 277 (1938). Since 1936 the picture has changed entirely. The Commission found that earnings since 1936 have permitted the development of Minneapolis into a modern and efficient operating plant, relatively free from debt, and that it is now a reasonably prosperous railroad with a financial and physical picture that has been steadily improving over the past few years (R. 27-28). The Commission also found that control by Santa Fe and Pennsylvania would not result in the diversion of appellant's traffic (R. 35-37). As the District Court pointed out, the advantages which might be realized by appellant through acquisition of Western was only one of the factors which the Commission had to evaluate (R. 102).

Although appellant relies on this Court's decision in *Schaffer*, the contention that its application did not receive comparative consideration is actually based on the failure of the Commission to model its findings after the pattern suggested in *Johnston Broadcasting Co.* v. *F. C. C.*, 175 F. 2d 351, 357 (D. C. Cir., 1949), and to make specific find-

7. Here there was no shipper testimony to evaluate—as there was in *Schaffer*, 355 U. S. at 92. Not a single shipper testified as to the alleged benefits of the proposed new service.

ings as to every difference between the two competing applications (brief, p. 23). But the *Johnston* case dealt with two mutually exclusive applications to do the same thing—to operate a new broadcasting station—and an item by item comparison was appropriate to determine which applicant was better qualified.

Here the Commission was confronted with two radically different proposals for the future operation of an existing railroad, as well as various proposals by other roads for inclusion in control. An item by item comparison was, therefore, impracticable. The controlling question in evaluating the two competing applications was what function Western could best serve in the national transportation system. The Commission concluded that preservation of Western's present function as a separately operated bridge line was preferable to its integration into the Minneapolis line. This conclusion was reached after consideration of the interests of all elements of the public involved, including Minneapolis. Under these circumstances the failure to follow the *Johnston* formula was in no sense a denial of a fair hearing.[8]

Appellant (brief, pp. 29-31) attacks the Commission's finding that Santa Fe and Pennsylvania would preserve Western's present policy of neutrality toward its connecting carriers and contends that it, too, would be neutral—only more so. This argument is made without any reference to the evidence on which the Commission's finding is based. Nor is reference made to the testimony by appellant's vice-president which disclosed the plans for using the control of Western to divert traffic from Western's other connections to the Minneapolis line. In this context, appellant's claim that it was denied comparative considera-

8. A similar approach to a somewhat similar problem by the Federal Communications Commission was upheld by this Court in *F. C. C.* v. *Allentown Broadcasting Co.*, 349 U. S. 358, 361-63 (1955).

tion boils down to a contention that the Commission should have ignored the evidence and decided in its favor.

The Commission's finding, which appellant calls a "highly theoretical assumption", is soundly based on the record and the Commission's own transportation experience.[9] The Commission found that:

> "* * *, No greater protection could be afforded to carriers interchanging traffic with Western than to have ownership divided equally between the largest connecting carrier in the east and the largest one in the west. Under this built-in system of checks and balances, it is inconceivable for the Santa Fe to permit impairment of service or discriminatory solicitation with respect to eastern connections, or the Pennsylvania with respect to western ones * * *." (R. 46.)

This "built-in system of checks and balances" works in two ways:

First, Pennsylvania as an eastern road receives valuable traffic via Western from the latter's connections on the west, such as Rock Island, Burlington and Minneapolis. Santa Fe likewise receives important traffic via Western from eastern roads, such as Nickel Plate and the New York Central. Neither would want Western to be operated in such a way as to lose that traffic (R. 371-72, 575, 581-82).

Secondly, it is a well-known fact that railroads serving the east-west gateways cannot afford to favor one connection to the detriment of others. This was conceded by appellant's freight traffic manager (R. 1137) and it is reflected in the policy of the Nickel Plate (R. 1328-29). It was recognized by the Commission in *Chicago, Burlington & Quincy R. Co. Control*, 271 I. C. C. 63, 154 (1948).

Neither Santa Fe nor Pennsylvania could afford to join in any attempt to divert traffic from Western's other con-

[9] Appellant's suggestion (brief, p. 29) that Western, under Pennsylvania-Burlington ownership, discriminated against its other connections is without foundation in the record or in fact.

nections to routing via Santa Fe and Pennsylvania. If they attempted this, Santa Fe would antagonize all its other eastern connections and Pennsylvania would antagonize all its other western connections, including not only the lines with which each bridges traffic over Western, but also their connections at other east-west gateways which do not connect with Western.

This would be true whether Santa Fe and Pennsylvania attempted to favor each other directly by their own solicitation or indirectly through their control of Western. Perhaps appellant will argue, as it did before the Commission, that other railroads would recognize the right of Santa Fe and Pennsylvania to solicit a long haul for "their subsidiary," Western. But as joint owners of Western, Santa Fe and Pennsylvania would still be an eastern and a western carrier and, as such, they could not afford to work together to the detriment of their respective eastern and western connections.

Appellant asserts that as a small railroad it, too, would have to be neutral (brief, p. 29); but there could be no checks and balances with Western's line integrated into the Minneapolis as one railroad (R. 1325-26). *There would be no Western to observe a policy of neutrality.* The Nickel Plate and Rock Island, as well as the Wabash, offered evidence as to the detrimental effect of the Minneapolis plan on their traffic (R. 1325, 1544-45). This was corroborated by Mr. Nelson, appellant's traffic vice-president, who testified that by integrating Western's line into its service, Minneapolis would obtain "new traffic" by diverting it from the Rock Island, Milwaukee, North Western and Burlington (R. 1200, 1197-98), and by short-hauling the Gulf, Mobile & Ohio, the Chicago & Eastern Illinois, the Illinois Central and the Wabash (R. 1197, 1178-79, 1182-83). Minneapolis would "actively solicit" this traffic to divert it from these lines, all of which are connections of Western (R. 1184,

1199). This would be a far cry from Western's present policy of working closely with all its connections. Certainly the Commission was justified in finding that this policy would be harmful to other carriers (R. 32).

Referring to its own claims of diversion, Minneapolis says (brief, p. 30) that the Commission "brushed off" its "unchallenged" evidence of the loss it would suffer from the Santa Fe-Pennsylvania acquisition. This is somewhat lacking in candor. Reference should at least have been made to the five full paragraphs of the report which the Commission devoted to a careful analysis of this "evidence", which was most definitely challenged (R. 35-37). The analysis speaks for itself and fully supports the Commission's finding that Minneapolis would not be injured.

Appellant concludes its comparative hearing argument by again repeating the irresponsible assertion that the Commssion adopted "in advance" an arbitrary standard that "automatically" excluded Minneapolis (brief, p. 31). The District Court rejected this contention, pointing out that the benefits claimed by Minneapolis were weighed against the interests of Western's other connections, the shippers using its services, the communities along its line and Western's employees (R. 102-103). The public interest is the interest of the "whole public" not just that of Minneapolis.[10] The conclusion that Western could best serve the public as a separately operated bridge carrier working closely with all its connections was in no sense an arbitrary one selected in advance, but was reached after full consideration of the claims of all the interests involved.

10. *Florida East Coast Ry. Co. Reorganization*, 267 I. C. C. 295, 325 (1947); *Detroit, Toledo & Ironton Control, supra*, 275 I. C. C. at 488; and *Watson Bros. Transp. Co. Inc.*, 57 M. C. C. 745, 758 (1951).

II.

ADEQUATE FINDINGS WERE MADE ON ALL MATERIAL ISSUES; AND THE FINDINGS ATTACKED BY APPELLANT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

Appellant contends (brief, pp. 32-33) that the Commission failed to observe the requirements of Section 8(b) of the Administrative Procedure Act, 5 U. S. C. § 1007(b). That section provides that all decisions include a statement of the findings and conclusions on all material issues, as well as the reasons or basis therefor. We have already reviewed the findings which explain and support the Commission's concept of the overall public interest in the particular context of this case, pp. 19-20, *supra;* the findings on which the Commission based its conclusion that the Santa Fe-Pennsylvania application was consistent therewith, pp. 21-24, *supra;* and the findings on which the Commission based its rejection ofthe Minneapolis application, pp. 24-30, *supra.* This review, we think, sufficiently demonstrates compliance with the requirements of Section 8(b). However, appellant has devoted a considerable part of its brief to an attack on the manner in which the Commission dealt with a number of specific issues and we shall take them up *seriatim.*

1. *Economies and Service:* Appellant first repeats its contention that there was an "absence of any findings" respecting its economies and service proposals and the alleged benefits "of strengthening Minneapolis" (brief, pp. 33-35). We have already reviewed the findings which reflect the Commission's evaluation of these contentions, *supra,* pp. 24-26. Appellant simply ignores these findings and contends that the Commission erred because it failed to make specific findings as to evidentiary details of its integration program and service proposals. Such a detailed analysis would have served no useful purpose. The

Commission's report clearly recognized the nature and scope of these proposals in weighing them against the other factors bearing on the public interest.

2. *Economic Motivations:* Appellant says the Commission made "no findings" as to the economic motivations of the competing applicants (brief, p. 35). This is not true. The Commission found that appellant sought to acquire Western in order to reap the financial benefits of the economies to be realized through integration of its line with Western and of the added traffic which it expected to obtain for its line north of Peoria by the diversion of traffic from Western's other connections (R. 30, 32-33, 31-32).

On the other hand, the Commission recognized the perfectly legitimate self-interest of Santa Fe and Pennsylvania in cementing their already close relationship with Western when they learned that its stock was to be sold.[11] After pointing to the major part they had played for over 30 years in the development of Western's route (R. 21-22) and to the fact that 70 per cent of Western's traffic was interchanged with them (R. 22) the Commission stated that:

> "* * * The protection of interchange traffic was one of the principal reasons advanced by the applicants, and recognized by us in approving acquisition of control in *Detroit T. & I. R. Co. Control*, 275 I. C. C. 455." (R. 22.)

The considerations which led Santa Fe and Pennsylvania to seek authority to acquire control of Western are significant in a proceeding such as this because they reflect the strong interest of these two roads in the future of Western's route and in the preservation of its primary

11. Section 5(2)(c) implicitly recognizes the interest of a railroad's connecting lines in any proposed acquisition by its provision that in determining the public interest the Commission must give weight to the effect of the inclusion, or failure to include, other carriers in the transaction.

function as a transcontinental bridge line. Santa Fe had seriously considered the acquisition of Western as far back as 1942, when its future was threatened by serious labor difficulties (R. 362-64). And the first discussions with the Pennsylvania about joint acquisition of Western took place at that time (R. 363).

3. Burlington-Pennsylvania Control: Appellant contends that the Commission ignored Western's bankruptcy under Pennsylvania-Burlington ownership more than 40 years ago and that there has been no showing of any change in traffic or transportation conditions which would lead to a different result under Santa Fe-Pennsylvania control (brief, pp. 36-37). The Commission did not ignore Western's former receivership (R. 21) and its findings explicitly recognize the substantial changes which have taken place since that time.

Subsequent developments have proven that what Western lacked then was an effective connection at the western end of its line to complement the Pennsylvania on the east. The Burlington, with an important line directly into Peoria, had no incentive to support the western part of Western's line. The need for an effective connection on the west was met when the interchange with Santa Fe at Lomax was constructed in 1927. As pointed out in the case authorizing that interchange, "the proposed construction will aid in sustaining that part of the applicant's railroad west of Peoria" *Construction by T. P. & W.*, 124 I. C. C. 278, 279 (1927). The soundness of this prediction is amply demonstrated by the Commission's findings as to the successful growth of Western's traffic in cooperation with Santa Fe and Pennsylvania in the more than 30 years since the construction of the Lomax interchange (R. 21-22, 46).

4. *Future of the Peoria Gateway*: Appellant says the Commission made no findings as to the competition with the Peoria gateway provided by Santa Fe's route to Chicago and Pennsylvania's routes to Chicago and St. Louis (brief, p. 40). This is not true. The Commission specifically referred to such competition (R. 33) but found that:

> "Under [Santa Fe-Pennsylvania] control, Western would have an increased opportunity to secure traffic now moving via other gateways. While the Santa Fe and the Pennsylvania ordinarily solicit traffic for their long hauls, they have not worked against Western, and have offered only passive resistance against Lomax and Effner, respectively, in recognition of the benefits they would receive from the Western route. Considering the greater expense of operating through a large congested terminal, Santa Fe and Pennsylvania are just about as well off financially when handling traffic via Western as they would be on the long haul through Chicago. If the Santa Fe obtains a half interest in Western, it intends to place Lomax on a parity with Chicago from a solicitation standpoint, and as the other half owner, the Pennsylvania will recognize Effner as one of its principal interchanges along with Chicago and St. Louis. While the Pennsylvania will continue to solicit its long haul to St. Louis, Effner and Chicago will be on a parity" (R. 34).

Appellant ignores what the Commission said in this finding and attempts to confuse the issue by asserting that Santa Fe and Pennsylvania would not "solicit one pound of freight for Western" and charging that the parity policy was therefore a "hoax" designed to mislead the Commission (brief, pp. 40-42).

The Commission was not misled. It did not find that *Santa Fe* and *Pennsylvania* would solicit freight for Western.[12] It found that under their control *Western*

12. If they did they would alienate their other eastern and western connections, respectively, which do not serve the Peoria gateway. As we pointed out at pages 28-29, *supra*, railroads serving the east-west gateways cannot afford to do this.

"would have an increased opportunity to secure traffic now moving via other gateways"—in other words, by Western's own solicitation efforts.

This is entirely consistent with the parity policy, as explained by Santa Fe's vice president, Mr. Duffy. Under that policy shippers using the Santa Fe will be advised that Santa Fe will be satisfied with routing either via Chicago or via Lomax, where it connects with Western (R. 483). This does not mean that Santa Fe will solicit traffic for Western; but it means that Western's solicitors will be "in a better position to solicit traffic which might otherwise move via the Santa Fe through Chicago" (R. 483-84, 494-95, 496-97).

Conversely, Pennsylvania, while it will continue to solicit for its long haul to St. Louis, will place Effner, where it connects with Western, on a parity with Chicago and thus increase the opportunity of Western's solicitors to secure traffic now moving via the Pennsylvania to Chicago. Pennsylvania's traffic vice-president, Mr. Carpi, so testified (R. 582, 607) and President Symes' testimony, when read in its entirety, is not in conflict with this finding (R. 557-58 as well as R. 521-22).

Contrary to appellant's assertion (brief, pp. 41-42), the testimony of Western's president, Mr. Coulter, supports the Commission's finding. His testimony recognizes that while Santa Fe and Pennsylvania will not solicit for Western, their policy of placing Lomax and Effner on a parity with Chicago will make additional reservoirs of traffic "available" to Western's solicitation efforts (R. 1582-83, 1600).[13] Certainly it cannot be said that the record

13. Mr. Coulter did not state, as appellant says (brief, p. 41), that under this policy Pennsylvania would still seek its long haul to Chicago or St. Louis. He said that is Pennsylvania's "present policy", but that it will be changed "to put Chicago and Effner on the same basis, on a parity, which is not the case today" (R. 1600).

lacked substantial evidence to support the Examiner's parity findings, which was adopted by the Commission.

Appellant says, however, that Santa Fe and Pennsylvania lack any incentive to develop Western's route (brief, pp. 42-43). Such incentive is not lacking.

The only economic justification for Pennsylvania's line west of Logansport, Indiana, is its connection with Western at Effner. Thus the Commission found that Pennsylvania has consistently favored interchange with Western at Effner, rather than interchange with its own subsidiary, the Wabash at Logansport (R. 43-44). When Pennsylvania interchanges traffic with Western at Effner it saves the expense of the longer haul to Chicago and avoids the congestion and switching expense at Chicago (R. 575-76, 474). The divisions it receives out of the through rates are, generally speaking, not substantially less than those it receives for a haul to Chicago (Ex. H-10, pp. 5-6; R. 508, 1670-71) and when half of Western's divisions are added to reflect its proposed 50 per cent interest in Western it will generally fare better via Effner than via Chicago (Ex. H-34, pp. 1-41; R. 1163, 1770-1810 and Ex. H-36, pp. 1-36; R. 1163, 1818-1853).

Santa Fe has a particularly strong interest in Western's route through Peoria because it does not reach the Peoria or St. Louis gateways, while its western competitors, the Rock Island and Burlington, serve the Chicago, Peoria and St. Louis gateways directly (R. 481). The movement of traffic via Western enables Santa Fe to obtain a long haul through Lomax on traffic which might otherwise move via St. Louis; in which event, Santa Fe could receive no haul east of Kansas City and might lose the traffic entirely, as the Commission found (R. 38 and see R. 481-83). This consideration has been prominent in the thinking of Santa Fe

traffic people for many years (R. 362-64).[14] It was recognized in the proceeding involving construction of the interchange connection between Santa Fe and Western at Lomax in 1927, when it was pointed out that "the route to be afforded by the proposed connecting track will permit of longer hauls to [Western] and the Santa Fe." *Construction by T. P. & W.*, 124 I. C. C. 278, 279 (1927).

These economic considerations explain why Santa Fe and Pennsylvania have cooperated with Western for 30 years in coordinating their schedules and services to provide a fast through route for east-west traffic (R. 21-22). Service is the "most important" factor influencing the routing of traffic (R. 34), and it is perfectly obvious that Santa Fe and Pennsylvania would not have cooperated in improving their connecting services if it was against their interests to build up traffic over Western's route.

5. *Car Supply*: Appellant next attacks the finding with respect to car supply because Santa Fe and Pennsylvania were short of cars in 1955 (brief, pp. 43-44). Of course, all roads suffer from lack of cars during periods of general car shortage,[15] but that does not detract from the Commission's finding which was that Santa Fe and Pennsylvania would increase the supply of cars available to Western by seeing to it that Western's car ownership obligations were met in full either by having Western increase its car ownership or by increasing their own ownership sufficiently to take care of Western (R. 47). This is supported by the record (R. 368-69).

14. The traffic manager of a large Pacific Coast shipper testified that in recent years the Santa Fe has "tended to lean toward the Lomax gateway about as freely as they do the Chicago gateway" (R. 859).

15. Appellant's reports to the Association of American Railroads showed that it was short of cars for most of the year 1955 (Ex. H-120, pp. 1-2; R. 1577, 1981-82; R. 1573-74) and its president admitted that its car ownership was not up to A. A. R. recommendations (R. 1122).

6. *Industrial Development*: Appellant attacks the find ing that with the backing of Santa Fe and Pennsylvani and the assistance of their industrial departments, ther are excellent prospects for locating new industries o Western's line (brief, p. 44). But the record is replet with testimony that the ownership of Western by thes two strong connections (R. 486-87, 654, 658, 681, 750, 758 59 790, 807-08, 820, 949, 950, 957-58, 965-66) and the assistanc of their industrial staffs (R. 571-72, 574-75, 639-40, 75 964) would provide an economic stimulus to industria development along Western's line. Appellant says officer of Santa Fe and Pennsylvania testified that they woul prefer to locate industries on their own lines, but th testimony of the officers referred to shows that both Santa Fe and Pennsylvania will have an incentive to assist i locating industries on Western. Santa Fe, because of it late entry into Chicago, is lacking in industrial property in that area and Pennsylvania, too, is short of industria sites in Illinois (R. 485-86, 582-83).

7. *Purchase Price*: The Commission's finding that the purchase price of $135 per share is reasonable was based upon the consideration of a number of factors which it "explored" and which were expressed in a series of findings (R. 42). These factors included (1) the fact that the purchase price of $135 was arrived at on the basis of an agreement between a willing buyer and a willing seller; (2) the fact that the same price of $135 per share was offered by all of the other railroads seeking inclusion, namely, the Nickel Plate, Rock Island, Burlington, Wabash and Minneapolis; (3) the excellent physical and financial condition of Western; (4) its good earnings and operat ing record its net income ranged from $641,000 to over $1,000,000 in the period 1950-1954 (Ex. 9-C to Santa Fe-Pennsylvania application; R. 189); (5) its strategic loca tion which "adds to its value as a long-term investment"

(6) the valuation of its properties as fixed by the Commission for rate-making purposes; and (7) its progressive and able management.

Appellant attacks only two of these findings and ignores the rest. Appellant argues that the finding that the price was established on the basis of an agreement between a willing buyer and a willing seller does not take into consideration the fact that the same parties had entered into an earlier contract for the purchase of Western's stock at $100 per share (brief, pp. 37-38). This argument is merely a quibble about the word "willing." The trustees repudiated the earlier understanding which called for a $100 per share purchase price when Minneapolis offered $133. Santa Fe, knowing that Minneapolis and Rock Island were also bidding for the stock, was willing to pay $135 to get it (R. 23). The trustees were willing to sell at that price and not at $100. That is the way prices are determined in the market.

Appellant says that the price of $135 is fair and reasonable for Minneapolis but not for Santa Fe and Pennsylvania, because as sole owner Minneapolis will be able to increase the earnings of Western through economies and increased traffic (brief, pp. 38-39). This argument is necessarily speculative because the alleged savings are apparently exaggerated[16] and the proposed traffic program, involving a complete departure from the policies on which Western has built its success, could be harmful to Western and Minneapolis. In any event, not only Minneapolis but the Rock Island, Nickel Plate, Burlington and Wabash were all willing to pay $135 per share if permitted to participate in the ownership of Western.

16. Appellant's counsel insisted that the record clearly show "that the maximum savings are one thing and the actual program is something else" (R. 1205).

Appellant says finally that "data" as to price-earnings ratios "passed unnoticed", but there were no such data in the record. It is apparent from the findings outlined above that Western's potential earning capacity was not ignored by the Commission.

8. *Public Witnesses:* In an obvious effort to discredit the public support accorded Santa Fe-Pennsylvania's proposal, appellant says that the witnesses were "assembled" as part of a "large-scale publicity and promotional campaign" (brief, pp. 44-45). The record does not support this charge.

Appellant argues that the witnesses were not advised of the considerations underlying its proposal. It was only at the insistence of counsel for appellant, however, that the public witnesses were heard before the details of the Minneapolis plan were revealed (R. 351-52). Moreover, appellant overlooks the fact that its board chairman made a special appearance at Peoria in advance of the hearing to describe the Minneapolis plan (R. 808, 815-16). The continued participation of the local community and industrial interests in the later phases of this proceeding indicates that whatever apprehensions they may have had regarding appellant's proposal were confirmed after the drastic nature of its plans were fully revealed.

Appellant suggests that the local community witnesses were primarily concerned about possible abandonment of Western's "Iowa Branch" (brief, p. 45). But what appellant calls the "Iowa branch" is the line extending west from Peoria to Lomax and Keokuk, in other words, the entire western half of the railroad. The local communities and shippers west of Peoria have real cause for concern about future prospects of service and industrial development if Minneapolis is permitted to acquire Western. Today they are receiving "main line" service because

Western's operations over this part of its route are supported by the large volume of traffic interchanged with Santa Fe at Lomax (R. 369).

As the owner of Western, Minneapolis would have every incentive to adjust its service and solicitation policies to secure the movement of the through traffic over its own line extending northwest from Peoria, rather than over the west end of Western's line. The incentive would be to "consolidate" the interchange of traffic with the Santa Fe at Nemo on the Minneapolis, rather than at Lomax (R. 386-87). This is borne out by the fact that appellant's plans for improved service relate only to service via the Minneapolis line and Western's line *east* of Peoria and by the fact that its traffic plans are designed to divert traffic to its own line north of Peoria. There were no plans for improving service to the large transcontinental shippers whose bridge traffic provides the principal support for Western's line and who insisted that the excellent connecting service provided by Santa Fe and Pennsylvania affords the best assurance of continued good service via Western under their joint control (R. 46).

The cities in the Peoria area, Peoria and East Peoria, are strongly opposed to the disappearance of Western as a separate operating entity and its absorption by Minneapolis. They have a direct and vital interest in the retention of Western's headquarters and general offices at East Peoria; in preserving employment for their citizens; and in preventing the destruction of $1,330,000 in payrolls in the Peoria area. The State of Illinois has a similar direct interest in Western, extending to its entire line.

9. *Labor:* Appellant argues that the benefits of its integration plan outweigh the adverse effect on Western's employees (brief, pp. 46-47). We have already pointed out that in rejecting the Minneapolis plan the Commis-

sion considered not only the interests of the employees, but also the interests of all the other elements of the public involved, including the intervening railroads, the communities served by Western and the shippers using its line (*supra*, pp. 20, 25). The balancing of these interests against the alleged benefits of the Minneapolis plan is a task committed to the Commission, not to the courts. This is implicitly recognized in *City of Nashville* v. *U. S.*, 155 F. Supp. 98, 104 (M. D. Tenn. 1957), cited by appellant.

* * * * * *

The alleged inadequacy of the findings with respect to the issues concerning the applicability of Section 10 of the Clayton Act (brief, p. 48) and the competitive consequences of Santa Fe-Pennsylvania control of Western (brief, pp. 48-50) are dealt with in Sections III and IV, respectively of this Argument.

III.

THE COMMISSION WAS NOT REQUIRED TO MEASURE THE SANTA FE-PENNSYLVANIA APPLICATION BY THE STANDARDS OF THE ANTITRUST LAWS. IT GAVE FULL AND CAREFUL CONSIDERATION TO THE COMPETITIVE SITUATION AND ITS CONCLUSION THAT THE OPERATION OF WESTERN BY SANTA FE AND PENNSYLVANIA WOULD BE IN FURTHERANCE OF THE NATIONAL TRANSPORTATION POLICY AND WOULD NOT UNDULY CURTAIL COMPETITION WAS WELL WITHIN THE SCOPE OF ITS STATUTORY AUTHORITY.

A. The Commission's Evaluation of the Competitive Situation Conforms to the Standards Laid Down by this Court in *McLean Trucking Co.* v. *United States*.

Minneapolis argues that the Santa Fe-Pennsylvania acquisition would violate the antitrust laws and that the Commission abused its statutory power in approving the acquisition. The implication is that the Commission

ignored this Court's ruling in *McLean Trucking Co. v. United States*, 321 U. S. 67 (1944), and failed to weigh the public benefits of the proposed acquisition against its "destructive effect upon competition". A review of the Commission's findings, which are wholly ignored by Minneapolis, will show the contrary.

This Court's opinion in *McLean* makes it clear that in railroad legislation enacted since 1920, Congress has not placed its principal reliance on free competition. The emphasis has been "on achieving an adequate, efficient and economical system of transportation through close supervision of business operations and practices rather than through heavy reliance on the enforcement of free competition in various phases of the business" (321 U. S. at 83).

This Court held in *McLean* that the "basic determinants" of Commission action in proceedings under Section 5(2) of the Interstate Commerce Act must be the policies expressed in that Act and in the National Transportation Policy (321 U. S. at 79-80). Proposals under Section 5(2) are not to be measured by the general policies of the antitrust laws; otherwise the provisions of Section 5(11) granting immunity from the antitrust laws to transactions approved by the Commission would be meaningless (321 U. S. at 85-86). The policy of the antitrust laws is not to be ignored, however; and it is, therefore, the duty of the Commission to consider the scope and effect of the curtailment of competition which will result from the proposed transaction along with its advantages in the light of the over-all transportation policy (321 U. S. at 86-87).

This is exactly what the Commission did, as the District Court pointed out (R. 101). The Commission finding was as follows:

"We are convinced that the benefits to be derived

> from the operation of the Western under the control of the Santa Fe and the Pennsylvania as proposed will be in furtherance of the overall national transportation policy declared by the Congress, and its consummation will not unduly curtail competition in connection with the other carriers. Compare *McLean Trucking Co.* v. *United States*, 321 U. S. 67." (R. 39.)

This finding is supported by numerous subsidiary findings, to which we have already referred, outlining the public benefits from the control of Western by Santa Fe and Pennsylvania, the important part they have played in Western's development, and the competitive effects of the proposed acquisition upon other carriers. More than a third of the report is devoted to a discussion of the various factors bearing on the competitive situation.[17]

Appellant assumes that the policy of the antitrust laws was ignored because the Commission's report "does not mention" either Section 1 of the Sherman Act or Section 7 of the Clayton Act and its findings as to the competitive effects of the acquisition are not expressed in terms of the antitrust laws (brief, p. 48); but *McLean* makes it clear that this is not required. The Commission's report, which was sustained in that case, did not discuss the competitive situation in terms of the antitrust laws and made no reference to the Sherman or Clayton Acts. *Associated Transport, Inc.—Control and Consolidation*, 38 M. C. C. 137 (1942). In that case, just as in the present case, the Commission discussed the competitive situation in practical and concrete terms reflecting the evidence of record and its "past experience with transportation operations and analogous transactions." (321 U. S. at 89.)

17. See R. 21-22, 33-34 (relationships between Santa Fe, Pennsylvania and Western); R. 25-30 (routes, size and importance of the railroads principally involved); and R. 34-41, 42-44 and 45-48 (effects of Santa Fe-Pennsylvania control on other railroads).

B. Appellant's Charges of Monopolization of East-West Gateways and Suppression of the Peoria Gateway Are Groundless.

Minneapolis says that the Commission should have found that the proposed acquisition would lead to "monopolization" in east-west gateways and the suppression of the Peoria gateway in favor of Chicago and St. Louis (brief, pp. 59, 61). No such findings were required. The evidence would not support them.

The alleged "monopolization" of east-west gateways is apparently just rhetoric, for Minneapolis does not amplify the charge and the facts will not support it. There are too many available routes through Chicago, Peoria and St. Louis which do not include the Santa Fe or Pennsylvania (R. 577-78; and see Map, Appendix A).

Santa Fe serves only Chicago. Pennsylvania serves both the Chicago and St. Louis gateways, as does the Baltimore & Ohio, but this is not unique.[18] Nickel Plate and New York Central each serve the Chicago, Peoria and St. Louis gateways from the east, and Santa Fe's competitors, the Rock Island and Burlington, each serve all three from the west.

Many other important railroads serve one or more of these gateways. For example, Chicago is served by such major railroads as the Erie and Chesapeake & Ohio from the east and the Chicago & North Western and the Milwaukee from the west; and the same condition prevails at St. Louis (See Map, Appendix A).

Minneapolis says that if "control" of the Peoria gateway is allowed to pass into the hands of the "Pennsyl-

18. Pennsylvania also has a line to Peoria from the south, but that line is not a service route on east-west traffic (R. 567-70). When traffic is routed via Western and the point of interchange is not specified, Pennsylvania delivers it at Effner, thus giving Western its long haul (R. 573-74).

vania-Santa Fe combine" they would strangle Peoria gateway competition to the advantage of the other gateways. This suggestion is based on two assumptions: (1) that control of Western is control of the Peoria gateway; and (2) that the movement of traffic over Western's route is detrimental to the interests of Santa Fe and Pennsylvania. Both assumptions are false.

1. Control of Western is not control of the Peoria Gateway.

In the first place, control of Western is not control of the Peoria gateway. There are a number of competitive east-west routes through Peoria which do not include Western. These are formed by such lines as the Minneapolis, Rock Island and Burlington on the west and the Nickel Plate, New York Central (through its subsidiary, the Peoria & Eastern), and the Chicago & Illinois Midland-Baltimore & Ohio route on the east (see Exhibit 6 to Santa Fe-Pennsylvania application, R. 149; Ex. H-11, R. 508, 1672; R. 844, 845; and Map, Appendix A). A substantial volume of traffic moves via such routes, cutting Western out entirely (Ex. H-128, pp. 1-3; R. 1590, 2002-04 and Ex. H-126; R. 1558, 1993).

Any attempt at suppression of Western would only divert Western's traffic to other available routes. Thus, as the Commission pointed out, unless Western continues its present service and solicitation policies, it will lose the traffic it interchanges with its other connections without any benefit to Santa Fe or Pennsylvania (R. 38-39). A number of large shippers, who use Western's route for service reasons, testified that if Western rendered poor service to its other connections, the traffic would go to other available routes which do not include either Santa Fe or Pennsylvania (R. 725-26, 727-28, 729-30, 771-73, 798, 845-46).

2. The movement of traffic via Western's route through Peoria is beneficial, not detrimental, to Santa Fe and Pennsylvania.

In the second place, the Commission found that Western's route was beneficial, not detrimental, to Pennsylvania and Santa Fe (R. 34) providing a "vital direct link" between them "essential to the type of through service which is becoming increasingly important not only to the shipping public but to the railroads as well" in meeting the competition "of other modes of transportation" (R. 45). The Commission also found that the plan of Santa Fe and Pennsylvania to place Lomax and Effner on a parity with Chicago from a solicitation standpoint would make additional traffic available for solicitation via Western's route (R. 34).

The basis for these findings is explained fully at pp. 34-37, *supra*, and need not be repeated here. Suffice it to say that unless Western's solicitors are left free to continue their present solicitation policies, Santa Fe would lose the opportunity of obtaining, through Western, a long haul on traffic which would otherwise move via St. Louis and might be lost to the Santa Fe entirely. Similarly, Pennsylvania, which with a half-interest in Western will fare as well or better on traffic moving via Effner rather than via Chicago, could well lose much of the traffic it now receives via Western at Effner from the Santa Fe, Burlington, Rock Island, and Minneapolis. This is just another aspect of the checks and balances inherent in the control of Western by an eastern and a western carrier (R. 46 and see pp. 28-29, *supra*).

Appellant refers to the exhibits showing the percentages of through revenues accruing as divisions to the railroads involved and says that Santa Fe would never be content with 52 per cent at Lomax when it could get 70 per cent by

hauling the traffic to Chicago (brief, p. 63). The example is not typical, involving as it does a haul from Grand Rapids, Michigan to Tulsa, Oklahoma, while 50 per cent of the interchange between Santa Fe and Western is transcontinental traffic where the differences between Chicago and Lomax divisions are much less (R. 475; Ex. H-10, pp. 2-3; R. 508, 1667-68). Even this example shows that the Santa Fe share via Lomax becomes 63 per cent when one-half of Western's division is added to reflect Santa Fe's proposed 50 per cent ownership of Western (Ex. H-34, p. 1; R. 1166, 1770).

The important point, however, is that "paper" comparisons such as these ignore the realities of transportation economics. A railroad cannot expect to get its longest haul on all the traffic it handles and cannot afford to neglect other routes which are sources of traffic for its line even though it may receive a shorter haul (R. 475-77). It is the total business the railroad handles that produces its gross revenues, not the maximum revenues on a particular car (R. 402-03, 483-84).[19] In this case Western's solicitation for traffic through the Peoria gateway, as noted above, assures the Santa Fe an opportunity to handle traffic which otherwise would move via St. Louis and which might be lost to it entirely.

Using the same Grand Rapids-Tulsa example, appellant compares Pennsylvania's 26 per cent division via Effner with its 50 per cent division via St. Louis. But with one-half of Western's division to reflect its proposed 50 per

19. These considerations explain the willingness of any railroad to accept less than its longest possible haul on much of the traffic it handles. Their significance was recognized by Mr. Nelson, appellant's vice president, when he testified that if appellant acquired Western it would not attempt to get the long haul to Effner on the large volume of traffic which it presently interchanges with the Nickel Plate at Peoria. Any attempt to disturb the profitable interchange with the Nickel Plate would be "penny-wise and pound foolish" (R. 1188).

cent ownership in Western, Pennsylvania's share is shown as exceeding 37 per cent; and in several of the examples in the exhibit it is close to or equals the division via St. Louis (Ex. H-34; R. 1166, 1788-92, 1800, 1803). In almost all the examples shown, this basis produces a substantially greater percentage for Pennsylvania when routing is via Effner rather than Chicago.

Wholly aside from these considerations the checks and balances of Santa Fe-Pennsylvania ownership would prevent any restriction on the efforts of Western's solicitors to secure traffic for Western's route as against the St. Louis gateway. Any such restriction would destroy or greatly diminish Western's value to the Santa Fe. This the Santa Fe would never permit; and the contract under which it agreed to divide Western's ownership equally with Pennsylvania specifically provides that Western's solicitors "will be entirely free to solicit traffic in such manner as is best to serve the interests of Western" (R. 24).

Again using its Grand Rapids-Tulsa example, appellant suggests that Pennsylvania would favor the route through St. Louis and Kansas City via the Pennsylvania and its subsidiary, the Wabash. This would short haul the Santa Fe with a vengeance and it certainly would not permit any restriction on Western's solicitation against that route. Moreover, the record shows that even today with no interest in Western, Pennsylvania does not work with the Wabash against Western's route. On the contrary the Commission found that Pennsylvania favors Western's route via Effner (R. 43-44).

The Commission found that, although it is controlled by Pennsylvania, Wabash is independently operated by its own management (R. 26). The same finding was made in *Detroit, Toledo & Ironton R. Co. Control*, 275 I. C. C. 455,

458 (1950), and in *Illinois-Missouri Terminal Ry. Co. Purchase*, I. C. C. Finance Docket 18752 (1956).

The record in this case fully supports the finding that, under Pennsylvania's control, Wabash has been independently operated by its own management (R. 526, 1278-79). It is shown by the fact that Pennsylvania and Wabash each pursue their own independent traffic policies based on their own self interest. This explains why the Pennsylvania-Wabash route via Logansport and Decatur has not developed as a significant competitor of the Pennsylvania-Western route via Effner. Use of the route via Logansport short-hauls both Wabash and Pennsylvania (R. 579). Wabash solicits for its long haul to Buffalo and as a result, interchanges more traffic with the Delaware, Lackawanna & Western at Buffalo than at all ten of its interchanges with Pennsylvania (R. 523). Conversely, Pennsylvania prefers to secure a haul to St. Louis, Chicago or Effner rather than interchange traffic with Wabash at Logansport (R. 579, 580, 528-29).

If further proof is needed to support the testimony that these are, in fact, the traffic policies of Pennsylvania and Wabash, it is found in the interchange data in the present record. In 1954, the interchange between Pennsylvania and Wabash at Logansport was 20,000 cars (R. 595), as compared with 56,414 cars interchanged with Western (R. 1641). And of the 20,000 cars interchanged with Wabash almost 18,000 were eastbound cars received from Wabash, much of that traffic being from local points on Wabash's line which are not competitive with Western (R. 595). Even at St. Louis the interchange between the Pennsylvania and the Wabash amounted to only 7,910 cars (R. 603).

Nor has Pennsylvania used its control of the Wabash to restrain competition or injure its competitors. This was recognized by the Commission in *Detroit, Toledo & Ironton R. Co. Control*, *supra*, 275 I. C. C. at 490, when, after its

viewing the results of Pennsylvania's control of the Wabash, it found that such control had had "no substantial effect" on the interchange of traffic between the Wabash and its other connections.

Certainly the finding that Western's route is beneficial, not detrimental, to the Santa Fe and Pennsylvania, based as it is on the practical considerations affecting the routing of traffic and the relationships between railroads and shippers, was within the competence of the Commission. And it is buttressed by the undisputed finding that Santa Fe and Pennsylvania have demonstrated their economic interest in the development of Western by more than 30 years of cooperation in improving their connecting services (R. 21-22). In view of this long record of cooperation and the added incentive provided by their investment in Western, it is only common sense to conclude that the future of Western under their joint control will be one of continued growth and development. The shippers who are using Western's route today because of its superior service and who, therefore, have a very real interest in its future are convinced of this (R. 46). It defies common sense to assert—as does appellant—that having spent thirty years in helping to build up Western to its present position, Santa Fe and Pennsylvania are now seeking control in order to suppress it.

Minneapolis cites *United States* v. *Southern Pacific Co.*, 259 U. S. 214 (1922), as a decision in which this Court condemned "the very evils" said to be present here (brief, p. 62). But the history of that case only serves to illustrate the fact that the Commission is not bound by the standards of the antitrust laws in proceedings under Section 5 (2) of the Interstate Commerce Act. In that case this Court held that the Southern Pacific with its route from California via New Orleans to the east violated the antitrust laws when it acquired control of the Central

Pacific with its competing route from California via the Ogden gateway. Shortly thereafter, the acquisition was authorized by the Interstate Commerce Commission under the recently enacted Section 5 and the Commission's action was sustained in *United States* v. *Southern Pacific Co.*, 290 Fed. 433, 450 (D. Utah, 1923). Minneapolis refers to a statement in the earlier opinion of the Supreme Court that Southern Pacific would prefer its long haul via New Orleans to the detriment of the Ogden gateway. The vigor of the Ogden gateway after years of Southern Pacific control of the Central Pacific indicates that this fear was unjustified.

Minneapolis says the Commission has deviated from standards applied in previous cases, but the cases cited do not support this charge. *I. C. C.* v. *Baltimore & O. R. R.*, 152 I. C. C. 721 (1929), did not involve an "application" for approval of a "proposed acquisition" as Minneapolis asserts (brief, p. 21). It was a proceeding under the Clayton Act. The Commission expressly pointed out that approval under Section 5 (2) had neither been given nor sought and Commissioner Eastman, in a concurring opinion, pointed out that it was conceivable that the acquisition there involved might finally be approved in a proceeding under Section 5 (152 I. C. C. at 723 and 739). Moreover, that case involved direct competition of parallel lines between common points, which is not present here.

Chicago, B. & Q. R. Co. Control, 271 I. C. C. 63 (1948), was in no way comparable. That case involved the rehabilitation of existing rail lines to provide a new route and the entrance of an additional western carrier, the Santa Fe, directly into St. Louis. And it was conceded that there would be a very substantial diversion of traffic from other St. Louis lines, several of which were in weakened financial condition.

As a matter of fact, the report in that case recognized that the Santa Fe, as a western line, could not afford to "favor any of its connections at St. Louis as against another in its solicitation of traffic or otherwise because of the possible retaliation from the other" (271 I. C. C. at 154). This fact and its converse—that an eastern line like the Pennsylvania cannot afford to favor one western line against another—provide the checks and balances to which the Commission referred in the present case.

The quotation (brief, p. 64) from the *Spokane International* case, 295 I. C. C. 425 (1956), reflects views similar to those expressed by the Commission in the present case in rejecting the request of certain other railroads for participation with Santa Fe and Pennsylvania in the control of Western (R. 45). If an analogy is to be drawn from that case, the Santa Fe and Pennsylvania can best be likened to the successful applicant there, the Union Pacific. Like them, the Union Pacific was a large carrier; it gave the Spokane a long haul on interchange traffic; it had cooperated with the Spokane for years in building up through traffic; it was the Spokane's most important interchange connection; and under its proposal relationships with other carriers would be protected because the Spokane would retain its identity as a separate railroad "exactly as it is today".

C. No Combination of Santa Fe and Pennsylvania Is Involved in Their Joint Acquisition of Western.

Finally, Minneapolis argues that the Commission ignored the overall effect on transportation of joining two "gigantic railroad empires" (brief, p. 67). Apparently this is a reference to the charge that acquisition of Western would increase their "monopolistic power" in their own service areas. Both Santa Fe and Pennsylvania are large rail-

roads, as the Commission's report shows (R. 25-26), but there is no evidence that either possesses monopolistic power in its own territory. Nor does this proceeding involve a combination or merger of Santa Fe and Pennsylvania. The lurid language, which is remarkably free from references to the record,[20] cannot obscure the fact that, despite their joint control of a 240 mile bridge railroad which already interchanges 70 per cent of its traffic with them, Santa Fe and Pennsylvania will still remain a western and an eastern railroad, respectively. As such, they cannot afford to work together to the detriment of their other connections to the west and to the east. The Commission so found (R. 46).

The District Court quite properly rejected the contention that the proposed acquisition would violate the antitrust laws. As that court pointed out, the Commission "did give due consideration to the effect of the acquisition on competing carriers and the possible curtailment of competition and weighed such factors against the broad question of the public interest" (R. 101). It is not the function of the court to substitute its judgment for that of the Commission (R. 101). Resolving these considerations is "a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry"; and Congress left that task to the Commission. *McLean Trucking Co. v. United States*, *supra*, 321 U. S. at 87.

20. For example, the statement that "the greatest tonnage in the west is captive to Santa Fe" (brief, p. 67). This is not supported by the record and it is also untrue.

IV.

THERE HAS BEEN NO VIOLATION OF SECTION 10 OF THE CLAYTON ACT AND THAT SECTION IS NOT A BAR TO COMMISSION APPROVAL OF THE STOCK ACQUISITION BY SANTA FE AND PENNSYLVANIA PURSUANT TO SECTION 5 OF THE INTERSTATE COMMERCE ACT.

Appellant contends that the "purchase" of Western's shares by Pennsylvania was a violation of Section 10 of the Clayton Act, 15 U. S. C. 20. Section 10 provides that no "common carrier engaged in commerce" may have "dealings in securities, supplies, or other articles of commerce" amounting to more than $50,000 in any one year with any corporation with which it has directors in common, unless such dealings shall be pursuant to competitive bidding and with the bidder "whose bid is the most favorable to such common carrier".

The controlling interest in Western's stock—82 per cent—was held by the two trustees of the McNear estate, the Wilmington Trust Company and Guy Gladson. There are directors common to the Wilmington Trust and the Pennsylvania and appellant contends that Pennsylvania has had "dealings in securities" with the Wilmington Trust without receiving competitive bids. This, appellant says, was a direct violation of Section 10 which the Commission was powerless to "condone".

The pertinent facts are as follows: On April 15, 1955, Santa Fe and Pennsylvania obtained letter commitments from the McNear trustees for the sale to each of 26 per cent of Western's stock at $100 per share, subject to any necessary Commission approval (R. 174-76). On May 25, after appellant had offered $133 per share for the stock, these commitments were repudiated (R. 366). At the suggestion of Mr. Gladson, the individual trustee, after discussions with counsel for Mrs. McNear, the principal bene-

ficiary, Santa Fe and Pennsylvania were advised that the stock would be sold to appellant unless Santa Fe or Pennsylvania agreed to purchase all of the stock "on a basis of equal to or better than" the offer of appellant (R. 1426-27). Pennsylvania declined; but Santa Fe on May 26 contracted to purchase all the stock held by the trustees at $135 per share, subject to Commission approval (R. 1427-28, 150-54). It also contracted to purchase the shares of all the other holders of Western's stock (R. 367).

During the following month Santa Fe's president, Mr. Gurley, considered several possibilities ranging from sole ownership by Santa Fe to possible multiple ownership by a number of railroads (R. 367). Finally, on June 28, 1955, Santa Fe entered into a contract with Pennsylvania and Pennsylvania Company providing that the latter should acquire 50 per cent of the stock Santa Fe had contracted to purchase. This contract was also subject to Commission approval (R. 165-69).

Even if it is assumed that Section 10 of the Clayton Act is applicable to the situation here involved—we think it is not—the short answer to appellant's argument is found in Section 5(11) of the Interstate Commerce Act. Section 5(11) provides that the authority of the Commission under Section 5 is "exclusive and plenary" and that any persons participating in a transaction approved under Section 5 are "relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law; Federal, State or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved." The controlling consideration under Section 5 is the public interest in an adequate transportation system (*McLean Trucking Co. v. U. S., supra*) and, having determined that the proposed acquisition of Western's stock by Santa Fe and Pennsylvania was in the public interest, the Commission properly concluded that the alleged violation

of Section 10 was no bar to its approval (R. 44). The District Court agreed (R. 98-99).

Appellant says Section 5(11) operates only as to the future and that the Commission is powerless to "condone" a past violation such as is alleged here (brief, pp. 57-58). What appellant fails to recognize is that the order here under attack operates only as to the future. It does not approve or ratify a past acquisition, although the Commission has the power to do so. *United States* v. *Southern Pacific Co.*, 290 Fed. 433, 450 (D. Utah, 1923). The contracts involved are expressly subject to the approval of the Commission. No stock has as yet been acquired by either Pennsylvania or Santa Fe and none will be unless and until the Commission's order is finally approved.

This action of the Commission was fully within its statutory authority and did not even purport to relieve the Pennsylvania of any past violations of law. If Pennsylvania had in fact violated Section 10, it would still be subject to prosecution and fine, the only sanction provided by that section. But there has been no violation either of the letter or purpose of Section 10.[21]

The purpose of Section 10 is to protect a carrier from paying too much or selling for too little when it deals in

21. As to the letter, Section 10 applies to "dealings in securities" by a "common carrier engaged in commerce". The term "dealings in" has been defined as "buying or selling" (25 C. J. S. 1040-41) and here no securities have been bought and none will be unless and until the Commission's order of approval becomes final. *NLRB* v. *Cabot Carbon Company*, 360 U. S. 203, 210-214 (1959), cited by appellant (brief, p. 55) is not in point. The term construed there was "dealing with", not "dealings in".

Moreover, as the District Court noted in passing, the prospective purchaser of 50 per cent of the stock is not Pennsylvania Railroad, but its subsidiary, Pennsylvania Company. The latter does not engage in railroad operations or operate carrier property (*Wabash R. Co. Control*, 247 I. C. C. 365, 366 and see R. 119, 120, 127-28) and therefore is not a "common carrier engaged in commerce".

supplies or securities with a seller or buyer with which it has an interlocking relationship. This is perfectly clear both from its language and its legislative history. Hence the provision that it must deal with "the bidder whose bid is most favorable to such common carrier". The legislative history, too, shows that Section 10 was enacted to protect the carrier from improvident dealings with a buyer or seller where there are directors in common and to prevent the enrichment of the latter at the expense of the carrier (51 Cong. Rec. 15943, 63rd Cong., 2d Sess., Sept. 30, 1914).

Appellant's argument, although it is not stated as clearly as it was below, necessarily assumes that Section 10 is intended to protect the interests of competing carriers who seek to purchase the same thing as the carrier to which Section 10 applies. But nowhere in the statute nor in its legislative history is there the slightest suggestion that its purpose is to require the carrier to bid competitively *against* other railroads when it is seeking to purchase supplies or securities. As the District Court pointed out, there is no language in Section 10 which "pertains to any competitive bidding by the railroad company" (R. 99). That would only serve to increase the price the carrier had to pay.

Although the District Court rested its decision of the Section 10 issue on the provisions of Section 5(11) of the Interstate Commerce Act, it noted in passing that the proposed purchase involved here was not the kind of transaction at which Section 10 is aimed. It pointed out that Wilmington Trust was not acting for itself but was functioning in a fiduciary capacity as a trustee in the interest of the beneficiaries of the trust. Thus the situation was not

one in which the interlocking directors could be enriched at the expense of the purchasing carrier (R. 98-99).[22]

The Commission, too, while resting its decision on Section 5(11), pointed out that the issue before it did not involve a purchase by the Pennsylvania from the Wilmington Trust. The Commission said:

> "* * * The Santa Fe is the only purchaser of the stock from the trustees and had no commitments to sell any of it to any other railroad. Before offering to sell a portion of the stock to Pennsylvania several other joint control possibilities were considered and rejected." (R. 44.)

Appellant challenges this finding, asserting that the Santa Fe purchase contract was part of a "joint venture" between Santa Fe and Pennsylvania (brief, p. 54), but the finding is fully supported by the record. Mr. Gurley, Santa Fe's president, testified that when Santa Fe contracted to purchase all the stock "there were no commitments on our part to sell any of the stock to any other railroad" (R. 367). He testified further that before agreeing to sell a portion of the stock to Pennsylvania, he considered several possibilities ranging from sole ownership by Santa Fe to possible multiple ownership, including Nickel Plate, Rock Island, Burlington and Minneapolis (R. 367). Conversations were had with officials of each of these roads, as well as with officials of Pennsylvania (R. 367).

22. Appellant says the Commission should have found that the Pennsylvania enjoyed a preference in the negotiations as a result of the interlocking directorate (brief, p. 48). Such a finding would have no relevance to Section 10, but, in any event, it was the individual trustee, Mr. Gladson, who made the suggestion that the offer be made to Santa Fe or Pennsylvania if either would meet or better appellant's offer. This was made after discussion with counsel for the principal beneficiary (R. 1426-27) and reflects the desire of the beneficiaries to sell to Santa Fe and Pennsylvania, if they could get as good a price, because of their natural interest in the future of Western and its employees (R. 831-33).

Mr. Gurley was cross-examined at length, but his testimony was not shaken (R. 379-80, 407-11). It was corroborated by copies of correspondence between Mr. Gurley and the president of the Rock Island which were introduced by the Rock Island, an adverse party (Ex. H-80-84; R. 1457, 1964-70) and by the testimony of appellant's chief executive (R. 1107-08). The Examiner who heard the testimony and observed the demeanor of the witness believed it. Under the circumstances, there would be no basis for overturning the Commission's finding even if the substantial evidence rule were not applicable.

Finally it should be pointed out that even if Section 10 were applicable to the parties here involved the Commission's findings fully justified the exercise of its "exclusive and plenary" authority under Section 5 to approve the acquisition and, thereby, relieve the parties from any restraints which might be imposed by Section 10 upon its consummation. There was no *fait accompli;* approval of which would undermine the administration of the statute, such as that which was condemned in *Central of Georgia Ry. Control*, 307 I. C. C. 39 (1958), cited by appellant (brief, p. 57). The proposed acquisition has been submitted to and approved by the Commission in advance of consummation. The Commission has found the proposed acquisition to be in the public interest. It has passed on the terms of the transaction and has expressly found the purchase price to be reasonable. In doing so it has also provided full protection against the evil which Section 10 of the Clayton Act was designed to prevent—exploitation of the purchasing carrier through payment of an excessive purchase price for the stock.

V.

APPELLANT WAS ACCORDED AN ADEQUATE JUDICIAL REVIEW BY THE DISTRICT COURT.

Appellant's entire argument shows a fundamental misconception of the function of the courts in reviewing an exercise of the Commission's administrative discretion. It is directed largely to the merits of the issues presented before the Commission with scant reference to the Commission's findings or the evidence on which they are based. The court below did not abdicate its function as charged (brief, p. 72). It merely refused to substitute its judgment for that of the Commission on issues committed by law to the lafter. Its action was consistent with a long line of decisions by this Court.[23]

Appellant's assertion (brief, p. 71) that it has not sought to invade "the province entrusted to the Commission" is belied by the very relief it seeks here. It has asked this Court to declare "as a matter of law" that "it is the duty of the Interstate Commerce Commission" to enter an order approving the Minneapolis application and denying that of Santa Fe and Pennsylvania (brief, p. 73). Appellant simply fails to recognize that the review of a Commission order is not a trial *de novo* of the issues before the Commission.

23. See, for example: *McLean Trucking Co.* v. *U. S.*, 321 U. S. 67 at 87-88 (1944); *U. S.* v. *Detroit Navigation Co.*, 326 U. S. 236, 241 (1945); *U. S.* v. *Pierce Auto Lines*, 327 U. S. 515, 535-36 (1946).

CONCLUSION.

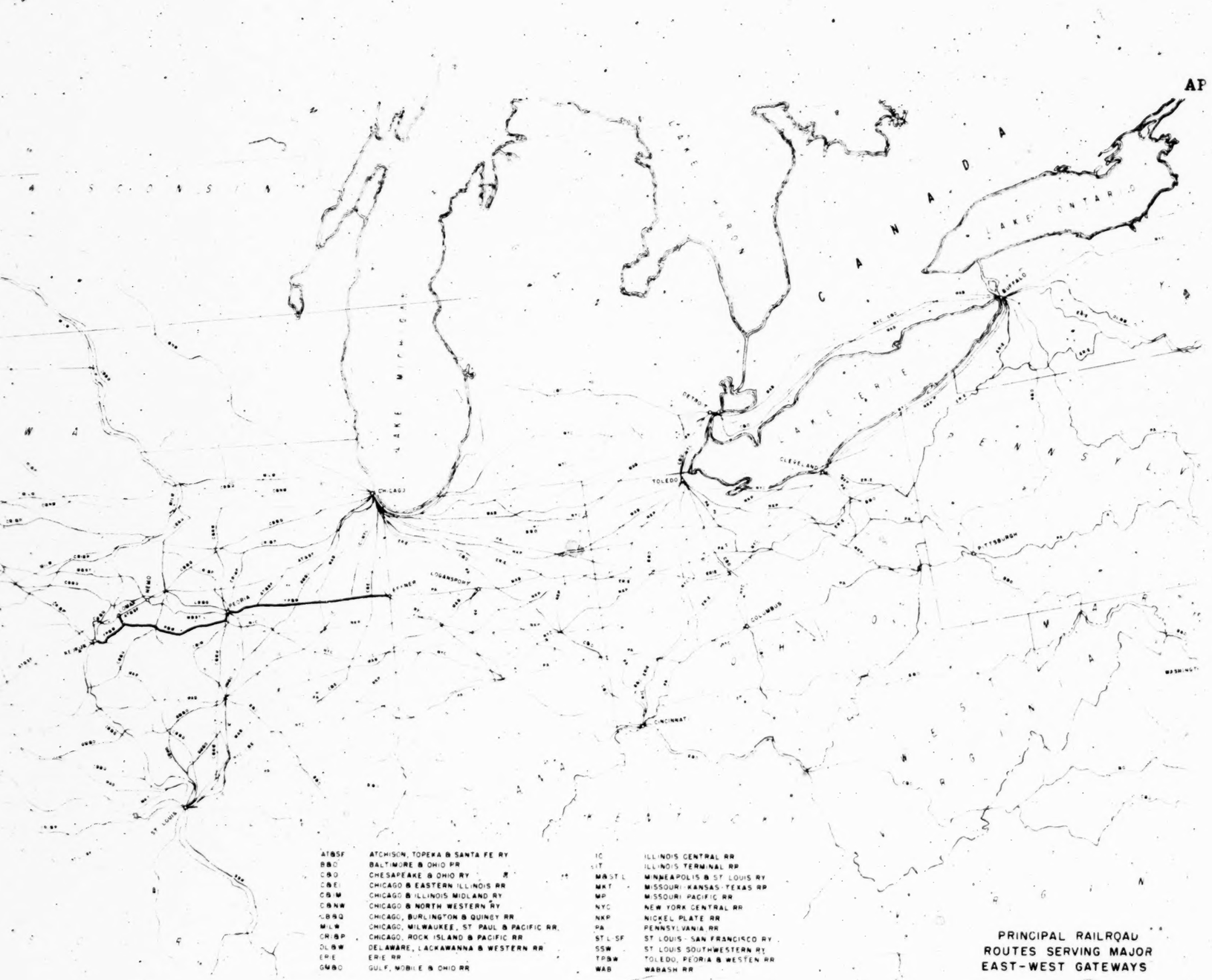
We submit that the District Court carefully considered the questions raised by appellant, followed accepted standards of review and merely refused to substitute its judgment for that of the Commission on matters committed by law to the latter. Its judgment should, therefore, be affirmed.

Respectfully submitted,

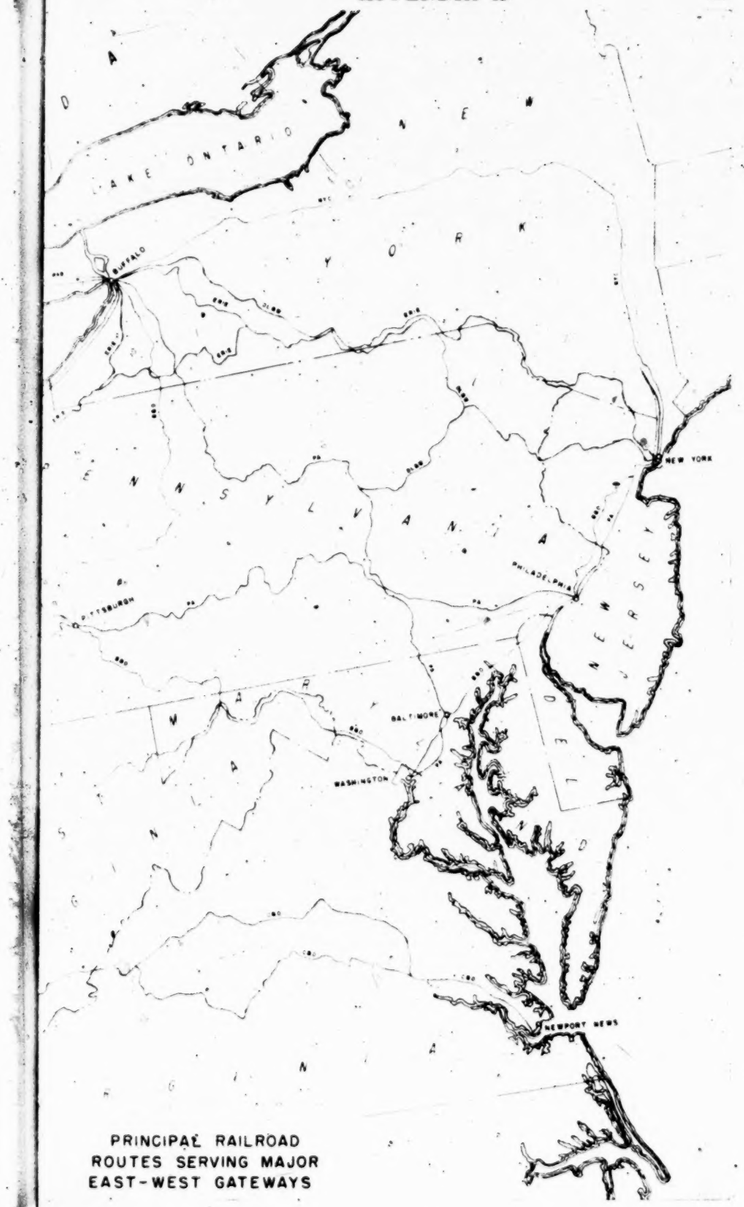
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October 24, 1959.



PRINCIPAL RAILROAD
ROUTES SERVING MAJOR
EAST-WEST GATEWAYS



PRINCIPAL RAILROAD
ROUTES SERVING MAJOR
EAST-WEST GATEWAYS

UNITED STATES MAP OF THE
MUNICIPALITIES AND SUBURBS
ALONG THE LINES OF TOLEDO
PEORIA AND WESTERN RAILROAD
COMPANY. APPELLEES.

ILE COPY

Office-Supreme Court, U.S.
FILED
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Nos. 12, 27 and 28

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

BRIEF ON BEHALF OF THE MUNICIPALITIES AND SHIPPERS ALONG THE LINES OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY, APPELLEES.

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STATEMENT.

This brief is submitted jointly on behalf of the 18 municipalities, the 6 civic and business associations and

the Keokuk Bridge Commission of Keokuk, Iowa, which are referred to by appellant in its statement of the case as "certain other bodies" (Brief p. 13) which intervened in support of Santa Fe and Pennsylvania's control of Western.[1] Collectively, we represent virtually every municipal, civic, business and shipping interest along the lines of the Toledo, Peoria & Western Railroad Company.[2]

Because of appellant's inadequate characterization of the scope of the interests represented by our intervention and of the significance of our participation in the proceeding, it would appear necessary to define our interests and explain the basis for our participation. Our interest in this proceeding evolves out of the concern which we share for the economic and commercial welfare of the area in Central Illinois served by Western, of which the City of Peoria is the commercial and industrial center. Specifically, these interests include: (1) our interest in preserving and developing adequate transportation service in this

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1. These parties include: the City of Peoria, Illinois; the City of East Peoria, Illinois; the Peoria Association of Commerce; the City of Bushnell, Illinois; the Bushnell Chamber of Commerce; the City of Canton, Illinois; the Canton Chamber of Commerce; the City of LaHarpe, Illinois; the LaHarpe Golden Rule Club; the Village of Lomax, Illinois; the City of Keokuk, Iowa; the Keokuk Chamber of Commerce; the Keokuk Bridge Commission; the City of Warsaw, Illinois; the Warsaw Chamber of Commerce; the City of Forrest, Illinois; the City of Fairbury, Illinois; the City of Gridley, Illinois; the City of Gilman, Illinois; the City of Sheldon, Illinois; the City of Watseka, Illinois; the City of Eureka, Illinois; the Village of Secor, Illinois; the City of Washington, Illinois; and the City of Chenoa, Illinois. All of said appellees will hereinafter sometimes be referred to as "these intervening appellees."

2. Hereafter called Western. The Atchison, Topeka and Santa Fe Railway Company will be referred to herein as Santa Fe and the Pennsylvania Railroad Company will be referred to as Pennsylvania. Appellant will sometimes be referred to as Minneapolis.

area; (2) our interest in maintaining and extending the total transportation plant available in the Peoria area; (3) our interest in the welfare of the employees in the transportation industry in this area;[3] (4) our interest in the continued further industrial development of the Peoria area and in the area along the lines of Western, the achievement of which objective is so closely related to transportation, including (a) the location of new industry, (b) expansion of existing plant and (c) diversification of industrial lines; and (5) our broad interest in the economic stability of the area generally which is so vitally affected by a basic industry such as transportation.

We intervened in Interstate Commerce Commission Finance Docket 18991 in support of the application of Santa Fe and Pennsylvania for joint control of Western. We intervened in Interstate Commerce Commission Finance Docket 19086 in opposition to appellant's application for control of Western. We opposed at the hearing, upon brief, exceptions and oral argument before the Commission and on appeal to the District Court, appellant's proposal and the request of certain railroads for multiple ownership.[4]

We supported the application of Santa Fe and Pennsylvania for joint control of Western on the following grounds:

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3. It should be noted that the Railway Labor Executives Association intervened in support of joint control by Santa Fe and Pennsylvania on the ground that the interests of Western's employees would be given full recognition under their proposal (R. 44).

4. Direct participation in control was sought by the New York, Chicago & St. Louis Railroad Company and the Chicago, Rock Island & Pacific Railroad Company; also, Chicago, Burlington & Quincy Railroad Company and Wabash Railroad Company applied for participation in control in the event the Commission extended control to the two former railroads.

1. It will insure continued separate operation of Western under its present management with its executive offices and terminal facilities located in the Peoria area;

2. It will preserve intact all of the positive benefits accruing to these communities by the continued maintenance and preservation of Western's basic function as an important link in transcontinental traffic;

3. It will best assure the continued growth and development of Peoria as a railroad gateway;

4. It will best assure the continued growth and development of Western;

5. Such control and the benefits which will inevitably flow as a consequence of ownership by Santa Fe and Pennsylvania will provide the greatest single impetus which this area could receive to an expanding economy by the further industrial development of the Peoria area as well as the entire area served by Western.

We opposed appellant's application for control of Western on the following grounds:

1. Such control would forever foreclose to the Peoria area the realization of the positive benefits described above which would flow as a consequence of the joint control by Santa Fe and Pennsylvania and the continued development of Western as a major link in transcontinental rail traffic;

2. Such control admittedly would visit serious economic consequences upon these communities and particularly the Peoria area by a permanent loss of an annual payroll of over one and one quarter million dollars and a loss of employment affecting at least 256 families;

3. Such control would result in a substantial reduction of the total transportation plant and facili-

ties available to the Peoria area by major abandonments of railroad yards, shops and offices;

4. Such control, with the curtailment of existing transportation plant and personnel and particularly the shift in orientation of Western's function as a major link in transcontinental traffic, would make the Peoria area and the area served by Western less attractive as a site for plant expansion and for the location of new industry;

5. Such control would inherently transform Western's line west of Peoria from a main line serving transcontinental traffic into a branch line of appellant's combined operation. This would result in serious economic consequences to the communities along this segment of Western's line which are wholly dependent upon Western for rail service.

The complete unanimity of opinion by those of us who are most vitally affected by a change in Western's control is a highly significant factor in this proceeding. Appellant cannot dismiss the importance of this fact by contending, as it has, that we are the victims of a "publicity and promotion campaign" (Brief p. 44). Too broad a range of interests, both geographic and economic, are involved herein. The Commission, in defining the concept of the public interest under Section 5(2) has stated that "consideration must be given to the public affected by the transaction and the effect of the proposal upon all parts of the public which would be so affected." *C., B. & Q. Railroad Control*, 271 I.C.C. 63, at p. 146 (1948); *Detroit Toledo & Ironton R. Co. Control*, 275 I.C.C. 455, 488 (1950). We constitute that part of the public which is most directly affected by the transaction. We submit that the Commission's order properly reflects our interests and should be sustained.

SUMMARY OF ARGUMENT.

1. The Commission's decision awarding control of Western to Santa Fe and Pennsylvania is based upon adequate findings.

2. The findings upon which the Commission based its decision fall within the scope of the relevant legislative standards of Sec. 5 of the Interstate Commerce Act and the National Transportation Policy.

3. Appellant was accorded a fair hearing and a comparitive consideration of its application for control of Western.

4. *An analysis of the criteria suggested by appellant for testing the issues* relating to (1) adequacy of findings, (2) the relevance of the findings to the legislative standards, and (3) the question of whether appellant was accorded a comparative hearing, *demonstrates that the District Court's decision should be affirmed.*

5. The findings are supported by substantial evidence.

6. Appellant's attack on the shippers and communities along the lines of Western is groundless and constitutes an abortive attempt to conceal the fact that its proposal for control of Western was opposed to the interests of that segment of the public which is most directly affected by this proceeding, the shippers, municipalities; and business interests located along the lines of Western.

7. South Dakota and Minnesota's interests in appellant's branch lines will not be affected by Santa Fe-Pennsylvania's control of Western.

ARGUMENT.

I.

The Commission Accorded Appellant a Comparative Hearing; the Decision Is Based upon Adequate Findings and the Findings Are Consistent with the Statutory Standards.

A reading of the Commission's report in its entirety indicates clearly that appellant was accorded a fair hearing and a comparative consideration of its application. Appellant ignores what the Commission found in its report and undertakes to attack the subjective mental process by which the decision was reached. Thus, ignoring the extended discussion of appellant's proposal contained in the report, appellant argues that the Commission reached its ultimate conclusion "at the outset" without a consideration of its proposal (Brief p. 19). Appellant argues, moreover, that the "criterion" adopted by the Commission was a "standard" of "separate and independent management" of Western (Brief p. 19). This "standard", however, can be found nowhere in the Commission's report either expressed as a finding or in its discussion of the issues.

Appellant's argument, based as it is upon some nebulous subjective mental processes of the Commission arrived at apart from the Commission's report, cannot be intelligently discussed. We can only deal with the Commission's approach to the proceeding as reflected by the objective standards of the findings contained in the report. By these objective standards, it is clear that (1) the Commission preliminarily defined its function to

include a comparative evaluation of both applications on the merits (R. 25), (2) the Commission did, in fact, discuss and evaluate the principal aspects of appellant's proposal on their merits (R. 30-37), and (3) the Commission made specific findings on the merits of appellant's proposal (R. 30-33).

The Commission initially undertook to define its function in this proceeding to include an evaluation of both applications in order to arrive at a decision as to which of the alternatives before it was most consistent with the public interest (R. 65). The Commission defined its function as follows: (1) to arrive at a standard of public interest; (2) in arriving at a standard of the public interest, to analyze each application in relation to the other, as well as to the other interests; and (3) then to determine which of the alternative plans for control most nearly approximates that standard.

Having defined its function to include a consideration of appellant's proposal, the Commission then proceeded to evaluate the significant aspects of that proposal. The report shows that, in arriving at a standard of the public interest, the benefits and detriments of both applications were considered. This is evident by the extended discussion of appellant's proposal which followed (R. 30-37). On the basis of this discussion of the proposal and the findings relating thereto, the Commission concluded that appellant's proposal was contrary to the public interest.

Appellant nevertheless argues that the Commission should have made "comparative" findings which "catalogued" the merits and demerits of the competing applications. Appellant contends that such findings are required in a comparative hearing proceeding and cites as authority, *Johnston Broadcasting Co.* v. *F.C.C.*, 175 F.2d 351 (D.C.

(Cir. 1949). The *Johnston* case, however, involved two mutually exclusive applications for the construction of a new broadcasting station. The court there said that the F.C.C. was required to make specific findings as to "every difference" between the applicants only after the minimum qualifications of both applicants had been established and the public interest was protected. The Commission in this proceeding was presented with two radically different proposals, both of which could not meet "minimum qualifications". Consequently, there was no point in the Commission's analysis at which the *Johnston* rule could have been applied.

As a practical matter, the complexity of the proceeding precluded detailed findings as to every difference between the Santa Fe-Pennsylvania plan and appellant's proposal. Any failure to make such detailed findings in no sense reflects a denial of a fair hearing or a comparative consideration of appellant's proposal.

Appellant suggests that certain criteria may be used for testing the issues relating to (1) the adequacy of the findings, (2) the compatibility of the findings with Sec. 5 and the National Transportation Policy and (3) the question of whether appellant was accorded a comparative hearing (Brief p. 23). We submit that each of these three issues should be resolved favorably to appellees *even under the criteria by which appellant seeks to have this court evaluate the Commission's report.* These tests include (1) efficiency and economies of operations, (2) improvement and expansion of service through the Peoria Gateway, (3) promotion of industrial development, (4) strengthening of the carriers in the interest of the national transportation system, (5) stability of employment and (6) promotion of competition.

An analysis of each of these criteria follows:

Economies: After reviewing appellant's evidence relative to its proposed economies, the Commission made a specific finding that most of the economies would be secured "at the expense of labor" (R. 32). This finding reflects that the interests of labor was one of the factors balanced by the Commission against the economies. The Commission is specifically required under Sec. 5(2)(c)(4) to give consideration to the interests of the "carrier employees affected". The economies which the Commission found would be realized as a consequence of Santa Fe-Pennsylvania's control of Western involved no similar conflict (R. 47).

A finding, isolating the factor of economies and weighing, the "comparative" dollar amounts of the economies which might be achieved under the two proposals, such as appellant contends is required in a comparative hearing, would have been inappropriate in this proceeding. The economies which appellant contends would be achieved under its control were based upon appellant's proposal to abolish Western as a separately operated carrier. This proposal conflicted not only with the interests of Western's employees, but the communities served by Western, local industries, shippers and other rail carriers. The economies which allegedly would be achieved under appellant's control of Western could not, therefore, logically be isolated from the context of appellant's proposal and "balanced" as an abstraction against the economies which would be achieved under Santa Fe-Pennsylvania's control of Western. Such balancing would have been illogical, moreover, for the additional reason that separate operation, by its very nature, does not lend itself to striking economies.

The economies were balanced realistically against the need for preserving Western's status as a separately operated carrier. The District Court recognized this and answered appellant's contention as follows:

> "The plan which Minneapolis proposes is to abolish Western as an independent carrier, and that plan is strongly opposed, not only by the carriers and other defendants who have intervened herein, but also by many communities and industries in Illinois and Iowa, as well as the employees of Western. The removal of the offices of Western and its key personnel to Minneapolis is strongly protested. The large savings which allegedly were to follow upon an integration of Minneapolis and Western, as asserted by Minneapolis, was weighed and considered by the Commission. * * * It may be noted that, of the $1,770,945 reduction in combined operating expense of Minneapolis and Western if integration took place, $1,327,062 would result from the elimination of some 256 positions now occupied by employees of Western. *Whether such economies outweigh the alleged detriment to Western's employees, to its local industries and communities, and to other carriers, is also a matter which is clearly within the sound judgment of the Commission.*" (Emphasis supplied.) (R. 102).

Improvement of service via the Peoria Gateway: Appellant argues that the findings are deficient because "no" finding was made relative to the "improvement" and "expansion" of service via the Peoria Gateway and that it was denied a comparative hearing because the "merits and demerits" of the two proposals were not "catalogued" and "balanced" in relation to this standard. Appellant suggests that its proposal was superior "from the public viewpoint" in this regard because it proposed to establish through trains, accelerated schedules and new and direct interchanges with other railroads (Brief pp. 26-27).

Adequate findings were made with respect to the broad issue of the effect upon adequacy of rail service of the two proposals (R. 30, 32, 45). The ultimate basis for the Commission's decision rests, in fact, upon the "best use" of Western's transportation facilities in terms of the transportation service which it can best perform (R. 45). These findings are inherently related to adequacy of rail service via the Peoria Gateway (R. 36). Appellant ignores the broad service considerations underlying the decision and directs the court's attention instead to its proposal to establish new interchange points and to operate through trains via the Peoria Gateway which it argues was a test against which both proposals should have been compared.

This argument illustrates the inappropriateness of "comparative" findings as to any single aspect of either of the two proposals because of their radically different nature. Santa Fe-Pennsylvania's proposal for control of Western did not involve the institution of new interchange points or operating through trains via Western. The absence of such proposals did not, however, constitute an inherent "demerit" in its plan "from the public viewpoint". It simply reflected a different kind of utilization of Western's plant. The nature of the two proposals consequently did not lend itself to the kind of "comparative" findings as to any aspect of either of the plans as appellant argues should have been made. The Commission's view of the service factor in the proceeding was made abundantly clear. It concluded that ultimately the "improvement" and "expansion" of rail service via the Peoria Gateway lies in the future development of Western under its "present policies" (R. 45). This conclusion was based upon broad considerations having regard for the "strategic position" of Western serving the Peoria Gateway

as an alternative route (R. 21), its function as an overhead carrier (R. 21), the importance of its relationships with its 16 connecting lines (R. 21), and the significance of the preservation of these relationships and its policies to the railroad industry and to the public (R. 45). Appellant's plan for the "improvement" and "expansion" of service via Peoria, being part of its proposal for the absorption of Western, was inconsistent with the achievement of these objectives. The Commission so found (R. 30).

Appellant's argument illustrates why no single aspect of its proposal could have been isolated from the context of the plan of which it is a part and be dealt with as an abstraction in a comparative finding by the Commission. Such an approach would have been completely unrealistic. While the achievement of new service routes via Peoria by the establishment of new interchanges and through trains would appear superficially desirable, the Commission was faced with appellant's specific traffic program. The application of this program was found by the Commission to be "extremely harmful to other carriers" (R. 32), and would result in imperiling the traffic of other railroads (R. 32). In analyzing the effect of appellant's "unified operations" proposal and weighing the effect of these changes in Western's operations against their economic impact upon Western's connecting lines, the Commission was discharging the requirements of Sec. 5 and the National Transportation Policy which require the Commission to give consideration to "adequacy of transportation service".

These findings illustrate that new service proposals, such as are involved in the establishment of new interchange points and the operation of through trains, are not absolute objectives of either Sec. 5 or National Trans-

portation Policy, but are conditional objectives which must be weighed against their economic impact upon other carriers in a significantly broader application of the concept of "adequacy of transportation service". This is precisely what the Commission did.

Strengthening carriers in the interest of the national transportation system: Appellant, capitalizing on its status as a small carrier, argues that one of the determinative standards in the proceeding should have been the "strengthening" of a "weak carrier" and that "comparative" findings should have been made in accordance with this standard (Brief pp. 27-28). The Commission recognized that one of appellant's objectives in acquiring control of Western was to "enhance its financial stability" (R. 30). But the Commission found that appellant is "reasonably prosperous with a financial and physical picture that has been steadily improving over the past few years" (R. 28). The District Court noted in its decision that "The advantages to Minneapolis in adding Western to its railway system seems apparent. No doubt Minneapolis would be materially strengthened by its proposed integration with Western. But obviously the advantages to Minneapolis was only one of the considerations, and factors which the Commission had to weigh and evaluate." (R. 102).

This is exactly the point which appellant ignores. The Commission's function was broader than resolving the issues in terms of appellant's financial interests. Having found that appellant was a "substantial" railroad, a "comparative" finding resolving the issue of Western's control in terms of the relative financial needs of the competing applicants would have been completely inappropriate, and would not have provided a criterion which was relevant to the public interest.

The issues in the proceeding, moreover, were far more complex than appellant suggests. The Commission had to deal with the realities of appellant's proposal. It found that appellant's plan for securing additional traffic by its control of Western would be at the expense of other carriers connecting with Western (R. 32). Appellant's argument also ignores the fact that the ultimate rationale of the Commission's decision lies in this very area of strengthening the carriers in the interests of the national transportation system. The Commission's principal concern, however, was not with the financial interests of a single carrier but with the railroad industry as a whole. It found that, because of the national importance of Western as a "short line connection", and the unique transportation function which it performs on behalf of its 16 connecting lines, its present operation had to be retained in order to provide for the railroad industry the kind of transportation service which is essential "for the railroads adequately to compete with other modes of modern transportation" (R. 45).

Industrial development: There was no occasion for the Commission to make a "comparative" finding with respect to the relative interests of the competing applicants in industrial development along Western's lines. The economic interests of either applicant as owner of Western in this area are obvious. The Commission found that the promotion of industrial development along Western's lines was one of appellant's objectives as owner of Western (R. 30) and that under Santa Fe-Pennsylvania's control there also were "excellent prospects" for the location of new industry (R. 46). The latter finding is supported by the subsidiary finding reflecting our position regarding industrial development. The Commission found that "each of the city officials and representa-

tives of Chambers of Commerce of the communities served by Western recognized the advantages of Santa Fe-Pennsylvania ownership as an economic stimulus to the industrial development of their communities" (R. 47).

Stability of employment: Sec. 5(2)(c)(4) directs the Commission to give specific consideration to the "interest of the carrier employees affected". The interests of the carrier employees were represented by the Railway Labor Executives Association with participated in the proceedings before the Commission. The Commission found that the employees "unanimously" favored Santa Fe-Pennsylvania's proposal (R. 44). To argue, as appellant does, that the "carrier employees" interests would best be served by the elimination of 256 positions is little less than fantastic. Appellees submit that the Commission's decision accurately reflects the interests of the "carrier employees" and that a "comparative" finding based upon appellant's theory of "stability of employment" would have directly contravened the congressional intent expressed in the mandate of Sec. 5(2)(c)(4).

Promotion of competition: The Commission's findings regarding the competitive effects of the competing proposals particularly illustrate the fact that both proposals were accorded comparative consideration. The radically different objectives of the two proposals, however, necessarily required that the plans be analyzed independently of each other.

The Commission found that appellant's proposal contemplated the abandonment of Western's existing policy of neutrality with respect to the 15 other connecting carriers with which it presently cooperates (R. 30). Appellant's plan to increase its traffic by diverting the traffic of Western's connecting carriers was found to

have serious competitive consequences to other carriers (R. 32). The Commission found that the traffic of the Wabash and the other carriers which participated in the proceeding would be imperiled, or at least, diminished, and that the consequences of such diminution of traffic could result in line abandonments (R. 32). The effectuation of appellant's proposal, therefore, would ultimately have resulted in a serious curtailment of rail competition not only in the immediate area served by the combined Minneapolis-Western operation, but in a significantly broader area of the Middle West.

The competitive effects of Santa Fe-Pennsylvania's control of Western were given detailed consideration by the Commission. The economic self-interests of Santa Fe and Pennsylvania as joint owners was found to assure the continuance of Western's existing solicitation and service policies of working closely with each of its 16 connecting lines (R. 35). Before the Commission, appellant's argument with respect to the alleged restraint on competition resulting from Santa Fe-Pennsylvania control of Western took the form of specific claims of traffic diversion. These claims were analyzed in detail and were found to be groundless (R. 35-37). The Commission concluded that Santa Fe-Pennsylvania control of Western would not unduly curtail competition in connection with other rail carriers (R. 39).

The ultimate rationale of the Commission lies in Western's unique transportation function and in the need of preserving its function in order to promote more effective inter-mode competition in the field of transportation. The Commission found that the function which Western performs as a "vital link" to its connecting lines affords a basis for the railroad industry to provide the

"fast, strong and reliable" transportation service which is "necessary in order for the railroads adequately to compete with other modes of transportation" (R. 45). Control of Western by Santa Fe and Pennsylvania was thus found to have no adverse intra-mode competitive effect but would result in a substantial promotion of inter-mode competition in the transportation field.

II.

The Findings Are Supported by Substantial Evidence.

1. Industrial Development.

The interests represented by these intervening appellees, the communities and shippers along the lines of Western, have a very real interest in the promotion of industrial development in the area served by Western. We submit that the Commission's recognition of the benefits which would accrue to the economy of this area as a consequence of Santa Fe-Pennsylvania's control of Western through industrial development is fully supported by substantial evidence (R. 46).

This finding is based in part upon the evidence in the record establishing that the very fact of ownership by Santa Fe and Pennsylvania would itself provide a significant stimulus to industrial development in the communities served by Western. Such ownership by two large railroads, which connect at the eastern and western termini of Western would itself create an inducement both for the location of new industry as well as the expansion of existing plant (R. 639-40, 654, 658, 681, 750, 758-59, 790, 807-08, 820, 940, 950, 957, 965).

Appellant suggests that the Commission's finding is inconsistent with Santa Fe's and Pennsylvania's competitive interests in the area along their own lines (Brief p.

24). This ignores the fact that the finding is based upon evidence that, because of Santa Fe's late entry into Illinois and the Chicago area, it is lacking in industrial property in that area, and that Pennsylvania is short of industrial sites in Illinois (R. 485-86, 571, 582-83).

Appellant argues that the Commission's "confidence" is unwarranted because both carriers made it "crystal clear" that they would "bring" to Western only such industries as they were unable to locate on their own lines (Brief p. 44). This is not an accurate statement of the record or of the testimony of Messrs. Carpi and Duffy (R. 493-494, 583, 584). Mr. Gurley, then President of the Santa Fe, made it "crystal clear" that, as joint owner of Western, Santa Fe would treat the area served by Western on an equal basis with communities served by the Santa Fe with reference to the location of industries (R. 368).

The validity of the finding, moreover, is not dependent upon whether Santa Fe or Pennsylvania would "bring" industry to Western in preference to their own lines since it was established that merely the consulting services of Santa Fe and Pennsylvania's industrial development departments would be of material assistance to Western and to these intervening appellees (R. 639-40, 759, 964), and that their joint ownership of Western would itself create a basis for stimulating industrialization along Western's lines.

Directly related to this finding is the fact that Western's existing status as a bridge-line handling east-west traffic along its entire line "is the greatest single underwriting influence" for continued good service to the communities along Western's line and, particularly, along the segment of its line west of Peoria (R. 369). In 1927,

when Western's application was filed to connect with the Santa Fe at Lomax, it was pointed out that the proposed construction would aid in sustaining that part of the lines west of Peoria. *Construction by TP&W R.R.*, 124 I.C.C. 278, 279 (1927). This prediction has been fulfilled. The Santa Fe interchange at Lomax accounted for 78 per cent of the total traffic interchanged by Western with all its western connections for a twelve-month period ending June 30, 1955 (R. 1713). The retention of Western's existing function under Santa Fe-Pennsylvania's proposal, therefore, is particularly essential to the industrial development of the communities along its line west of Peoria.

Control of Western by appellant would, on the other hand seriously impair the service and would preclude the possible future industrial development of communities along Western's lines west of Peoria.[5] Some of these communities are entirely dependent upon Western for rail service. Appellant's main line between Nemo and Peoria parallels Western's line west of Peoria (Exhibit 6 attached to the application of the M. & St. L. and Finance Docket No. 19086-296). The traffic presently interchanged at Lomax with Western could, as was suggested by appellant's Chairman, be "consolidated" at Nemo (R. 386). Appellant's plan for diverting the traffic of other carriers to its own lines, moreover, did not involve a single interchange point on Western's lines west of Peoria (R. 1197-1200, 1178-84). Appellant's Freight Traffic Manager indicated furthermore that every line which presently interchanged with Western west of Peoria, except at

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5. These communities include the City of Canton, Illinois, the City of Bushnell, Illinois, the Village of Lomax, Illinois, the City of LaHarpe, Illinois, the City of Warsaw, Illinois, and the City of Keokuk, Iowa. Each of these municipalities and their respective Chambers of Commerce are parties to this brief.

Keokuk, could interchange such traffic with appellant on its present main line (R. 1158-60). This leaves little room for doubt as to the future of service via Western's line west of Peoria or the possibilities for industrial development along this line. Regardless of what appellant might argue concerning the future of Western's west end under its control, appellant's control would transform an existing main line into a branch line. Appellant's President was forced to admit this to be a fact (R. 1164). This would involve the transformation of a significant portion of a "vital link" in the national transportation system into a mere appendage of appellant's operations. This result, we submit, would have serious economic consequences to the communities and business interests which are presently served by Western's line west of Peoria.

Each of the municipalities, civic and business associations and shippers along Western's line represented by these intervening appellees offered extensive evidence which provided the basis for the Commission's finding that there are "excellent prospects" for the location of new industry under Santa Fe and Pennsylvania's control of Western. The unanimity of opinion of the organizations specifically concerned with the industrial development of these communities regarding this question cannot be disregarded. It should be noted, moreover, that the testimony of these witnesses was based in part upon the record of demonstrated cooperation of Santa Fe-Pennsylvania with both Western and these communities in the past.

2. Increased Car Supply.

Another area in this proceeding in which we have a substantial interest lies in the increased availability of railroad cars to the shippers in the communities served by Western. The Commission found that under Santa

Fe-Pennsylvania's control the supply of freight cars available to Western would be materially increased (R. 47). This finding is closely related to the finding respecting industrial development along Western's lines since Western's inadequate car ownership creates a substantial deterrent to plant location along Western's lines.

Appellant ignores the specific proposals by which Santa Fe-Pennsylvania would, as joint owners, increase Western's car supply, and argues that the finding is not supported by the evidence because Santa Fe and Pennsylvania have experienced car shortages in their own operations (Brief pp. 43-44).

Appellant has experienced similar periods of car shortage (R. 1214). The problem of periodic periods of car shortages in the railroad industry is, however, national in scope and is wholly unrelated to this finding. The record on this point is clear. In the first place, it was established that Santa Fe and Pennsylvania would increase Western's car supply by bringing Western's car ownership to a proper level (R. 368-69). Secondly, as joint owners of Western, Santa Fe and Pennsylvania would make a greater number of their own cars available to Western and in a period of car shortage, Western's shippers would be treated on a parity with their own shippers in car distribution (R. 368-69). As joint owners of Western, Santa Fe and Pennsylvania would have a sufficient economic interest to justify such a program. These intervenors supported Santa Fe-Pennsylvania's proposal for this specific reason (R. 668, 689, 783-84, 917, 923). This testimony was based in part upon the demonstrated cooperation of Santa Fe-Pennsylvania with Western and its shippers in the matter of car supply in the past.

III.

Appellant's Attack on the Shippers and Communities Along the Lines of Western.

Appellant has made broad and rather sweeping charges in its effort to discredit the unanimous public support accorded the Santa Fe-Pennsylvania proposal for control of Western (Brief pp. 44-45). Appellant's statements constitute neither a legitimate argument directed to the adequacy of the findings nor to the substantiality of the evidence as to specific findings. Appellant's statements are intended to minimize the significance of the participation in this proceeding of the 18 municipalities, the civic and business associations, and the shippers which are most directly and immediately affected by the outcome of this proceeding. Because our testimony underlies significant findings contained in the report, we cannot let these charges go unchallenged although they are not relevant to any of the issues with respect to the adequacy or substantiality of the findings.

The charge is made that the commercial and municipal interests represented by the intervenors herein were "produced" by the "free-spending" Santa Fe-Pennsylvania and "assembled" as part of a "promotional campaign". We are said to have been uninformed and not "remotely aware" of the issues in the proceeding. It is suggested that we do not really desire to maintain Western as a separate and independent operating carrier since we are not really opposed to the reduction of transportation facilities at Peoria, the removal of Western's offices to Minneapolis, the loss of at least 256 jobs in the area and the inability to realize the advantages occurring from Santa Fe-Pennsylvania control. We are said, on the other hand, to be interested "solely" in good service and appel-

lant is said to provide good or better service than Santa Fe-Pennsylvania. Thus the Commission should have confined the treatment of our testimony to its "economic substance," *i. e.*, good service, instead of taking us at our word and assuming that we were supporting the continued separate and independent operation of Western and opposed to appellant. The significance of our testimony and the treatment accorded it by the Commission is thus conveniently written off as a "popularity contest", the import of which was completely misunderstood by the Commission (Brief pp. 44-45).

This rather fantastic argument only emphasizes the length to which appellant must go in an effort to discredit the significance of our participation in this proceeding.

No matter how carefully the record of our testimony is sifted in order to find a basis for discrediting it, the fact remains that not a single shipper, municipal or community interest which is directly and immediately affected by Western supported appellant's plan for control. This is not mere happenstance. It cannot be written off by a charge that these responsible municipal and business interests were the "victims" of Santa Fe and Pennsylvania's "promotion and publicity". Too broad a range of economic and public interests is represented by our participation. The absence of any public support speaks eloquently for the fact that appellant's proposal contravened the interests of that segment of the public interest which is most vitally and directly affected by the services of Western.

Without identifying specific findings, appellant argues that the Interstate Commerce Commission erred in not confining "the findings with respect to the shippers and local officials" to the "economic substance" of their testimony. The only findings made by the Commission with

respect to the shippers and communities along Western's lines reflect our position in this proceeding. We sought to maintain Western as a separate and independently-operated carrier (R. 31, 46). We sought to maintain Western's existing plant and facilities in the Peoria area (R. 47). We sought to retain Western's headquarters at Peoria in order to continue the present easy access to management (R. 47). We supported Santa Fe and Pennsylvania's proposal for control because of the specific advantages which would accrue to us by virtue of such ownership (R. 45). This was the "economic substance" of our testimony and this is precisely what the Commission found.

Appellant's proposal to eliminate at least 256 jobs in Peoria, to reduce the available transportation facilities involved in the abandonment of a classification yard, car repair shops and operating offices located in Peoria, and to move the offices to Minneapolis, obviously was unpopular. Consequently appellant is obliged to attack the Commission's action as reflecting the result of a "popularity contest" (Brief p. 45). But the basis for the "popularity" of Santa Fe-Pennsylvania's proposal lies in the fact that it would secure substantial economic advantages to these communities. Appellees submit that our participation in this proceeding would have been precisely the same even if we had not been the "victims" of an alleged "publicity and promotional campaign" to which appellant attributes our intervention (Brief p. 44). There is, however, no support in the record for this assertion and appellant's references to the record do not bear out the charge. The record references indicate that an attorney for the Santa Fe discussed its proposal with some of our witnesses, but it is also clear that the then Chairman of the Board of appellant's railroad was soliciting our support (R. 808, 815-16).

At the hearing before the Commission, counsel for the Santa Fe requested that we be heard after appellant had presented its proposal on the record (R. 351). Apparently realizing the extent to which appellant's plan, when its drastic character was completely revealed, would contravene our interests, counsel for appellant insisted that our witnesses be heard before appellant introduced its evidence (R. 351-52). Appellant now charges that our witnesses were uninformed and "not even remotely aware" of the considerations underlying its proposal (Brief pp. 44-45) and that not one of them expressed opposition to the elimination of "duplicate facilities" (Brief pp. 44-45), but were solely interested in "good service". If our opposition to appellant's proposal was not sufficiently articulate at the hearing, it was attributable entirely to appellant's procedural maneuvers at the commencement of the hearing. Our subsequent participation in this proceeding (after all the evidence was in) before Division 4, the Commission, the District Court and this Court indicates where our interests lie.

IV.

Control of Western by Santa Fe-Pennsylvania Will Not Injure Appellant's Branch Lines in South Dakota and Minnesota.

The participation in the proceedings of the States of South Dakota and Minnesota and their respective Public Utilities Commissions was predicted upon the fear that Santa Fe-Pennsylvania's control of Western would divert traffic from appellant's lines, thus resulting in the abandonment of appellant's branch lines in these states (Brief p. 28). The Commission, however, made an extensive analysis of appellant's claims of traffic diversion (R. 35-37). The Commission found that these claims were groundless.

Neither South Dakota nor Minnesota have attempted to deal with the Commission's detailed analysis or raised any question with respect to these findings in this appeal.

The issues discussed by South Dakota and Minnesota's briefs are manifestly no more than a reiteration of the arguments advanced by appellant.

CONCLUSION.

Representing, as we do, the great bulk of the public interest of the middle west in this case, as opposed to the only expressed interest in reversing the lower court and the Commission (which was filed by the states of South Dakota and Minnesota and their respective public utility commissions), it can hardly be doubted that the public interest, insofar as the participants in this case are concerned, lies heavily in support of the Commission's order.

Concluding, it is earnestly submitted that the public interest to which the Interstate Commerce Commission is committed by virtue of the National Transportation Policy and the Interstate Commerce Act compels no other conclusion when reviewed in the light of the findings of the Commission in this case that the Commission in the exercise of its delegated authority in approving the application of the Santa Fe and the Pennsylvania Railroad for the acquisition of the Toledo, Peoria & Western Railroad Company has met all of the exacting requirements of the Interstate Commerce Act and the National Transportation Policy.

We therefore respectfully suggest, on the basis of the considerations outlined in this brief, that this honorable Court should—

(1) Sustain the holding of the lower court in this case, and

(2) Sustain the findings of the Interstate Commerce Commission and its order, which is the subject of this review.

Respectfully submitted,

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Nos. 12, 27, 28

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In The
Supreme Court of the United States

OCTOBER TERM, 1959

No. 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,

Appellant,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

No. 27

STATE OF SOUTH DAKOTA AND PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA,

Appellants,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

No. 28

STATE OF MINNESOTA AND MINNESOTA RAILROAD AND WAREHOUSE COMMISSION,

Appellants,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

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REPLY BRIEF OF APPELLANT, THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

The one subject that went unnoticed in the Commission's report, and upon which the appellees have elected

to remain silent in [illegible] briefs, is Pennsylvania's admitted motive in enteri[illegible] the acquisition of Western; namely, to stifle competition. Pennsylvania had for years conceded the soundness of a Minneapolis-Western merger. (R. 977-8, 1022, 537-8) When it learned of the plan to add a third sector—the Monon—to produce a meaningful outer-outer belt line by-pass of Chicago, Pennsylvania proceeded with the acquisition of Western to forestall and permanently prevent that competition. (R. 1022-3, 539-40) And it did so with the aid of its interlocking directorate relationship with the seller, Wilmington Trust Company. How a transaction so oriented squares with the public interest the Commission did not say. The District Court, as explained in a footnote to the opinion, saw no purpose in exploring such motivations because the Commission had "no authority to direct the trustees to deal with Minneapolis rather than with the other interested purchasers." (R. 97) And the whole subject, including the District Court's *non sequitur*, is simply ignored by all the appellees.

The deficiencies of the Commission report (and the briefs filed in its defense) reach deeper and further than this one item. The assumption is persistently made that Minneapolis contemplates the "disappearance" or "destruction" of the Western organization and abandonment of the policy of neutrality. (R. 30-1, U. S. Br. 24, 31, P.-S.F. Br. 8, 25, 29) There is not a shred of evidence to support any of these assumptions. The unification of the Minneapolis and Western solicitation and service organizations will enhance and fortify the existing policies of aggressive solicitation, impartiality with connections, and effective service. That is the announced purpose and the incontestable self-interest; both carriers have for years solicited the Peoria gateway to the exclusion

of all other gateways. The point is not whether the surviving operation of Western will be "independent", "autonomous", or "separate"—all of which are literary allusions. The real question is whether the service and solicitation policies will be aggressively pursued and impartially administered.

With respect to section 10 of the Clayton Act, the appellees' briefs reiterate the Commission's position that Pennsylvania made no purchase of Western stock from Wilmington Trust, but none attempts to explain how that comports with the record. Instead, they would read into the statute special limitations which the Congress did not write or, so far as the legislative history reveals, ever contemplate.

With respect to the national antitrust policies, the Commission's position, unexplained in its report, is finally disclosed. It regards the National Transportation Policy as a substitute for the national economic policy of free competition. In that frame of reference, it felt called upon to allude to the antitrust policy in terms only of individual traffic diversions rather than the over-all framework of free competition and did not seek the accommodation, to the extent possible, of both national policies.

I.

The Denial of a Comparative Hearing.

Minneapolis presented a positive program for promotion of the Peoria gateway, economies through elimination of duplicate facilities and operations, added and improved service and strengthening the two small carriers. Pennsylvania and Santa Fe united on a negative program, admittedly undertaken to forestall competition from Minneapolis and Western; no economies or service im-

provements were involved and the owners would continue as Western's most powerful competitors. The Minneapolis application clearly advanced the National Transportation Policy "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation"; it conforms fully to the national antitrust policies. The Pennsylvania-Santa Fe application makes no contribution to the transportation policy and gravely offends the antitrust policy. Findings that would catalogue, evaluate and balance the comparative considerations (which could have yielded but one result) were not made. Instead the Commission adopted as the sole criterion "independent and separate operation" of Western, automatically ruling out any possibility of integration or economy. Now the Commission justifies its lack of comparative findings on the ground that it confronted "radically different proposals". Whether the standard to be achieved be determined in advance or at the conclusion of a composite balancing, there is no excuse for omitting findings of fact with respect to each application or the evaluation of the comparative advantages in each category.

While the appellees' briefs rely upon *FCC* v. *Allentown Broadcasting Corp.*, 349 U.S. 358 (1955), that decision actually offers little comfort to their position. There the Commission did in fact examine and appraise, in comparison, each application in relation to each factor. The Commission found that both applicants were legally, technically and otherwise qualified and that both communities were equally in need of the programs proposed to be broadcast by each applicant. The one factor which carried the crucial weight was that Allentown had three local stations and that Easton had only one. Despite the difference in population, the Commission thought that the choice between locally originated programs was

decisive. Had like procedure been followed in this case, the Commission would have been compelled to grant the Minneapolis application and deny the other.

1. The Illusion of Independence of Western.

Both the Commission and the appellees gloss over the absence of comparative findings by loose references to the terms "independent", "separate" and "neutral". And now the Government brief (pp. 10, 23, 34) adds the term "autonomous". That Western's management could be independent of its owners is an illusion that not even the Pennsylvania-Santa Fe brief seriously espouses. Dispelling any notion that promises of separation and autonomy will insulate Western from effective control by its owners, were the Pennsylvania-Santa Fe conversations about using Western for their own advantage in empty refrigerator car routing, as noted in our original brief. (p. 22) In preparation for this hearing, the President of Pennsylvania found it advisable to warn his executives against altering existing relations to Pennsylvania's advantage—a measure wholly unnecessary were the normal inclination not in that direction. (Ex. H-14, R. 1693).

The assumed virtue of the separate operation appears to be two-fold. First, it is designed to continue active solicitation for Peoria gateway routing by Western's traffic solicitors, notwithstanding that the economic self-interest of the controlling carriers would remain in their longer hauls through Chicago and St. Louis. Our original brief exposed the parity hoax perpetrated upon the Commission and showed the unreality of expecting a subsidiary's solicitation force effectively to compete with the parents. *ICC* v. *Baltimore & O.R.R.*, 152 I.C.C. 721, 735-6 (1929) (Orig. Br. 20-22)

In terms of promotion of the Peoria gateway, the Commission had a choice. The solicitation force could be placed under the control of two carriers that had long been, and would continue as, active competitors and whose economic preferences lay in other gateways. Alternatively, Western's organization could be augmented with the Minneapolis traffic staff, both having long concentrated on bridge solicitation for the Peoria gateway to the exclusion of all others, and having no conflicting economic interest either to erase or to avoid.

Secondly, a "separate" Western was thought to provide assurance of neutrality with connecting carriers. The record shows that whether the exercise of control be patent or latent, self-interest provides the only truly effective guarantee of neutrality. In the court below, Pennsylvania-Santa Fe described any departure from neutrality by Western as "suicidal". There is nothing in the record or in good sense that renders that term less applicable if Minneapolis acquires Western. As the Traffic Vice President of Santa Fe put it, "any time it [Western] was guilty of preference, even with its owners under an independent operation, it wouldn't be long before the T.P.&W. would find very little cooperation with any of the other railroads that now interchange with it." (R. 503)

The Minneapolis acquisition was designed to be ". . . the closest possible thing to a continuation of the TP&W policy in its present form . . ." (R. 1030) The Peoria gateway is the lifeline of Minneapolis. The Pennsylvania-Santa Fe brief (p. 28) concedes that ". . . railroads serving the east-west gateways cannot afford to favor one connection to the detriment of others." The $12 million investment in Western compares to Minneapolis' capital stock of $20 million. These add up to an overriding

economic incentive to operate, as the Minneapolis Chairman testified, "with an eye single to the best interest of the TP&W." (R. 1031)

We need look only to the conditions imposed by the Commission as an assurance of neutrality (R. 40-1) to see that these operating principles are unrelated to whether Western operates as a separate organization or in integrated collaboration with Minneapolis. These conditions require that existing routes, junctions and channels of trade be preserved and that the neutrality of handling traffic inbound, outbound and in overhead service be continued without discrimination.[1] Present relationship and service are to be continued without impeding the routing of traffic by captive industries. These conditions prescribe a way of life which the Pennsylvania-Santa Fe witnesses testified must be respected by any owner in order to avoid reprisals and retaliation from any carrier adversely affected. (R. 483-4, 546, 572)

2. *Preservation of Western's Solicitation and Service Policies by Minneapolis.*

Stripped of the confusion of labels, the heart of the Commission position is that the public interest will be served by retaining the established solicitation and serv-

[1] The Government brief complains of our "belated" acceptance of these conditions. (p. 31) On the opening day of the hearing, Burlington, whose petition proposed the conditions, suggested a change. Counsel for Minneapolis announced its acceptance of the conditions, stating that prior to the hearing he had advised the Milwaukee of that acceptance. (R. 355, 454) The question arose again the next day, and Minneapolis reiterated its full acceptance of all the conditions. (R. 551) The neutrality conditions accord precisely with the incentive of Minneapolis "to carry on and improve the same type of aggressive solicitation and service that has been provided by the TP&W." (R. 1032)

ice policies of Western. Accepting this preconceived premise, it was incumbent upon the Commission to set out precisely the policies it proposed to preserve and to determine separately how each of these policies would fare under each of the competing applications. This the Commission was called upon to do, not by generalizations, not by recitals of asserted position, but by findings of fact predicated upon the evidence. And this is precisely what the Commission failed to do.

The policies which made Western successful were these:

First, aggressive solicitation of traffic in active competition with the primary gateways at Chicago and St. Louis and the minor gateways at Decatur, Kansas City and the like. This little carrier maintains 19 off-line agencies throughout the United States to promote that solicitation.

Second, efficient service bridging traffic on transcontinental routes between the east and the west. This involves efficiency in operation and effective utilization of equipment.

Third, the furnishing of full and prompt information to shippers with respect to traffic being handled. Here again the 19 off-line agencies provide facilities for that important purpose.

Fourth, the maintenance of cooperation with each of the 16 carriers with which Western connects. Primarily, this involves maintenance of service routes, facility of interchange and accommodation of schedules under a policy of impartial treatment for all connections.

These policies, supplemented by the active solicitation by Minneapolis which was dependent upon, and other roads that utilized, the Peoria gateway, enabled Western to build up its large traffic volume in defiance of the

"passive" opposition of its two largest connections, Pennsylvania and Santa Fe.[2] (R. 34)

3. Preservation of Neutrality by Minneapolis.

The Commission insisted that "The proposal of Minneapolis unequivocally contemplates the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works." (R. 30) That Western and Minneapolis would integrate their operations and, to that extent the independence of both would be affected, is perfectly true. But with respect to neutrality, there is not one speck of evidence to support the Commission's statement. Indeed, it flies in the teeth of the sworn testimony and unqualified opinions of the

[2] Counsel make much of the Commission's finding that the success of Western "dates from the construction, in 1927, of its western connection with the Santa Fe at Lomax," (U.S. Br. 5; P.-S.F. Br. 4) The Court will note that finding reflects a time rather than a causal connection. The truth is that Western's success was attributable to the aggressive solicitation and service policies of McNear, who acquired the Western from the Receiver in 1927. At that time he said of his principal eastern and western connections that had owned the property for 33 years:

> ". . . It was against the interest of the controlling companies—Pennsylvania-Burlington—to develop the property because it competed for traffic with their lines." Acquisition by T.P. & W. R.R., 124 I.C.C. 181, 187 (1927)

In the first year McNear jumped the Western carloads from 38,650 to 53,283, the Santa Fe contribution being less than 3,600 cars. The next year he increased the volume to just under 68,000 cars, of which the Santa Fe connection at Lomax accounted for 5,961. (R. 464; Ex. H-5, R. 1641) And even these Santa Fe carload figures are not net because, contemporaneously with the opening of the Lomax gateway, Western discontinued its joint operation from Lomax to Burlington for connection with the Burlington. (R. 381)

officers of the opposition. The evidence on the subject of neutrality is as follows:

1. Pennsylvania-Santa Fe witnesses testified that neutrality with connections is a highly sensitive aspect of railroad operation because the failure to respect neutrality invites reprisal and retaliation. Any semblance of favoritism is self-defeating. (R. 483-4, 546, 572) These economic forces would hardly be less operative under the Minneapolis regime than they would be for the colossi giving the warning.

2. Minneapolis proposed expanding and intensifying solicitaiton for the Peoria gateway. The number of off-line agencies soliciting Western traffic would be increased from 19 to 35. (R. 1185-7) Ninety percent of the revenue being derived from bridge traffic, such intensified solicitation would necessarily increase the volume of the connecting carriers. Far from deteriorating, the connections would be enhanced.

3. The Minneapolis program received the wholehearted endorsement of both the President of Pennsylvania, Western's largest connection, and the President of Western, who is credited with Western's progress in recent years. It was only when Pennsylvania's President felt the sting of meaningful competition from a proposed outer-outer belt line that he abandoned his position, held for years, that the Western and Minneapolis merger was a natural. (R. 532, 539, 1022-3, 977-8) It was only after Pennsylvania and Santa Fe made the second purchase contract that Western's President changed his allegiance. (R. 997) With their first-hand knowledge of both the operating realities of the proposed merger and the basic requirement of impartiality with connections, they supported the Minneapolis program—until they became adversaries in this litigation.

4. The improved service, proposed by Minneapolis, particularly when coupled with the intensified solicitation, offers new opportunities for traffic to most of Western's connections. If a car can move 15 or 18 hours—or even one hour—faster through integrated, accelerated schedules, the connections that deliver or receive that car will be the beneficiaries of heavier traffic.

5. Minneapolis, Santa Fe and Pennsylvania constitute three of Western's connections. Not one of the remaining 13 connections has appeared in this Court to challenge Minneapolis on the issue of neutrality. Were this a genuine threat, were there a danger that Minneapolis would adopt the self-defeating policy of favoritism, at least one of the adversely affected carriers would have appeared.

6. The Commission-imposed conditions are both acceptable to, and in harmony with the self-interest of, Minneapolis.

The opposition briefs assume that improved service is incompatible with neutrality. As the Commission's proposed conditions reveal, neutrality requires that existing service routes, connections and schedule accommodation be retained so that the opportunity for continuing existing service is not impaired for any connection. (R. 40-1) The evidence shows that Minneapolis intends to continue that program, and indeed the contemplation that Minneapolis would continue Western's high quality of service was conceded by Pennsylvania's Traffic Vice President. (R. 590) Neutrality does not guarantee to any connection that it will retain the same volume of business, that the shipper will not seek faster, better service elsewhere. The very essence of the transportation goal, be it rail, water, highway or air, is to give the shipper the finest, the fastest, the most convenient service. And that is

hardly incompatible with the public interest. But more than that, an examination of the improved and accelerated service proposed by Minneapolis establishes a complete absence of harm to any connections with Western.

First, it is proposed to provide integrated service between the Twin Cities and Effner, the eastern terminal of Western. How any connections could be injured by eliminating duplicate yard handling and the transfers of cars two or three times along the route, is difficult to see. Secondly, Minneapolis proposed to get coal traffic not now moving from its Middle Grove mines to the river port at Peoria by integrated service, avoiding a switching charge. Having in mind the intense competition in the coal industry and the significant portion of the coal selling price attributable to transportation expense, this proposal is a contribution to the miners and the mine owners in Middle Grove and adds a measure of stability to a vital, ailing national industry. Here again no connection could possibly be affected adversely.

Third, main line interchanges without intermediate switching carriers would save some 24 to 48 hours on Illinois Central interchanges, opening the opportunity for traffic from and to the south and southeast. (R. 1179) Improved interchanges were also proposed with the Gulf, Mobile & Ohio, Nickel Plate and New York Central, all calculated to bring new traffic through the Peoria gateway. (R. 1179-82) These steps would necessarily enhance the volume of traffic moving over Western, from and to its connections.

Fourth, new service routes would be opened through the C. & E. I. interchange at Watseka. This would "provide a faster freight service route" for traffic "now fun-

neled through the Chicago Gateway." (R. 1181) It would enable shippers from the northwest and, indeed, from any part of the west coast, to utilize Western's facilities to reach the south and southeast, and vice versa. Here, too, a new flow of traffic would be drawn into the gateway. Again, the connections could only be benefited, not harmed.

We do not deny that Minneapolis will intensify the competition with the Chicago and St. Louis gateways. Certainly it plans to divert traffic from these competing gateways and from other modes of transportation. (R. 1029) If promotion of the Peoria gatew , serves the National Transportation Policy, then such diversions, obtained on the basis of better service, should be encouraged and not suppressed.

4. The Commission's Use of Different Yardsticks.

Not only did the Commission attribute to the Minneapolis program a destruction of neutrality, contradicted by all of the evidence, but the Commission invoked a special yardstick with which to strike at the so-called diversion of traffic. The improved, accelerated service and the new service routes, the Commission found, would be extremely harmful to other carriers. (R. 31-2) No finding of fact showing the nature or magnitude of such harm is provided. The only railroad mentioned is the Wabash, whose President thought "a large part" of about 6500 cars moving via Albia and Des Moines to or from Illinois or states east thereof would be "influenced" to Western.[3] (R. 1270-1). He could not say what portion

[3] The witness spoke of a large part of 35% of 21,000 cars moved in 1955. On cross-examination he admitted that this figure should be reduced by a 2500 car nonrecurring movement from Detroit. (R. 1292).

of this "large part" related to stations west of Bement, Illinois, the breakpoint for any possible diversion. The truth is that the Albia-Des Moines interchange to which the Wabash President referred is predominantly a north-south interchange which could not affect east-west traffic. (R. 1202) In any event, the Wabash is quite competent to supply specific data if genuine vulnerability existed or if the item had any real significance in its operations.

When the possibility of diversion of traffic by Pennsylvania-Santa Fe was considered, the Commission adopted a wholly different yardstick—and indeed a different tone:

> "Of course, if service over the Western is improved under the control of the Santa Fe and the Pennsylvania, and traffic can be handled over it more economically and efficiently than over existing routes, there may be some diversion of traffic, but such diversion would not jeopardize the maintenance of adequate transportation service by the objecting intervening carriers." (R. 34)

Thus the Commission employed the standard of jeopardy to maintenance of adequate transportation service to test diversion of traffic by Pennsylvania-Santa Fe, while holding that *any* diversion by Minneapolis is "extremely harmful." The employment of two wholly different criteria to judge the significance of traffic diversion by the competing applicants demonstrates the utter absence of a comparative hearing.

The Commission again tinkered with the standards in considering the diversion of Minneapolis traffic inherent in the Pennsylvania-Santa Fe program. Santa Fe's Traffic Vice President testified that Nemo would cease to be on a parity with Lomax "service wise and every other wise". (R. 496) This and other preferences would render $7 million of Minneapolis traffic—more than

one-third of its total volume—vulnerable to diversion and would produce an almost certain loss of $1.1 million in revenue. (R. 1027, 1104, 1112-8, 1254, 1356-7, 1410-1) While the Commission said that the "record does not disclose the basis of the percentages used" (R. 35), witness Swanson, in response to a Pennsylvania request, provided an analytical breakdown of all the traffic movements, the commodity and nature of which he had already described. (R. 1151/2, 1356-7) When he returned to the witness stand, the successful applicants elected not to cross-examine on that analytical breakdown. (R. 1611-12) Although Santa Fe's deliberate change in service was admitted and the imperiled traffic explored in detail, the Commission concluded that the Minneapolis traffic "does not move on a competitive service basis" and hence would not be vulnerable.* (R. 36)

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*The idea that Minneapolis obtained the traffic through friendship rather than service came from the testimoney of Coulter (President of Western) that Minneapolis service from Peoria to Nemo was almost a full day slower than Western's service to the Lomax terminal. (R. 1580-2) On cross, he admitted that the principal Minneapolis business received from Western at Peoria came "around 10 P. M. in the evening". (R. 1605) His principal testimony had reference to morning westward movement, which was admittedly light, but he did not know that Minneapolis' train No. 19 (departing Peoria at 1:15 A. M.) connects with the same Santa Fe train No. 59 at Nemo which receives the cars delivered at Lomax by Western's train No. 23 (departing Peoria at 1:00 A. M.). (R. 1606) The identity of these westward connections appears from the schedules in Santa Fe Exhibit H-121. (R. 1982-4) Recent schedule improvements have reduced the elapsed time for the traffic moving from Peoria to Kansas City to 17 hours 45 minutes on the Minneapolis-Santa Fe, compared with 19 hours 59 minutes on the Western-Santa Fe. The eastward traffic from Nemo connecting with Western at Peoria is delayed by lack of integrated schedules and switching (R. 1184), but the volume is not substantial. Of the entire Nemo-Peoria revenue, the eastward portion is less

Finally, any appraisal of added and improved service must be primarily in terms of public interest, not in terms of advantage for particular carriers. If the facility of movement of goods and wares in peace and military equipment in war can be expedited through the elimination of double and triple switching and multiple yard operations, then the public interest demands that such service be sustained unless, in the words of the Commission itself, such improvement would "jeopardize the maintenance of adequate transportation service by the objecting intervening carriers". (R. 34) Such effect from the Minneapolis program for improved service has never even been intimated by any party.

Had a comparative hearing been accorded, very little expertise judgment would have been required to weigh and compare the competing applications in terms of (1) improvement in transportation service, (2) promotion and development of the Peoria gateway, (3) economic incentive to preserve and enhance Western operations, (4) the maintenance of effective competition in the interest of shipper service and in keeping the antitrust policy, (5) the strengthening of carriers to perform their roles in the national transportation system, (6) provision of stability in employment without undue burden on individual employees, and (7) economies that will facilitate better and cheaper service to the public.

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[1] (continued)
than 30%. (R. 1355-6) And of the Minneapolis deliveries at Peoria, less than 13% represents such delayed interchange with Western. (Ex. H 128, R. 2002) Other carriers cooperate to integrate their schedules with those of Minneapolis. (R. 1193, 1349) The comparison by the witness of 49 miles per hour speed on Western with 30 miles per hour on Minneapolis (R. 1579) turned out to be the maximum in the first instance and the average in the second. (R. 1597)

II.

The Omission of Findings on Essential Issues and the Entry of Findings Contrary to Undisputed Record Proof.

Appellees' briefs proceed on the assumption that when the Commission recites the position of a party on an issue, its fact finding function has been adequately discharged.

1. Economies and Improved Service.

The primary benefits sought in railroad mergers are economies through the elimination of duplicate facilities and integration of service. The Minneapolis proposal achieves both objectives for strengthening carriers and improving public service. This was no mere exercise in generalities. The evidence spells out the precise operations to be integrated, the duplications to be eliminated, the trains to be accelerated and the new service routes and connections to be added. (R. 1028, 1077, 1186, 1222-9, 1239-42; Ex. H-44, R. 1894-1924, 1380) The Pennsylvania-Santa Fe answer is that we ignore the "findings which reflect the Commission evaluation" of our contentions. (Br. 31) There is not a syllable in the Commission report which even approaches the dignity of a finding and none is cited by appellees. On economies, the Commission says only that "Minneapolis estimates". (R. 32) On improved service, the Commission says "Minneapolis contends" and "Minneapolis proposes to establish". (R. 31) Would the actual saving be $1,770,945, as shown in the Minneapolis schedules and testimony, or would it be more or less? Are the accelerated service and the new service routes practical and will they advance the public interest? These are the queries which the Commission was called upon to answer in findings of fact

and on these matters nothing appears in the Commission report.

Without mentioning the public service benefits from the improved accelerated service, the Commission found that it would be "extremely harmful to other carriers". (R. 32) The Commission referred only to the vague Wabash generalization, unsupported by specific data (*supra*, pp. 13-14). Appellees would now bolster the Commission's findings with auxiliary findings of their own that the new service routes would divert traffic from Western's connections. (U. S. Br. 32-3; P.-S. F. Br. 29-30) The new service routes and accelerated service are designed to bring into the Peoria gateway additional traffic now moving through other terminals or by other modes of transportation (R. 1029); these must necessarily add to the volume of Western's connections. The Government errs in its assertion that Rock Island and Nickel Plate presented estimates of "potential losses from diversion of traffic under the Minneapolis plan." (U.S. Br. 23) The Rock Island figures mentioned reflect simply competitive traffic which could move today on either the Minneapolis or the Rock Island, and which the originating carrier can greatly influence. (R. 1551) The witness testified only that the Minneapolis was an aggressive competitor and that any business which is competitive could be lost. (R. 1542-5, 1550-1) The Nickel Plate testimony is in the same vein. (R. 1340-1)

Nor is there any evidentiary support for the fears expressed by appellees for the six other carriers. Hostile as the Commission was to the Minneapolis application, it did not even mention the Rock Island or the Nickel Plate or any carrier other than the Wabash in discussing the Minneapolis program. And none of the connecting carriers has been sufficiently concerned to intervene in

this Court. In the District Court, the only intervenor, Nickel Plate, did not raise any issue of Minneapolis diversion.

The other side of the coin is that the Santa Fe and Pennsylvania, with their massive originating volume, are in a truly powerful position to divert large tonnage. Most important is the tremendous long haul incentive for Pennsylvania and Santa Fe to divert existing Peoria gateway traffic to the more profitable St. Louis and Chicago gateways—a condition inherent in awarding Western to its most powerful competitors.

2. Economic Motivations.

As noted, Pennsylvania's plan to acquire Western for the purpose of forestalling competition was, so far as disclosed in the report, not considered at all. Reference is made to the purpose of Pennsylvania and Santa Fe to "cement" their already close relationship with Western. (P.-S.F. Br. 32) No mention is made of the fact that their connections with Western were in the nature of a shotgun marriage brought about by the service demands of shippers who were solicited by the dynamic McNear to utilize the short line bypassing Chicago. No account is taken of the fact that Santa Fe and Pennsylvania have "passively" opposed Western solicitation throughout the years. No consideration is given to the fact that Pennsylvania and Santa Fe are active, serious competitors of Western, with a primary interest in their long hauls to St. Louis and Chicago.

Counsel took pains to recall conversations of 1942 with reference to the acquisition of Western, but ignore (as did the Commission) the fact that up until the outer-outer belt line was proposed, Symes, President of Pennsylvania, kept urging a merger of Minneapolis and Western as a natural. Nor is there any reference to the

fact that Coulter, President of Western, administrator of the policies the Commission would preserve, similarly endorsed the Minneapolis-Western merger until he acquired new bosses under the contract of sale to Pennsylvania-Santa Fe.

We submit that an appraisal of economic motivations with these enormous blank spaces does not fulfill the Commission's responsibility in the public interest.

3. Prior Ownership of Western by Pennsylvania-Burlington.

Except for a reference to Western's "prolonged ownership by the Pennsylvania and the Burlington, which ended in receivership" (R. 21), the Commission's report makes no reference to that disastrous ownership experience of 33 years. It does not comment upon the fact, shown in its own records, that the receivership and the destruction of Western derived directly from the fact that it was against the interest of the controlling companies to develop the property because it competed with them for traffic. *Acquisition by T. P. & W. R.R.*, 124 I.C.C. 181 (1927).

Western's unhappy history imposed upon the Commission the duty of determining and weighing (a) the elements that led to the deterioration and receivership of Western, (b) the extent to which pertinent economic and operating conditions have undergone any material change, and (c) how, if at all, a repetition of the adverse results of ownership of Western by Pennsylvania in concert with a large western carrier could be avoided. That was never done. All that the Pennsylvania-Santa Fe brief can point to is the Commission's statement that much of Western's success dates from the construction of Western's connection at Lomax in 1927. As we have already indicated, this is a time and not a causal connection. the dramatic resurgence of Western's volume derives

from McNear's strong constructive solicitation and service. (*supra*, p. 9n.[2]) Nor does the Commission claim otherwise either through analysis of the figures or a direct finding. Even today only one-fourth of Pennsylvania's interchange with Western passes over the Santa Fe. (Ex. H-5, R. 1638) No amount of argument can erase the indelible fact that Western could not persuade shippers to use this strategic route until it was freed from control by its gigantic competitors. And in that sense, we fail to see the slightest difference between the history that Pennsylvania wrote before McNear and the one that the Commission would write now.

4. Purchase Price.

The Commission approved the price as reasonable because it was established by "agreement between a willing seller and a willing buyer". (R. 42) Why the same willing seller and the same willing buyer agreed upon a price 35% lower just one month earlier gave no concern to the Commission. How it could discharge its obligations without inquiring into that startling fact, none of the briefs explains.

Both the Commission and the appellees would bolster the finding by generalizations with respect to the condition of the property and the operating record of Western which the Commission considered without specific evaluation. They see confirmation in the willingness of Minneapolis to pay the same price, but give no consideration to the fact that the Minneapolis program, because of economies, would yield earnings more than twice those available under the separate operation of Western. Lack of consideration of price-earnings data is attributed by Pennsylvania-Santa Fe to the absence of such data in the record. (P.-S.F. Br. 40) We would have thought that the agency regulating the railroads and collecting

their day-to-day earning and operating figures would have no difficulty correlating those earnings with the daily market quotations. It has not been too much for this Court to take judicial notice of market data, and we take it that the Commission should not deny itself similar information.

5. Promotion of the Peoria gateway.

The Commission found that Pennsylvania and Santa Fe intended to promote Western as a strong competitive force. Assurances were accepted in disregard of (a) the competition of their own traffic organizations, (b) their economic advantages in the long haul through competing gateways, and (c) their 30 years of passive resistance to Western solicitation. This vital conclusion was reached by the Commission on the basis of its findings that Santa Fe "intends to place Lomax on a parity with Chicago from a solicitation standpoint" and that under Pennsylvania solicitation "Effner and Chicago will be on a parity". (R. 34) The plain meaning of these findings is that, upon investing in Western, Santa Fe would solicit traffic equally for the Chicago and Lomax terminals and Pennsylvania (while continuing to favor St. Louis) would solicit equally for the Chicago and Effner interchange.

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[3] Pennsylvania's Traffic Vice President was asked, upon cross-examination, whether he intended to advise his "traffic solicitors that Effner is to be placed on a parity with Chicago and St. Louis with respect to the active solicitation of freight". His answer was, "Yes, sir." (R. 594) At an earlier point he had mentioned the proposed parity and said that Pennsylvania would "not work against Effner". (R. 571) Throughout the proceeding, Pennsylvania-Santa Fe officers spoke of parity in terms of solicitation, generally without revealing that they did not intend to solicit any traffic for Western. (R. 403, 405, 495, 582, 594) It remained for the final Pennsylvania-Santa Fe witness to make it clear, on cross-examination, that Pennsylvania would not solicit for Effner and Santa Fe would not solicit for Lomax, and that, in their lexicon, "parity" and "benevolent attitude" were synonymous. (R. 1600-1, 1609)

Our original brief showed that the word parity was delusive and misleading; that actually the successful applicants meant no equality of solicitation but in the words of their own witness, merely a "benevolent attitude". (R. 1609) Pennsylvania and Santa Fe now concede that they do not intend to solicit a pound of freight for interchange with Western either at Lomax or Effner, or anywhere else.[6] They say, in effect, that the Commission understood that parity of solicitation meant neither parity nor solicitation.[6] And they arrive at that by the curious fact that the subject had been introduced earlier in the paragraph of the Commission report by a comment that under the new control, Western "would have an increased opportunity to secure traffic now moving via other gateways." (P.-S.F. Br. 34-5) Whatever special insight appellees may have, the report of the Commission which the courts are called upon to review makes it perfectly clear that the cornerstone of the Commission's fundamental conclusion that Pennsylvania-Santa Fe will promote the Peoria gateway is the finding of equality of solicitation for Western connections on the part of both carriers. The crumbling of that cornerstone, we respectfully suggest, withdraws the entire foundation for the promising structure erected by the Commission as a justification for its order.

6. Testimony by Shippers and Local Officials.

Our original brief pointed out that these witnesses were assembled as a part of a huge promotion, that they had no knowledge of the Minneapolis program and attempted no comparisons, that shippers were primarily interested in service, that all who had used Minneapolis applauded

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[6] The words of the Pennsylvania-Santa Fe brief (p. 34) are these:

"The Commission was not misled. It did not find that Santa Fe and Pennsylvania would solicit for Western."

its service and that, finally, the Commission should have been concerned with economic and public considerations not a public opinion poll.

The one-sided expressions are excused by Pennsylvania-Santa Fe counsel by the argument that these witnesses appeared prior to the testimony of Minneapolis officials (Br. 40) That hardly excuses the failure to enlighten these witnesses or commends their uninformed opinions.

The concern, expressed by counsel for the appellees, for the future of service and industrial development on the segment of Western lying west of Peoria, has no basis in either evidence or findings. (U.S. Br. 11, 39, P.-S.F. Br. 40-1) Studies made by the Minneapolis demonstrated the desirability of that property. (R. 1028-9, 1065) The density of its traffic is greater than that of a considerable portion of the Minneapolis line. The Commission found specifically that Minneapolis had no intention of abandoning that operation, and its findings do not intimate any possibility of deterioration in service. (R. 31)

Finally, the Pennsylvania-Santa Fe brief (p. 41) complains that the Minneapolis plans for accelerated schedules and new service routes would not benefit transcontinental shippers. A simple answer is that the Pennsylvania-Santa Fe proposes no improvement in service for any shippers. However, transcontinental shippers between the east and northwest must certainly benefit from the accelerated schedules. Those shipping to the west coast and the south and southeast would have new service routes with as much as two days' delay eliminated; these should certainly attract traffic movements to Western.

3. Stability of Employment.

The duty of the Commission to consider the effect of an acquisition upon employment is not satisfied by a mere reference to the number of positions eliminated by the abandonment of duplicate facilities and operations. The number of individuals who could be adversely affected and the extent to which the dislocation would be cushioned are factors which the Commission is required to consider. Nor may the long-range advantages of stability of employment be ignored. No explanation for the Commission's silence on these matters is suggested by the appellees.

The communities served by Western would be natural beneficiaries of the improved service, promotion and stability to be derived from uniting Western with the only other carrier that has for years promoted the Peoria gateway as basic to its very existence. Nor should there be overlooked the opportunities for commercial and industrial development, with added payrolls, which would be opened up by the consolidation of facilities. Considerable acreage from the yard and other facilities to be abandoned, a large office building and other property would become available for useful and productive utilization. (R. 1226)

The Commission knows full well that the employment aspect of carrier acquisition is a many faceted problem which cannot be answered simply by a mathematical computation of the number of unnecessary positions that will be eliminated. Indeed, the Washington Job Agreement and related formulae, from time to time invoked by the Commission, were established to meet the reality of that problem.

The factor of stability of employment as a consideration in a merger proceeding was ably described by the Commission itself in a recent decision:

> "*The merger will afford more stabilized employment for employees of both roads.* — In our opinion, the merger will be in the interest of employees of both roads, since in the last analysis railroad employment is directly dependent on volume of traffic handled. A stronger unified railroad would be in a much better position to develop new traffic than either Norfolk & Western or Virginian is separately. With heavier and more diversified traffic for the combined system, employment opportunities should be stabilized and increased." *Norfolk & Western Railway Company — Merger — Virginian Railway Company*, I.C.C. F.D. No. 20599, (October 8, 1959) Sheet 37.

In that case the carriers made a special agreement that displaced employees would not be discharged but would move into vacancies which attrition would amply provide and the Commission invoked the Oklahoma job protection formula. The Minneapolis program was not materially dissimilar. Its Chairman testified that in a large internal reorganization vacancies from attrition were sufficient to absorb substantially all displaced employees and that the same result was expected here. (R. 1032-3) This program was fortified by the protection of the Washington Job Agreement. (R. 289) The possibility that the incumbents of the positions to be abolished would not all be absorbed in other positions is so remote and the number who can possibly be in jeopardy is so small that an absolute guarantee of employment would have cost less than the printing bills in this proceeding.

III.

Section 10 of the Clayton Act.

The Commission held section 10 of the Clayton Act inapplicable, *first*, because the Commission has plenary authority under section 5(11) of the Interstate Commerce Act to render antitrust restraints inoperative, and *second*, because the purchase from Wilmington Trust Company had been made by the Santa Fe. (R. 44) Under *SEC* v. *Chenery Corp.*, 318 U. S. 80, 93-4 (1943), the validity of the decision "must be measured by what the Commission did, not by what it might have done."

The application to the Commission was for a joint acquisition by Santa Fe and Pennsylvania. The carriers had together negotiated and concluded the purchase agreements of April 15, 1955. Admittedly, Pennsylvania would have been a direct party to the agreement of the following month but for its insistence that the original sale agreements were valid. (R. 409, 458) Whether the Santa Fe discussion of participation with other railroads was or was not genuine, is not material. It did collaborate solely with its original partner, Pennsylvania, which always insisted upon the validity of its April 15th purchase contract, to enforce which a lawsuit is pending today. Both carriers then filed their joint application for the "joint acquisition of control of TP&W by Santa Fe and Pennsylvania Railroad". (R. 129)

Appellees insist that the "plain purpose of the section is to prevent a railroad from buying at too high a price" in an interlocking directorate situation. (U.S. Br. 63) Not a word of the statute is or can be cited to suggest such limited scope, nor is any support cited or to be found in the legislative history. The objectives outlined by the President and the Congress with respect to the original

section 9 of the bill (which became sections 8 and 10 of the Clayton Act) are these:

> "As the President has well said in his message, the adoption of the provisions of this section will bring new men, new energies, new spirit of initiative, and new blood into the management of our business enterprises. It will open the field of industrial development and origination to scores of men who have been obliged to serve when their abilities entitled them to direct. It will immensely hearten the young men coming on and will greatly enrich the business activities of the whole country." (H. R. Rep. No. 627, p. 20, 63rd Cong. 2d Sess. (1914))

We might add that were section 10 rewritten in conformity with the Government's brief, the Commission should have been particularly scrupulous and exhaustive in its exploration of the purchase price issue. That inquiry could hardly exclude the unexplored 35 per cent increase in purchase price in 41 days, the disparity of the price with market appraisals of railroad shares, and the drastic difference in the income to the purchasers under the competing applications.

That the phrase "dealing in securities" is not limited to the carrier's own securities, as the Government suggests (U.S. Br. 63-4, n. 22), is affirmatively established by *In Re Missouri Pac. R.*, 13 F. Supp. 888 (E.D. Mo. 1935), as well as the legislative history. The initial House Bill did limit the restraint to the carrier's own securities. (H. R. Rep. No. 627, p. 3, 63rd Cong., 2d Sess. (1914)) The Senate bill, which in this respect the conference report adopted, changed the phrase to its present comprehensive terminology. (S. Rep. No. 698, p. 64, 63rd Cong., 2d Sess. (1914))

By the Clayton Act, the Congress was striking at the hard core of concentrated economic power. It established

clear-cut standards for corporate morality. The use of an interlocking directorate by the largest railroad in America to crush the competition of a tiny carrier falls squarely within the comprehensive spirit and the unqualified condemnation of the legislative enactment.

The Government brief concedes that the Commission may not ignore the policy embodied in section 10 of the Clayton Act but insists that "it is quite clear that the Commission did not do so". (U. S. Br. 67) While the Commission observed that it had powers of immunization under section 5(11) of the Interstate Commerce Act, it found section 10 inapplicable upon the ground that Santa Fe had made the purchase. (R. 44) It did not find it necessary to inquire into the section 10 policy or to cite considerations, if any there were, warranting special condonation. Indeed, the Commission did not even look beyond the nominal purchaser, to note the joint purchase initially made and the joint application for joint acquisition that initiated the proceeding.

The Government is apparently unwilling to defend the District Court's position that section 10 could be applied only where the seller was acting for its own beneficial interest and where the interlocking directors could be enriched at the expense of the carrier. (R. 98-9, P.-S.F. Br. 58-9)

IV.

Absence of Consideration of Antitrust Policy and its Accommodation to the National Transportation Policy.

An accommodation of the national antitrust policy to the National Transportation Policy requires something much more fundamental and comprehensive than a mere inquiry into isolated diversions of traffic. It is not enough to say, as did the Commission (R. 39), that

the business of intervening railroads will not be unduly curtailed. Antitrust policy is concerned with whether mechanisms for monopolizing or stifling competition are being formulated, and that without regard to whether the immediate victims may be in the hearing room. It concerns the stake that the American people have in maintaining a free economy, unfettered by private cartels and combinations. It is in the full sweep of antitrust considerations that the Commission should have examined the antitrust problems before it.

We do not contend that the Commission may not properly sanction combinations that restrain competition in order to achieve significant public advantages in transportation service and facilities. Nor do we contend that the enormous disparity in size and power between the competing applicants entitles either to special consideration by the Commission. If the Commission is to proceed with an eye single to the public interest, it must take into account all significant considerations of transportation policy and antitrust policy, and may yield the latter only to the extent reasonably necessary to attain desirable transportation objectives for the public. We insist that the Commission cannot meet that obligation without taking into account the alternative possibilities.

The Commission's concept is that "Congress in dealing with recurrent railroad problems, has deliberately developed specific policies *in lieu of* the general national economic policy of free and unrestrained competition." (U. S. Br. 47) (emphasis supplied) This replacement notion is contradicted by *McLean Trucking Co. v. United States*, 321 U. S. 67, 84 n. 20, 85-7 (1944), where the Court makes it clear that (a) the antitrust laws remain applicable to the transportation industry, (b) their policy should be accommodated, to the extent possible, with

hat of the Interstate Commerce Act, and (c) antitrust iolations may be overridden "only where appropriate o further the national transportation policy, as estab-shed by adequate findings." Thus is posed the issue efore this Court.

Since the Commission did not see the flouting of anti-rust policy in the curtailment of gateway competition, n Pennsylvania's purpose permanently to foreclose com-etition, or in the enhanced competitive influence in the ennsylvania-Santa Fe service areas, findings to war-ant condonation were not provided. What transporta-on advantages in the public interest outweigh the cur-ilment of competition and the concentration of eco-omic powe has not been intimated either in the Com-ission's report or in the appellees' briefs. An appro-riate criterion recently set by the Commission is "the firmative improvement of transportation facilities" as xpressed in terms of "more economical and efficient erations and service, and improved service to the public", rtified by an assurance that "adequate competition would main." *The Pittston Company—Control—Brinks, Incor-rated*, 75 M.C.C. 345, 371-2 (1958). Of the applicants re, only Minneapolis could meet that test.

Even when the Commission dipped lightly into the roblem, it utilized, as we have already demonstrated, fferent yardsticks. With respect to the Minneapolis pplication, any diversion by Minneapolis was deemed xtremel harmful" even though the facts were vague, e figures indefinite, and the amount involved was in-gnificant in the affected carrier's volume. On the other nd, jeopardy to 35% of the Minneapolis volume, with almost certain loss of 5%, was of no consequence. or was the Commission concerned with diversion by ennsylvania-Santa Fe unless it would "jeopardize the aintenance of adequate transportation service by the

objecting intervening carriers." (R. 34) Thus, even in this limited aspect of the dynamic problem, there was not the slightest pretense of objectivity.

The subject of gateway competition was never considered by the Commission. It accepted the easy assurances of Pennsylvania-Santa Fe that competition with the Chicago and St. Louis gateways, which represents the very heart of the Western service, would not be relaxed, notwithstanding that such assurances are at war with the objective evidence:

1. Pennsylvania and Santa Fe have heretofore opposed Peoria gateway solicitation, preferring their long hauls respectively through Chicago and St. Louis.

2. Neither Pennsylvania nor Santa Fe proposes to change its solicitation policies. These will continue to favor the long hauls to St. Louis and Chicago in keeping with their economic self-interest. The repeated references to parity serve only to conceal the fact that neither Pennsylvania nor Santa Fe intends to support traffic routing through the Peoria gateway. Solicitation will be left wholly to the present Western organization which cannot but be responsive to the preferences of the controlling carriers. *ICC* v. *Baltimore & O. R.R.*, 152 I.C.C. 735, 735-6 (1929).

3. For more than three decades Western was permitted to dry up under the control of Pennsylvania and Burlington, both of which appeared willing to sacrifice their investment in this property for the advantages of traffic moving through the Chicago and St. Louis gateways. The only change that has been cited is that, in the west, a Santa Fe connection has been substituted for that of Burlington. But the

Commission made no finding that either this or any other circumstance constituted a material or controlling difference between the current conditions and those under the prior regime.

4. The Minneapolis application provided the ready alternative in which there could be no doubt that Western's service would be promoted with intensified solicitation, and that genuine competition with the competing gateways would be effectively maintained.

The issue with respect to gateway competition, is charged on the ground that "Control of Western is not ntrol of the Peoria gateway." (U. S. Br. 56) Western the primary Peoria link between the principal transntinental roads of the east and of the west. It connects th all railroads entering Peoria and is the only bridge ving traffic into and through Peoria, from both the stern and the western territories. It has connections th 16 carriers that account directly for 40.8% of the lroad trunk mileage in the United States. And they, turn, connect with most of the remaining lines. Western the key to the Peoria gateway because it permits transntinental traffic to move between the east and the west m originations and for destinations in almost every rt of the United States. Chicago is the great railroad mpital of the United States. Yet there is hardly a rough traffic movement passing through that terminal ich cannot be by-passed through Peoria on the Western.

The record discloses that interchanging well in excess 100,000 cars of traffic per year, Western is far and ay the primary carrier in the Peoria gateway. Its edules, its service, its facilities, its location, give it strategic importance to which this closely contested

proceeding is testimony. Were there satisfactory alternative facilities for the effective use of the Peoria gateway, the President of Pennsylvania would not feel called upon to reverse his policies of many years and move to destroy the grandiose plans for an outer-outer belt line (R. 1022) If Western did not occupy the strategic position of pre-eminence in the Peoria gateway, the Pennsylvania would not feel that its acquisition assured permanent protection against competition. (R. 1023)

There can be no doubt that Western is so vital a part of the Peoria gateway that its misuse is reached by the antitrust principles of the Sherman and Clayton Acts. Our national policy is not to wait until the economic injury has been accomplished, but to check the condemned evils at the outset. The possibility that the Peoria gateway will be completely destroyed is not necessary to move the Commission to preventive action. It is enough that the major, the dominant factor in that transcontinental bridge is being acquired by its largest competitors under circumstances calculated materially to restrain gateway competition.

Section 11 of the Clayton Act specifically charges the Commission with enforcement of section 7 of the Clayton Act in relation to carriers. (15 U.S.C. § 21) Section 7 is specifically designed to arrest in their incipiency combinations, through the acquisition of stock or assets, the effect of which may be substantially to lessen competition. The very body charged with the enforcement of that section now insists that it need not effectively deal with that policy here.

The briefs of appellees repeat the Commission's theory of checks and balances to protect competing carriers. These were fully operative during the long Pennsylvania-Burlington ownership which ended in disaster. None of

the briefs suggests why the future of the theory should be any happier than its history. Santa Fe admits that the checks and balances will not operate in the crucial area of terminal routing and parity. (R. 425-6) Thus the discrimination against Minneapolis by ending the Lomax-Nemo parity and similar discrimination against others would not be reached. Finally, if the Commission's action must rely upon theoretical checks and balances, and hopes that the successful applicants will change their economic ways of life, the Commission had a duty to turn to the alternative application which required no such crutches.

Admittedly, we do not have a detailed analysis of the competitive effects of the Commission's order in the respective service areas of Santa Fe and Pennsylvania. The vacuum is not of our making. The successful applicants did not supply the necessary data, and the Commission showed no interest in exploring this sensitive area. We do know that the largest railroad in the east and the largest railroad in the west have joined to establish a transcontinental link. We know that at least the Pennsylvania thought it of sufficient importance to use its interlocking directorate relationship to crowd out the natural buyer. We know that the outer-outer belt line would permit direct utilization of the Peoria gateway by transcontinental carriers that can now reach it only through branch lines or interconnections.

It was not incumbent upon the objectors to establish a transgression of antitrust policy. What the Commission describes as the "heavy burden" of the applicants certainly includes, in the case of these giants, a showing that their program would not offend antitrust policy—at least not beyond the point necessary for appropriate transportation purposes.

Conclusion.

Basically this proceeding concerns the proper application of legislative standards and respect for procedural principles established by statutes and the courts. There is a surprising lack of conflict in the evidence in factual matters. We have taken issue only with failure to make findings from undisputed facts or with the entry of findings contradicted by the evidence on both sides. Nor need expertise judgment be challenged to upset the Commission order.

Upon the record before the Commission it was its duty, as a matter of law, to reject the Pennsylvania-Santa Fe application and to approve the Minneapolis application.

Respectfully submitted.

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Nos. 12, 27, 28

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

No. 27

STATE OF SOUTH DAKOTA AND PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA, APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

No. 28

STATE OF MINNESOTA AND MINNESOTA RAILROAD AND WAREHOUSE COMMISSION, APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 12

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OPINIONS BELOW

The opinion of the District Court (R. 91–105) is reported at 165 F. Supp. 893. The report of the In-

terstate Commerce Commission (Division 4) (R. 17–49) is reported at 295 I.C.C. 523.

JURISDICTION

The judgment of the District Court was entered on September 16, 1958 (R. 105), and the notices of appeal in Nos. 12, 27, and 28 were filed in the District Court on October 2, 1958 (R. 106–110), November 13, 1958 (R. 114–117), and November 12, 1958 (R. 111–114), respectively. Probable jurisdiction was noted as to all three appeals on March 9, 1959 (R. 2029). The jurisdiction of this Court rests on 28 U.S.C. 1253 and 2101(b).

STATUTES INVOLVED

The National Transportation Policy (54 Stat. 899, 49 U.S.C. preceding Section 1); Sections 5(2) and 5(11) of the Interstate Commerce Act, as amended (24 Stat. 380, as amended, 49 U.S.C. 5(2) and 5(11)); Section 1 of the Sherman Act, as amended (26 Stat. 209, as amended, 15 U.S.C. 1); Section 7 of the Clayton Act, as amended (38 Stat. 731, as amended, 15 U.S.C. 18); Section 10 of the Clayton Act, as amended (38 Stat. 734, 15 U.S.C. 20); and Sections 8(b) and 10(e) of the Administrative Procedure Act (60 Stat. 242, 243, 5 U.S.C. 1007(b) and 1009(e)) are set forth in the Appendix.

QUESTIONS PRESENTED

1. Whether, in authorizing the Atchison, Topeka & Santa Fe Railway and the Pennsylvania Railroad to acquire joint control of the Toledo, Peoria & Western, the Commission gave proper consideration to the com-

peting application of the Minneapolis & St. Louis Railway and made adequate findings, supported by evidence, in accordance with the standards of the Intersfate Commerce Act.

2. Whether the Commission gave appropriate consideration to the competitive effects of the acquisition of control.

3. Whether Section 10 of the Clayton Act precludes the Commission from authorizing the acquisition of control in this case.

STATEMENT

These are direct appeals from the final judgment of a three-judge district court, dismissing the complaint of Minneapolis[1] which sought to set aside orders of the Interstate Commerce Commission authorizing Santa Fe and Pennsylvania to acquire joint control of Western through ownership of equal amounts of Western's stock.

---

[1] The following railroads are designated in this brief as indicated below:

Toledo, Peoria & Western Railroad Company	Western
The Atchison, Topeka & Santa Fe Railway Company	Santa Fe
The Pennsylvania Railroad Company	Pennsylvania
The Minneapolis & St. Louis Railway Company	Minneapolis
The New York, Chicago & St. Louis Railroad Company	Nickel Plate
Chicago, Rock Island & Pacific Railroad Company	Rock Island
Chicago, Burlington & Quincy Railroad Company	Burlington
Wabash Railroad Company	Wabash

Description of Western.—Approximately 240 miles in length, Western extends across Illinois from its eastern terminus at Effner on the Illinois-Indiana border through Peoria to its western termini at Lomax, Illinois, and Keokuk, Iowa. It has connections for the interchange of traffic with 16 railroads. It connects at Effner with the line of the Pennsylvania. On the west, it connects with the main line of the Santa Fe at Lomax and with the Rock Island and the Burlington at Keokuk. In the Peoria area, it connects with a number of carriers, including the Rock Island, the Burlington, and Minneapolis (from the west), the Nickel Plate, and the New York Central Railroad (from the east). Other principal connections are the New York Central at Sheldon (near Effner) and the Chicago, Milwaukee, St. Paul & Pacific Railroad at Webster.[2] Western's headquarters, shops, and yards are at East Peoria, just across the Illinois River from Peoria. (R. 20–21; Ex. H-4, R. 1615–1631.)

Taking full advantage of its strategic position as a short, direct bridge route between the east and the west bypassing the congested terminals of Chicago and St. Louis, Western has maintained a policy of

[2] Santa Fe and Pennsylvania also connect with Western at Eureka and Peoria, respectively. However, their branch lines to these points are not service routes on through traffic and the interchange there is inconsequential (R. 516–517, 567–569; Exs. H-16, R. 1700, H-18, R. 1713–1714). For example, during the year ending June 30, 1955, Santa Fe and Western interchanged 31,671 cars at Lomax but only 307 at Eureka, and the Pennsylvania-Western interchange was 55,180 cars at Effner and 140 at Peoria (Ex. H-18, R. 1713).

strict neutrality between all of its connections. More than two-thirds of its total revenues are derived from overhead or bridge traffic. (R. 21–22.)

Much of Western's success as a bridge line dates from the construction, in 1927, of its western connection with the Santa Fe at Lomax. Since that time, the Santa Fe and the Pennsylvania have cooperated with Western in coordinating their schedules and services to provide a fully competitive service over Western's route. Consequently, Western exchanges more interline traffic with them than with all of its other connections combined, this interchange accounting for almost 70 percent of Western's gross revenues. The Burlington and the New York Central ranked third and fourth in volume of interchange with Western, followed by the Rock Island, Nickel Plate, and Minneapolis in that order. (R. 21–22.)

The arrangements for purchase of Western's stock.—82 per cent of Western's stock is held by two trustees of the estate of George P. McNear, principal owner of Western until his death in 1947. One of these trustees, Wilmington Trust Company, had four directors who were also directors of Pennsylvania and/or one or more of its affiliates or subsidiaries (Ex. H–73, R. 1944–1945).

Upon learning that the trustees desired to sell in order to diversify the holdings of the trust estate, Santa Fe and Pennsylvania entered into negotiations with the trustees for the purchase of the stock, as did Minneapolis. Subsequently, Santa Fe and Pennsylvania obtained letter agreements, dated April 15, 1955, from the trustees for the sale of 26 per cent of

the stock to each of the two railroads for $100 per share, subject to the approval of the Interstate Commerce Commission (R. 174–176). However, on May 25, 1955, the trustees informed Santa Fe and Pennsylvania that they did not regard the letter agreements as binding and arranged to meet with the presidents of the two roads on May 27 (R. 366, 1026). In the meantime, Minneapolis had made further offers to purchase the stock, culminating in an offer to purchase the entire 82 per cent at $133 per share—an offer which was to expire at 5:00 p.m., May 26 (R. 1018–1019, 1021, 1024–1026, 1426). On May 26, Santa Fe and Pennsylvania were advised by the trustees that the Minneapolis offer would be accepted unless they agreed to meet or better it (R. 366–367, 1426–1428). Thereupon, Santa Fe alone entered into an agreement with the trustees to purchase the stock for $135 per share, subject to the Commission's approval (R. 150–154, 367, 1428–1429). Shortly thereafter, Santa Fe entered into agreements of like tenor with the remaining stockholders of Western (R. 154–160). After considering various joint control possibilities, as well as the possibility of proceeding alone (R. 367–368; Exs. H–80, H–81, H–82, H–83, R. 1964–1969), Santa Fe, on June 28, 1955, entered into an agreement with Pennsylvania Company (a wholly-owned subsidiary of Pennsylvania) to sell it 50 per cent of Western's stock, subject to Commission approval (R. 165–169).

Proceedings before the Commission.—On July 8, 1955, Santa Fe, Pennsylvania, and Pennsylvania Com-

pany filed with the Commission an application for its approval, under Section 5(2) of the Interstate Commerce Act, of joint acquisition by them of control of Western. Subsequently, Minneapolis also applied for authority to acquire control of Western through ownership of Western's entire capital stock.

Numerous parties intervened. The Nickel Plate and the Rock Island intervened to request inclusion in the acquisition of the stock of Western on an equal basis with the successful applicant or applicants. The Burlington and the Wabash did not object to the granting of the Santa Fe-Pennsylvania application, provided appropriate conditions were imposed for the maintenance of existing routes and traffic arrangements; but they requested that should any railroad other than Santa Fe and Pennsylvania be authorized to acquire an interest in the stock of Western, they be included in the transaction to the same extent as such other railroad. Various other railroads intervened to request the imposition of certain conditions. The States of Minnesota and South Dakota and their respective regulatory commissions intervened in support of the Minneapolis application, and the State of Illinois intervened in opposition to it. Various communities located along the line of Western, civic and business organizations, and shippers intervened in support of the Santa Fe-Pennsylvania application. The Railway Labor Executives Association intervened to protect the interests of carrier employees, and, on briefs and at oral argument, supported the Santa Fe-Pennsylvania application and opposed that of Minneapolis.

The two applications were consolidated for hearing. After the taking of extensive oral and documentary evidence, the hearing examiner issued a proposed report, recommending approval of the Santa Fe-Pennsylvania application and dismissal of the Minneapolis application. After exceptions and replies were filed and oral argument was heard, Division 4 of the Commission issued its report and order authorizing the acquisition of control of Western by Santa Fe and Pennsylvania and dismissing the application of Minneapolis. The Division found, subject to the conditions for the protection of railway employees and the maintenance of existing routes and channels of trade referred to in its report, that the terms and conditions of the proposed Santa Fe-Pennsylvania acquisition are "just and reasonable", and that the transaction "will be consistent with the public interest" (R. 49). The petition of Minneapolis for reconsideration was denied by the entire Commission.

Proceedings in the District Court.—On November 29, 1957, Minneapolis filed its complaint in the United States District Court for the District of Minnesota, and the court issued a temporary restraining order staying the effectiveness of the Commission's orders pending determination of the case on the merits. The States of Minnesota and South Dakota and their regulatory commissions intervened in support of Minneapolis.[3] Santa Fe, Pennsylvania, the State of Illi-

[3] Nickel Plate also intervened, joining Minneapolis in its effort to have the Commission's orders set aside, but taking the position that neither application should have been approved, and that multiple control (in which it participates) is the only form of control consistent with the public interest.

nois, and various communities and civic and business organizations intervened as defendants.

The district court, in an opinion which carefully considered and rejected appellants' principal contentions, unanimously sustained the validity of the Commission's orders (R. 91–105). The court discharged its temporary restraining order, but granted a 30-day stay and, after appellants had filed their notices of appeal, enjoined enforcement of the Commission's orders during the pendency of the appeals to this Court.

SUMMARY OF ARGUMENT

I

The National Transportation Policy and Section 5(2)(c) of the Interstate Commerce Act set forth broad criteria which the Commission must consider in determining whether a proposed railroad acquisition will serve the public interest. There necessarily remains for the Commission, as the expert agency chosen by Congress, the exacting task of applying the legislative policy to variant factual situations which are invariably complex. In this case, in passing upon competing applications for acquisition of Western—applications which embraced markedly different plans for the future operation of that road—the Commission, in order to make a meaningful choice, had to determine at the outset the kind of functional role which Western might best perform in the national and area transportation schemes. This determination, to be sure, might play a critical part in the eventual decision as to which applicant's ac-

quisition of Western would best serve the public interest. It does not follow, however, that such a determination is unfair to the applicant which contemplates a different role for Western.

Historically, Western had developed into a successful and efficient carrier serving as a link between a number of eastern and western trunk lines through the Peoria gateway. Its local management and its policy of neutrality between all of its connections were important elements in its success. When the death of Western's majority stockholder led to proposals for the transfer of its control to other railroad interests, the Commission determined that the public interest would best be served by maintaining Western's existing mode of operation to the greatest extent possible. This determination was certainly within its sound discretion.

As between the two competing proposals, there is no doubt that the Commission was amply justified in finding that the Santa Fe-Pennsylvania plan is far more consistent with this objective than Minneapolis'. Thus, the former proposed to continue Western as an autonomous carrier under its own local management, performing essentially the same bridging operation it had successfully carried on for the preceding 30 years; Minneapolis, on the other hand, planned to absorb Western within itself, without any separate Western management or solicitation force, and to initiate an intensive program to divert traffic from existing routing patterns to one more advantageous to Minneapolis. Moreover, contrary to

appellants' contentions, the economic interests of Santa Fe and Pennsylvania were not in conflict with their professed intentions. As lines joining the western and eastern extremities of Western, respectively, they had been largely instrumental in building up Western, had carried 70% of the interchange traffic between them, and had a continuing self-interest in maintaining a healthy neutral bridge carrier operating through the Peoria gateway.

The Commission's conclusion as to the advantages in granting the Santa Fe-Pennsylvania proposal is fortified by consideration of the other relevant factors in issue. A Santa Fe-Pennsylvania acquisition would have little, if any, adverse impact on the employees of the affected carriers, whereas Minneapolis' plans called for virtual elimination of the Western staff. The approved plan gives promise of encouraging considerable new industrial development along Western's route. Minneapolis, however, planned to cease all separate Western operations and would have had no incentive to promote industrial expansion on the important segment of Western's line between Peoria and the Iowa border, a segment which competes with its parallel line into Peoria. Contrary to Minneapolis' claim, the purchase price agreed to by the Santa Fe and Pennsylvania (which Minneapolis was willing to match) was a reasonable one, not burdening any of the parties with undue fixed charges. Although the economies of operation which Minneapolis claimed would result from its acquisition of Western were greater than those which would be realized by

its successful competitors, the significance of this factor is greatly offset by the consideration that those savings would be achieved largely by shifting Western's mode of operation from that favored by the overwhelming majority of carriers, shippers and other interested parties and found most desirable by the Commission.

II

Since 1920, it has been plain that the general policy of encouraging competition, reflected in the antitrust laws, is not the test of public interest for purposes of railroad regulation. Congress has concluded that acquisitions or consolidations of railroad properties, which would otherwise violate the antitrust laws, may well serve the public interest by strengthening the transportation system. See Section 5(11) of the Interstate Commerce Act. This Court has accordingly held, *McLean Trucking Co. v. United States*, 321 U.S. 67, that the Commission, in passing upon a proposed acquisition under Section 5 of the Interstate Commerce Act, is not required to determine whether the acquisition would otherwise violate the Sherman or Clayton Acts or to make findings in terms of those Acts.

This is not to say that the Commission is to ignore the policy of the antitrust acts. Here, the Commission carefully analyzed the various claims as to the alleged adverse effect of a Santa Fe-Pennsylvania acquisition of Western upon "competition and diversion of traffic"; it concluded that "the benefits to be derived from the operation of Western under the

control of the Santa Fe and the Pennsylvania as proposed will be in furtherance of the over-all national transportation policy declared by the Congress, and its consummation will not unduly curtail competition in connection with the other carriers" (R. 39). The interests of the Santa Fe and Pennsylvania in the large interchange business they have developed over Western gives assurance, the Commission found, of their continued interest in the Peoria gateway and in maintaining Western's neutrality as between all carriers with which it connects. Other factors to which the Commission gave weight were (1) the checks and balances inherent in control equally divided between the largest connection carrier on the eastern extremity of Western and the largest connecting carrier on the west; (2) the evidence of shipper control of routings in a manner protective of all carriers; and (3) the nature of the agreement between Santa Fe and Pennsylvania for the operation of Western. Finally, the Commission's approval contained a series of express conditions designed to insure that existing routes and channels of trade will be maintained.

Minneapolis ignores the fact that the Santa Fe and Pennsylvania have strong economic interests in the continued development of the Peoria gateway and that other lines provide east-west routes through Peoria to which traffic might be diverted, to the detriment of the Santa Fe and Pennsylvania, if Western's service were allowed to deteriorate. The previous history of partial control of Western by Pennsylvania under entirely different circumstances does not indicate that

the present plan is undesirable. And, contrary to the contention of Minneapolis, the Commission's decision here is nowise inconsistent with the standards applied in other acquisition proceedings.

III

The Pennsylvania and the Wilmington Trust Company, one of the trustees for the estate which held the majority of Western's stock, had a number of common directors. On this basis it is suggested that Section 10 of the Clayton Act is an obstacle to Commission approval of the Santa Fe-Pennsylvania acquisition.

However, the plain purpose of Section 10 is to prevent a railroad from buying at too high a price or selling at too low a price as the result of some common relationship between it and the seller or buyer. Here, if the price paid for Western's stock was high, this resulted from the competition for the stock between Minneapolis and Santa Fe-Pennsylvania and not because of directors which the Pennsylvania and Wilmington Trust Company had in common. Moreover, unlike ordinary purchases and sales by carriers, which are subject only to the criminal prohibitions of Section 10 of the Clayton Act, the proposed acquisition here was entered into subject to Commission approval; under Section 5(2) of the Interstate Commerce Act, the Commission had a responsibility, which it fully exercised, of determining that the proposed acquisition generally, and the purchase price and terms of sale specifically (See 49 U.S.C. 5(2) (c) and (d)), were consistent with the public interest.

Even if a technical violation of Section 10 had occurred, the Commission is expressly authorized to approve the acquisition notwithstanding such violation. Section 5(11) of the Interstate Commerce Act provides that the authority of the Commission over acquisitions is "exclusive and plenary" and that participating carriers are "relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal * * *." Although Commission approval of an acquisition might not bar criminal prosecution of a violation of Section 10 occurring during the purchase negotiations, both the language of Section 5(11) and relevant court decisions make it clear that the Commission may approve a Section 5 acquisition regardless of whether the acquisition would otherwise violate the antitrust laws. See *McLean Trucking Co. v. United States*, 321 U.S. 67.

ARGUMENT

I

THE COMMISSION'S DETERMINATION OF THE MERITS OF THE COMPETING APPLICATIONS WAS MADE IN CONFORMITY WITH THE STATUTORY STANDARDS AND IS SUPPORTED BY THE RECORD

In this case, the Commission was faced with two applications for authority to acquire control of Western; they embodied radically different proposals for the future operation of that road (R. 24–25, 30–31). The Commission expressly recognized its obligation to consider both applications under the governing public interest standard (R. 25). Its ultimate conclu-

sion (R. 49) in favor of the Santa Fe-Pennsylvania proposal is the result of a lengthy process in which it considered the views of all interested parties, determined what type of operation would best serve the public interest, and evaluated the acquisition proposals in the light of that determination and the various criteria set forth in the Act. The Commission also considered the competitive effects which might result.

Appellant Minneapolis, in Points I and II of its brief, urges that the Commission prejudged its case and deprived it of a fair hearing by determining that the public interest requires the continued separate and independent operation of Western in conformity with that road's established policies. This, it contends, amounted to advance endorsement of the proposal of Santa Fe and Pennsylvania and prevented a fair comparative consideration of the applications. Minneapolis also attacks the Commission's conclusion that the Santa Fe-Pennsylvania proposal would in fact achieve this goal (and that its own application would not) on the grounds that it is not supported by the evidence of record and could only have been reached by ignoring relevant considerations which the Commission was required to weigh. We shall show that none of these contentions has merit, and that this Court is, in effect, being asked on this appeal to recanvass and reweigh the findings and judgment of the Commission on matters that have been entrusted to its determination by Congress.

A. THE COMMISSION'S DETERMINATION THAT THE PUBLIC INTEREST WOULD BE SERVED BY MAINTAINING THE EXISTING POLICIES OF WESTERN WAS CONSISTENT WITH THE STATUTORY STANDARDS AND DID NOT DEPRIVE MINNEAPOLIS OF A FAIR HEARING

Congress and this Court have defined the general criteria which serve as guides to the Commission in determining whether a proposed acquisition of control is in the "public interest," as that term is used in Section 5(2). Thus, this Court has stated that the concept "public interest" "has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities * * *." *New York Central Securities Corp.* v. *United States*, 287 U.S. 12, 25; *Texas* v. *United States*, 292 U.S. 522, 531; *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 81. Section 5(2)(c) in terms requires the Commission to give weight to such considerations (among others) as the effects of the proposed transaction upon adequate transportation service to the public and upon the carrier employees affected. And the bearing of National Transportation Policy, 49 U.S.C. preceding Section 1, must, of course, be evaluated.

These criteria are not self-executing; comparative hearings are invariably complex and exacting.[1] The

[1] Of course, as the Commission stated (R. 47), there was only one matured plan for acquisition agreed to by both the potential seller and would-be purchaser—that put forward by the Santa Fe and Pennsylvania—and even if the Commission had rejected this plan and authorized Minneapolis to purchase the stock, there was no assurance Western would agree to sell it. But, contrary to the contentions of the State of Minnesota in

Commission must translate the general criteria into concreteness in the factual context of the particular case. Cf. *Schaffer Transportation Co.* v. *United States*, 335 U.S. 83, 92. In doing so, it must give due consideration to all segments of the public affected by a proposed acquisition and to the nature of the railroad property to be acquired.[5] Thus, in the present case, the Commission carefully analyzed the situation of Western—its physical condition, its geographical location, its function in the national transportation system; the interests of the shippers who utilize Western; the interests of communities dependent upon Western; the interests of Western's employees; and the interests of the other railroads involved.

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its brief (pp. 9, 17), the Commission expressly found (R. 48) it to be within its power to authorize Minneapolis to acquire Western if its proposals proved superior. The Commission's conclusory statement that authorization of the Santa Fe-Pennsylvania acquisition mooted the question of anyone else's acquiring Western's stock is merely a recognition of the fact that the two proposals were mutually exclusive. Having found, after "carefully consider[ing] the evidence and arguments presented relating to both the applications before us", that on "the whole record" the application of the Santa Fe and Pennsylvania was to be granted (*ibid.*), the Commission obviously was not required to consider whether Minneapolis, standing alone, would have been qualified to acquire Western.

[5] The Commission stated at the outset of its Report (R. 25):

"* * * We must weigh whether each application is consistent with the public interest, with or without inclusion of other railroads, considering not only other intervening petitioners seeking such inclusion but also the other applicant and nonparticipating railroads as well. * * * As a practical matter we, in such a proceeding as this, must arrive at a standard of public interest and determine which of the various plans of control most nearly approximates it."

The Commission found that Western was developed as a sound railroad under its former owner, George McNear, and has continued to be successful under its present management (R. 21). It is in excellent physical and financial condition, has a good earnings and operating record, and enjoys able and progressive management (R. 42). Its policy "has been, and now is, to maintain strict neutrality between all connections, and to participate in any haul of traffic no matter how slight. Such policy emphasizes the strategic position of an overhead carrier[6] through Peoria as an alternative route, bypassing the congested terminals of Chicago and St. Louis." (R. 21).

As the Commission stated, "It is universally conceded on the record that Western now is a well managed, independently operated railroad furnishing a valuable rail transportation service to the public" (R. 44). The Commission's appraisal of Western's role in the overall transportation picture is fully set forth in the following finding (R. 45):

> * * * Situated as it is between the Santa Fe at Lomax on the west and the Pennsylvania at Effner on the east, the Western receives its long haul and provides a vital direct link essential to the type of through service which is becoming increasingly important not only to the shipping public but to the railroads as

[6] Overhead or bridge traffic is traffic which originates and terminates on the lines of other carriers. The importance of bridge traffic to Western and its relative importance as a bridge line is shown by the undisputed fact that "At present, more than two-thirds of the total revenues of Western are derived from overhead or bridge traffic." (R. 22.)

> well. Fast, strong, and reliable through transportation service is necessary in order for the railroads adequately to compete with the other modes of modern transportation, and Western, as a direct east-west line, supplies the short-line connection for providing this through service with a minimum of delay.[7]

In obvious recognition of the fact that Western is providing an extremely valuable service to shippers, to the communities along its line, and to its connecting railroads alike, the vast majority of those interested in the proceeding strongly favored the continuance of service by Western as a separate and independently operated carrier under its present local management. Thus, the Commission noted (R. 31):

> Only the Minneapolis and its supporting interveners, the States of Minnesota and South Dakota, advocate the disappearance of West-

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[7] The value of Western to the Nation's transportation system was demonstrated by the greatly increased volume of through traffic which moved over its line during World War II (Ex. H–5, R. 1644–1645). In an earlier proceeding (*Illinois-Missouri Terminal Ry. Co. Purchase*, 295 I.C.C. 805, not printed in full), the Commission described the important function which Western fulfills as follows (Finance Docket No. 18752, mimeographed report of April 2, 1956, sheets 43–44):

"* * * Although only 231 miles long, the Toledo, Peoria & Western occupies a particularly important position in the Nation's transportation system as it forms a short, direct bridge route between the east and west which avoids the congested areas of Chicago and other major gateways. Modern equipment, dependable and convenient schedules, connections with all main lines, and complete icing and livestock facilities make the Toledo, Peoria & Western a valuable link for transcontinental shipments * * *."

> ern as a separate and independent operating carrier. All the other parties to these proceedings, including the railroad interveners, the communities served by the Western, and the shippers who appeared as witnesses, insist that the separate and independent operation of Western under its present local management is a public necessity. * * *

And see the further statement at R. 46–47.

Based upon its evalaution of the record, the Commission concluded (R. 45) that "Public interest demands that the present policies of Western in all respects be continued", a conclusion which is overwhelmingly supported by the views expressed at the hearing and the above, unchallenged findings. Certainly, this determination conforms to the Congressional mandate that the development and preservation of a transportation system adequate to meet the needs of commerce, the Postal Service, and the national defense is the ultimate requirement of the public interest. National Transportation Policy, 49 U.S.C. preceding Section 1; *McLean Trucking Co.* v. *United States,* 321 U.S. 67, 82–83.

It is a basic misconception to suggest that the Commission should not have determined the optimum role which Western's operation may perform in the area transportation picture. Comparisons, if they are to be meaningful, must necessarily be made in a defined context. The merits of competing proposals and the qualifications of competing applicants must be viewed in terms of the concrete, practical objectives which are to be served.

To the extent that Minneapolis chose to gear its proposal to a scheme of operation that had undesirable features, that, to be sure, affected its chances of prevailing. Thus, its emphasis on the asserted efficiencies and savings to be achieved under its plan of consolidating Western's operations into its own necessarily lost weight in the face of the Commission's determination that the public interest would best be served by maintaining Western as a separate functional entity. In this respect, the situation is closely analogous to that presented in *Federal Communications Commission* v. *Allentown Broadcasting Corp.*, 349 U.S. 358, where two competing applicants for radio stations proposed to serve different communities. This Court recognized that a preliminary judgment had to be made between the needs for service of the two areas, and that, in determining which of the two applicants could best meet this need, the award might well go to the party who, upon an abstract analysis of qualifications unrelated to the greater need, might have been found to be less qualified. Here, too, the Commission properly determined the basic transportation objectives and then evaluated the comparative qualifications of the applicants in the light of their ability to implement them.*

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* *Johnston Broadcasting Co.* v. *Federal Communications Commission*, 175 F. 2d 351 (C.A.D.C.) which appellant Minneapolis states (Br. 23) "well describe[s]" the proper "technique" for comparing competing applicants, unlike *Allentown* and the instant case, was a proceeding where *both* applicants sought to perform the same function of a local radio station in a particular town, and the establishment of a governing norm was thus not a prerequisite of a meaningful comparison. Nor is the fair comparative hearing required of mutually exclusive applicants

B. THE COMMISSION PROPERLY FOUND THAT THE SANTA FE-PENNSYLVANIA PROPOSAL WOULD BEST INSURE MAINTENANCE OF SERVICE IN THE PUBLIC INTEREST

As the Commission pointed out (R. 25), the alternatives before it were the authorization of acquisition of control of Western by either Santa Fe-Pennsylvania or by the Minneapolis (or such authorization conditioned upon inclusion of other railroads who had expressed a desire to participate) or denial of both applications. Since Western was financially sound and performing a valuable public service, both applicants, as the Commission indicated, (*ibid.*) had a "most heavy" burden of proof in demonstrating that approval of their acquisition plans would be in the public interest. On the other hand, with the death of Mr. McNear, the controlling interest in Western had passed into the hands of an estate anxious to sell, and the Commission recognized that under such circumstances "it is in the public interest for control of a carrier to pass from non-carrier interests, which no longer desire it, to carrier auspices" (R. 45).

In evaluating the proposals of the two applicants, the Commission, of course, gave primary consideration to the extent to which their proposals in fact contemplated continuance of Western as an autonomous entity serving the Peoria gateway in accordance with Western's existing operating policies. It analyzed

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by *Ashbacker Radio Corp.* v. *Federal Communications Commission*, 326 U.S. 327, impaired by the prior establishment, in appropriate circumstances, of proper standards for determining what type of operation will in fact best serve the public interest.

the proposals of the two applicants in considerable detail and concluded that the one advanced by Santa Fe-Pennsylvania did in fact contemplate operation of the Western in the same manner as it had operated under independent ownership. On the other hand, the Minneapolis proposal "unequivocally contemplate[d] the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works" (R. 30)—a result which, the Commission concluded, "would be extremely harmful to other carriers" (R. 32). Minneapolis contends that these determinations are unrealistic and that the facts of record show that control by Minneapolis will best preserve Western as an integral part of the East-West railroad traffic pattern and enhance the development of the Peoria gateway as an alternative to Chicago or St. Louis. It is clear, however, as the court below expressly found (R. 105), that the findings of the Commission on these issues within its special statutory competence rest on substantial evidence and should not be disturbed.

(1) There is no dispute as to the nature of the Santa Fe-Pennsylvania proposal for the future operation of Western. Western will continue to be operated as a separate, independent carrier under local management; it will maintain its own solicitation forces and be free to solicit traffic in a manner which will best serve its own interests; and all existing routes and channels of trade via Western are to be kept open without discrimination as between connecting railroads (R. 24). The continued neutrality of West-

ern's operations was in fact incorporated into seven specific "conditions" which the two carriers agreed to accept as part of any order approving their application (R. 40). These the Commission incorporated into its authorization order as the binding conditions upon which its approval was premised (R. 50).

Minneapo''s claims that none of the representations as to an independent or neutral operation of Western can be accepted at face value, and that, in light of the economic interests of the Santa Fe and Pennsylvania, the Commission had no alternative but to conclude that the real effect of their acquisition of Western would be to destroy or seriously hinder the "Peoria Gateway" and to promote the Chicago and St. Louis Gateway in which the primary economic interests of the Santa Fe and Pennsylvania are said to reside.

The alleged anti-competitive aspects of the joint control of Western by Santa Fe and Pennsylvania are discussed in detail in point II of this brief, *infra*, pp. 51–58. We do note at this point that the Commission gave appropriate consideration to the allegedly anti-competitive consequences of a Santa Fe-Pennsylvania acquisition of Western and found them to be minimal.

It is, of course, true that stock control of a corporation inherently involves control of its policy. It does not follow, however, that stock control of Western must be so exercised as to impair its separate and independent operation and policies of neutrality. Confronted with predictions of the same dire consequences in an earlier acquisition proceeding, the Commission noted that actual experience had proved otherwise.

pointing to the case of the Wabash under control of the Pennsylvania, *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455, 488–490, affirmed *sub. nom. New York, C. & St. L. R. Co.* v. *United States*, 95 F. Supp. 811 (N.D. Ohio). In a number of cases the Commission has recognized the efficacy of separate operation of a controlled carrier under its own local management as a means of preserving existing traffic relationships with connecting lines and insuring continued neutrality in service (*Wabash R. Co. Control*, 247 I.C.C. 365, 370–371; *Wheeling & L.E. Ry. Co. Control*, 267 I.C.C. 163, 176; *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455, 490), and it has had occasion to require separate operation (*Chicago Junction Case*, 71 I.C.C. 631, 638–639; *Clinchfield R. Co. Lease*, 90 I.C.C. 112, 132–133).

The Commission was not required to presume that the Santa Fe-Pennsylvania proposal was not made in good faith. On the contrary, responsible officers of the two roads provided assurances in their testimony, upon which the Commission was entitled to rely, that Western would indeed be operated as proposed.[*] Cf. *Chicago Junction Case*, *supra*, at pp. 638–639; *Detroit, T. & I. R. Co. Control*, *supra*, at pp. 491–492. As the Commission found (R. 35, 39), it will be in the self-interest of Santa Fe and Pennsylvania, in order to insure a substantial return on their investments, that they continue the present solicitation and service

[*] See the testimony of the President of Santa Fe (R. 357–358, 434–435), the President of Pennsylvania (R. 513), the Vice-President of Traffic of Santa Fe (R. 503), the Vice-President of Freight Sales and Services of Pennsylvania (R. 572). See, also, the testimony of the President of Western (R. 158).

policies which have been responsible for Western's success. The Commission also observed that the checks and balances inherent in control equally divided between the largest connecting carrier on the eastern extremity of Western and the largest connecting carrier on the west will work to prevent impairment of service or discriminatory solicitation (R. 46); see pp. 54–55, *infra*). In addition, conditions were imposed in the Commission's order, and these are designed to insure that existing routes and channels of trade will be maintained (R. 40–41).[*]

Moreover, the Commission pointed out in considerable detail, the geographic relationship of the Santa Fe and Pennsylvania to Western, the major role they played in Western's development, and the extensive interchange traffic which the Santa Fe and Pennsylvania now enjoy via Western, gave further assurance of their interest in the continued development of the Peoria gateway. Thus, the Commission noted (R. 21–22):

> * * * Much of the success of Western as a bridge line dates from the construction of a western connection with the Santa Fe at Lomax in 1927, authorized in *T., P. & W. R.R. Construction*, 124 I.C.C. 278. In 1928, the first full year after completion of the Santa Fe-Western

[*] There are adequate enforcement powers should these conditions not be carried out. See Interstate Commerce Act, Sections 5(9), 12(1), 16(8), 49 U.S.C. 5(9), 12(1) and 16(8); cf. *Atlantic Coast Line R. Co. v. United States*, 284 U.S. 288; *United States v. Texas & Pacific Ry. Co.*, 12 F. Supp. 511 (N.D. Texas); *City of New Orleans v. Texas & N.O. R. Co.*, 196 F. 2d 882, 886 (C.A. 5).

> Lomax connection, the Western interchanged a total of 29,697 carloads of traffic with the Pennsylvania and 7,264 carloads with the Santa Fe. By 1955, the corresponding figures increased to 58,543 carloads, or 97 percent, and 34,755 carloads, or 378 percent, respectively.
>
> Over the years, the Santa Fe and the Pennsylvania have cooperated with Western in coordinating their schedules and services. In 1930 arrangements were made for the establishment of coordinate schedules for the handling of perishables from Santa Fe origin territory, and the Western constructed icing facilities at Peoria to accommodate such traffic. Today, the Santa Fe, Western, and Pennsylvania schedules are set up to provide a fully competitive service over the Western route. * * *

See R. 464–468; Exs. H–5, R. 1641, H–8, R. 1661–1662, H–16, R. 1705, H–121, R. 1983–1984.

The Commission found, and it is undisputed, that Western interchanges more interline traffic with Santa Fe and Pennsylvania than with all of its other connections combined, this interchange accounting for almost 70% of Western's gross revenues (R. 22; see Ex. H–5, R. 1632–1650):

> For the year ended June 30, 1955, the latest period for which both car and revenue data were available, the total freight revenue of Western was $6,920,432. Of a total of 105,705 cars of interline traffic handled during the period, 74,772, or 70.7 percent, were interchanged with the Santa Fe and/or Pennsylvania. Such interchange accounted for $4,404,318 or 69.8 percent, of Western's gross revenues for

that year. The Burlington and The New York Central Railroad Company ranked third and fourth in the volume of interchange with Western, and the Rock Island, Nickel Plate, and Minneapolis ranked fifth, sixth and seventh, respectively. The protection of interchange traffic was one of the principal reasons advanced by the applicants, and recognized by us in approving acquisition of control in *Detroit, T. & I. R. Co., Control*, 275 I.C.C. 455.

The *Detroit, T. & I. R. Co.* case, *supra*, is strikingly similar to the present case. There the Commission authorized joint control of the Detroit by Pennsylvania and the Wabash, stressing the fact that the two applicants were its largest interchange connections. Observing that the Wabash and Pennsylvania were "the most logical owners," the Commission added that, "On the basis of present interchange their interests are superior to those of any other carrier in the area." (275 I.C.C. at 492.) And in *Spokane International R. Co. Control*, 295 I.C.C. 425, 441, order affirmed, *Canadian Pacific R. Co.* v. *United States*, 158 F. Supp. 248 (D. Minn.), Union Pacific's preponderance in interchange with Spokane International was a factor which the Commission considered in authorizing it to acquire control of the latter.

The complementary geographical relationship of Santa Fe, Western, and Pennsylvania, their record of mutual cooperation, and their common economic interest as reflected in the value of interchange strongly supported the Commission's decision. These factors disclose the legitimate interest of Santa Fe and Penn-

sylvania in seeking to acquire control of Western upon learning that its present owners desired to sell. (R. 370–371, 514, see also R. 358, 363–364, 513.) Most importantly, they provide the best possible assurance for the future stability and further development of Western.

This comports with the views of the shipper witnesses, all of whom supported the application of Santa Fe and Pennsylvania, as the Commission noted (R. 46):

> Several nationally prominent traffic executives of large industrial concerns, which annually route a substantial volume of traffic via Western testified in support of Santa Fe and Pennsylvania joint ownership. They based their support upon the fact that the Santa Fe and the Pennsylvania are presently rendering excellent service in conjunction with Western and that ownership by them would constitute their best assurance of continued good service via the combined Santa Fe-Western-Pennsylvania route, as well as via each of the other connections of Western.

It is most significant that communities along the entire length of Western's line, shippers located on Western, off-line shippers using Western as an interline or bridge carrier and Western's employees were unanimous in their support of the application of Santa Fe and Pennsylvania. In contrast, not a single shipper supported the Minneapolis proposal. Only three of Western's sixteen rail connections were in opposition (R. 46), and two of these were equally opposed to the Minneapolis application (R. 19–20).

(2) In contrast to the Santa Fe-Pennsylvania proposal, the Minneapolis proposal, as the Commission found (R. 30):

> * * * unequivocally contemplates the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works. Only the corporate existence of Western would remain. For all practical purposes Western would be integrated, consolidated and merged into the Minneapolis for ownership, management and operation. * * *

As the district court indicated (R. 102), "The advantages to Minneapolis in adding Western to its railway system seem apparent. No doubt Minneapolis would be materially strengthened". But, as the Commission found, these advantages would be largely at the expense of other carriers connecting with Western and the Western employees and would, if the benefits of Minneapolis' plan are to be carried into effect, necessarily result in elimination of Western as the neutral bridge line now performing such a useful public service (R. 30).

In its brief, Minneapolis protests that it "could not do otherwise than maintain a policy of neutrality" (Br. 31), and that conditions similar to those made part of the order approving the Santa Fe-Pennsylvania acquisition could fully protect the other carriers and the shipper and community interests (Br. 30). But this is a belated attempt to convert its basic proposal into one approximating that offered by the successful applicants; it is wholly at odds with the nature

of its proposal as offered and with its own supporting evidence. Minneapolis' contention that it would "naturally" maintain the neutrality of Western is also inconsistent with its claims (Br. 70) that the goal of its program of absorption of Western was to "foster and stimulate" competition between the unified Minneapolis-Western combination and the other carriers.

It is not disputed that under Minneapolis control Western would be integrated into its parent so as to be operated as a part of Minneapolis, indeed as a division of that carrier, thereby eliminating Western as a competitor and converting what are now interchange points on a separate Western to interchange points on a unified Minneapolis-Western. The entire program for the establishment of new service routes via these interchange points, as detailed by Minneapolis' Vice-President of Traffic, Roy W. Nelson, is designed to secure additional traffic for Minneapolis' line north and north-west of Peoria by diverting it from the lines of other carriers (R. 1177–1185). Although Mr. Nelson talked of creating new traffic via Minneapolis and Western (R. 1178), it is apparent that the traffic is to be diverted from other lines at Chicago and St. Louis (R. 1029, 1178) or from Western's connecting lines (R. 1184). Thus, traffic is to be secured by diversion from the direct Chicago-Twin Cities lines (R. 1178), including the Milwaukee (R. 1198), Chicago & North Western (R. 1198), and Rock Island (R. 1199–1200); and by short-hauling carriers connecting with Western's line east of Peoria, such as the Gulf, Mobile and Ohio (R. 1179–1180, 1197), Chi-

cago and Eastern Illinois (R. 1180–1181, 1197), Illinois Central (R. 1178–1179, 1195), and Wabash (R. 1182, 1202, 1198). Minneapolis will "actively solicit" this traffic (R. 1184).

Consistent with the above evidence, the Commission stated (R. 31–32) that "under unified operations, the Minneapolis proposes to establish coordinated schedules between it, the Western, and the connecting carriers, providing new service routes via these additional junctions for moving traffic in all directions. The record shows that such a policy would be extremely harmful to other carriers."

Thus, the Rock Island estimated its potential losses from diversion of traffic under the Minneapolis plan at more than $6,000,000 (R. 1542–1545); the Nickel Plate introduced testimony that its losses would be heavy (R. 1324–1326); and the testimony with respect to the Wabash indicates a substantial, if not precisely determined, potential loss (R. 1270–1271, 1292–1293).

It is thus apparent that the Minneapolis plan for operation of Western tends to defeat important objectives sought by the Commission and by virtually all of the parties participating in the proceeding. It is predicated upon integration of Western into Minneapolis with the operations controlled by Minneapolis and the direction emanating from the headquarters of Minneapolis; and it contemplates an aggressive traffic program designed to divert traffic now enjoyed by other lines.

C. THE COMMISSION GAVE PROPER CONSIDERATION TO THE OTHER FACTORS RELEVANT TO A CHOICE BETWEEN THE APPLICANTS

We consider, next, the Commission's conclusions with respect to the interests of the employees of the affected carriers; the reasonableness of the purchase price; and the relative advantages of the two proposals in terms of industrial development, increase in rolling stock, and economies and efficiency of operation.

1. Section 5(2)(c) provides that, in determining whether a transaction is in the public interest, the Commission shall give weight to "the interest of the carrier employees affected." Section 5(2)(f) states that, as a condition of its approval, the Commission shall require an equitable arrangement to protect affected employees for a limited period. To this end, the Commission is to provide for compensatory allowances to protect employees who will be affected by the transaction (accomplished here by imposing a condition requiring compliance with the Washington Job Protection Agreement of 1936) (R. 44, 49).

Operation of Western under the joint control of Santa Fe and Pennsylvania as an autonomous railroad under responsible local management would obviously have little adverse effect on employees. This is borne out by the testimony of the chief executives of Santa Fe and Pennsylvania that the two roads are satisfied with the management and staff of Western and that no changes in personnel or in the loca-

tion of the headquarters of Western at Peoria are contemplated. (R. 357–360, 434–435, 459–460, 511, 513, 541.) The employees unanimously favored the granting of the application of Santa Fe and Pennsylvania and opposed that of Minneapolis (R. 44; Reply of Railway Labor Executives' Association to Exceptions of Minneapolis, R. 2010).

In contrast, grant of the Minneapolis application would have severe employee consequences. In fact, a principal argument of Minneapolis in support of its application is based on alleged economies, three-fourths of which would be accomplished at the expense of the employees (R. 32). Minneapolis introduced evidence purporting to show that by unification the combined operating expenses of the two roads could be reduced by $1,770,945 (R. 32), of which $1,327,062 would take the form of wages and salaries to be saved through the elimination of 256 positions (Ex. H–44, R. 1918–1924). It further appeared that the bulk of the positions to be abolished would be in Peoria (R. 1379). Consequently, even those employees fortunate enough to be transferred, rather than released outright, would have to undergo the serious inconveniences involved in reestablishing homes in a new community.

We agree that the fact that some employees will be displaced is not a bar to approval of a Section 5 application when the transaction is otherwise clearly in the public interest. Nevertheless, the effect on employees

is a factor to which the Commission is required to give weight. It is apparent that it was accorded appropriate consideration here (R. 31, 32, 44).

2. As the Commission pointed out, the stock of Western is not listed on any exchange, but its market value of $135 per share was established on the basis of agreement between a willing buyer and a willing seller (R. 42). This is not altered by the fact that an earlier understanding called for a $100 purchase price, as Minneapolis seems to contend (Br. 38). Certainly, Santa Fe and Pennsylvania are not proposing to pay a higher price than necessary in order to acquire the stock. It is the price which Minneapolis and the railroads which sought inclusion were prepared to pay (R. 42), and was obviously considered fair and reasonable by them.

Minneapolis argues that the price is reasonable as to it (though not as to Santa Fe-Pennsylvania) because of the alleged economies which it anticipates. But apart from the uncertain nature of these economies (see R. 1204–1205) and the likelihood that they are exaggerated (R. 1579), there is, to say the least, no certainty that Western would continue to prosper under a plan which represents a complete departure from the policies which have made Western successful.

Contrary to the implication in the Minneapolis brief, the Commission, in determining the reasonableness of the price, gave proper consideration to the potential earning capacity of Western. Thus, in arriving at its conclusion the Commission took note

of the following factors not mentioned by Minneapolis (R. 42): (1) the excellent physical and financial condition of Western, (2) its good earnings and operating record, (3) the value of its properties as fixed by the Commission for rate-making purposes, (4) its progressive and able management, and (5) its strategic location, which adds to its value as a long-term investment. Cf. *Graves Truck Line, Inc.—Purchase—Whitworth*, 59 M.C.C. 601, 604–605.

In addition, in keeping with the statutory mandate, the Commission made the further unchallenged finding that "The transaction proposed by the Santa Fe and the Pennsylvania does not contemplate a guaranty or assumption of the payment of dividends or fixed charges, and there will be no increase in total fixed charges." (R. 49.) The obvious purpose of the requirements of Section 5(2) (b) and (c), *i.e.*, that the Commission consider the reasonableness of the terms of purchase and the total fixed charges resulting from the transaction proposed, is to erect a safeguard against improvident use of funds by a purchasing carrier, which might impair its ability to function in the transportation field. Clearly, that purpose is fully satisfied here.

3. The Commission also adverted to the industrial development along Western's right of way, and to certain other benefits which joint ownership by Santa Fe and Pennsylvania could be expected to give to Western. Minneapolis contests these findings and

argues that, on the contrary, it should have been given a strong preference because of the economies and efficiencies of operation flowing from the integration of Western into its system.

With respect to industrial development, the Commission found as follows (R. 46):

> With the backing of the Santa Fe and the Pennsylvania, there are excellent prospects for locating new industries on Western which will substantially increase the traffic originating and terminating on its line. Western has large acreages of potential industrial property in the Peoria area, and at other points along its line, and with the combined efforts of the industrial development departments of the Santa Fe and the Pennsylvania, such property development may be expected without undue delay.

Minneapolis attacks this finding, arguing that both Santa Fe and Pennsylvania would prefer to locate industry on their own lines (Br. 44). However, there is ample supporting testimony (R. 485–487, 571, 574–575, 582–583). The incentive for Santa Fe and Pennsylvania to assist in locating industry on Western is clear when it is realized that Western is favored with an abundance of potential industrial property both in Peoria and along its line (R. 486, 575), while both Santa Fe and Pennsylvania are lacking in industrial property in the area (R. 485–486, 582). As the president of Santa Fe testified: "It will be the attitude of the Santa Fe to try to help the T. P. & W. in every respect to locate industries

along its line * * * not only because we are going to be a half owner and accrue benefits, but also the selfish-reason we have limited industrial area in Chicago which makes it much more attractive to us to help the T. P. & W." (R. 486). The advantage of Santa Fe-Pennsylvania ownership as a stimulus to industrial development was recognized by the communities served by Western as well as by business interests in the area (R. 47; see 638–640, 758–759, 790, 807, 820, 940, 950, 957–958, 961).

Under Minneapolis control, on the other hand, Western would be just a division, with no sales force of its own, and the impetus for making use of the property along the Western line would be weaker. This would be particularly true of the entire portion of the Western line between Peoria and Lomax, which is directly in competition with the main line of the Minneapolis between Nemo and Peoria. While Minneapolis, by the time of the hearing had, for obvious reasons, discarded its earlier consideration of abandoning this line, and was willing to accept a condition against such abandonment (R. 31), its lack of incentive for expending major efforts on this important part of Western's line is apparent (see R. 615, 760, 773, 846–848, 958, 962).

The Commission further found that the supply of freight cars available to Western would be materially increased under joint control by Santa Fe and Pennsylvania, and that the latter roads would see to it that the car ownership obligations of Western were met in full (R. 47). Minneapolis criticizes this as

an expression of faith, not fact (Br. 43–44). But, we submit, it is a permissible judgment based on testimony of record (R. 368–369).

Finally, the Commission took note of other benefits, such as advice and assistance in the technique of railroad management, the realization of economies in operation and advantages in purchasing, which would be expected to accrue to a small railroad under ownership of two large, well-staffed roads (R. 47). Minneapolis stresses the economies which allegedly could be realized under its proposal (Br. 24–25). Manifestly, extensive economies are not contemplated under the plan of Santa Fe and Pennsylvania, predicated as it is on maintaining Western in its present status as a separate railroad under responsible local management. But possible economies comprise only one of a number of factors which the Commission must consider in determining consistency with the public interest. *Virginian Ry. Co. Control*, 117 I.C.C. 67, 75. The importance of proposed economies of operation in determining the public interest in a proposed acquisition will necessarily vary with the financial strength of the railroads involved and their present degree of operating efficiency. Since Western is now a well-run, successful property in excellent physical condition, the economies which Minneapolis claims would be realized through its absorption of Western would, in any event, be less significant than would be the case in other situations. To the extent that these economies are to be achieved at the expense of Western's employees and through Western's destruction as

a neutral bridge carrier performing a function the Commission has found to be in the public interest, they fail to furnish affirmative support for the Minneapolis case.

II

THE COMMISSION GAVE APPROPRIATE CONSIDERATION TO THE COMPETITIVE EFFECTS OF THE ACQUISITION OF CONTROL OF WESTERN BY THE SANTA FE AND PENNSYLVANIA

Minneapolis argues that the Commission, in giving approval to the Santa Fe-Pennsylvania acquisition of Western as comporting with the "public interest", failed to give proper consideration to the application of the antitrust laws. Both the Sherman and Clayton Acts, it is contended, would be violated by the transaction which the Commission approved. As we shall show, however, appellant misconstrues the role of the antitrust laws in the Commission's consideration of potential railroad combinations. Neither the language of Section 5 of the Interstate Commerce Act nor the controlling cases requires the Commission to determine antitrust questions as such or to make findings in terms of the antitrust laws. To be sure, the Commisison must give adequate consideration to possible anti-competitive aspects of a proposed railroad acquisition; the answer is that it has done so here.

1. Preliminarily, we review briefly the development of Congressional policy on railroad mergers, consolidations or acquisitions. The original Interstate Commerce Act of 1887 was concerned largely with the pro-

tection of shippers. As the Court observed in *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 80–81, "'the effort of Congress [was] directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates'; and emphasis on the preservation of free competition among carriers was part of that effort." By the Mann-Elkins Act amendments of 1910, the Commission was given broad power to prescribe and control rail rates. However, prior to 1920, the Interstate Commerce Act was silent as to railroad combinations, thus leaving them fully subject to the antitrust laws. *Northern Securities Co.* v. *United States*, 193 U.S. 197; *United States* v. *Union Pacific R.R. Co.*, 226 U.S. 61; *United States* v. *Reading Co.*, 253 U.S. 26; *United States* v. *Southern Pacific Co.*, 259 U.S. 214.

The Transportation Act of 1920 (41 Stat. 456) embodied a drastic change in Congressional policy toward the railroads. It followed a near breakdown in rail transportation during World War I, which resulted in two years of federal operation. Also, it reflected the precarious financial condition of the railroads at the end of the period of federal control. This change was described by the Court in the *McLean* case, 321 U.S. at p. 81, as follows:

> * * * The Act of 1920 added "a new and important object to previous interstate commerce legislation." It sought "affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country." *Dayton-Goose Creek Ry.* v. *United States*, 263 U.S. 456, 478; *Texas & Pacific Ry.*

> *Co.* v. *Gulf, C. & S. F. Ry. Co.*, 270 U.S. 266, 277. And in administering it, the Commission was to be guided primarily by consideration for "adequacy of transportation service, * * * its essential conditions of economy and efficiency, and * * * appropriate provision and best use of transportation facilities * * *" *New York Central Securities Corp.* v. *United States*, 287 U.S. 12, 25.

Specifically, in the Transportation Act of 1920, Congress found the general national economic policy of competition to be inadequate to provide a transportation system sufficient for the nation's needs. A major element in the new policy was the affirmative encouragement of unification as a partial cure for railroad problems.

For the first time, in amended Section 5(2) of the Interstate Commerce Act, 41 Stat. 481, the Commission was authorized to approve as "in the public interest" the acquisition by one railroad of control of another "either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation."

Moreover, Section 5(4), 41 Stat. 481, provided that after notice and hearing:

> The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible

> and wherever practicable the existing routes and channels of trade and commerce shall be maintained. * * *

Section 5(6), 41 Stat. 481, provided that "It shall be lawful for two or more carriers by railroad, subject to this Act, to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation," upon the condition, *inter alia*, that the proposed consolidation "be in harmony with and in furtherance of the complete plan of consolidation mentioned in paragraph (5) and * * * be approved by the Commission." Section 5(8) exempted from the antitrust laws consolidations approved under Section 5.

In brief, Section 5, as rewritten by the Transportation Act of 1920, not only permitted railroad mergers and consolidations, but encouraged them within the outlines of the general consolidation plan which the Commission was directed to prepare and adopt. Indeed, as the Court recognized in *St. Joe Paper Co.* v. *Atlantic Coast Line R. Co.*, 347 U.S. 298, 305–306, 315–321, the controversial question with respect to railroad mergers and consolidations from 1919 to 1940 was not whether they should be permitted, but whether they should be compelled. And see Leonard, *Railroad Consolidation Under the Transportation Act of 1920* (1946).[11]

[11] By Title II of the Emergency Railroad Transportation Act of 1933 (48 Stat. 217), Congress recast the provisions of Section 5, subjecting all forms of unification to Commission jurisdiction under a uniform rule. The provision relating to the

The objective of the 1920 Act, *i. e.*, extensive voluntary railroad consolidations into a limited number of systems, was not realized, and the Commission asked repeatedly to be relieved by Congress of its responsibility for working out such a national plan of consolidation. As a result, the Transportation Act of 1940 abandoned the attempt, begun in 1920, to channel voluntary consolidations into a predetermined national plan of consolidation. Section 5 was redrafted and took substantially its present form. Section 5(2)(a) provides that "It shall be lawful, with the approval and authorization of the Commission * * * for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; * * * ." Section 5(2)(b) provides that "* * * If the Commission finds that * * * the proposed transaction * * * will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: * * *." Section 5(2)(c) declares:

> In passing upon any proposed transaction under the provisions of this paragraph (2), the

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adoption by the Commission of the consolidation plan was retained. But the separate paragraphs dealing with acquisitions of control and with consolidations were combined into a single paragraph governing all types of combinations of railroad properties (including those effected by noncarriers such as holding companies, hitherto not required to be approved by the Commission). The paragraph empowered the Commission to approve proposed combinations, including acquisitions of control and consolidations, provided they were in harmony with the Commission's consolidation plan and would "promote the public interest."

> Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

In addition, Section 5(2)(d), an echo of the former provisions for a national consolidation plan, empowers the Commission to condition its approval upon the inclusion in the transaction of other railroads in the territory involved who request such inclusion. And Section 5(11) provides that "The authority conferred by this section shall be exclusive and plenary * * * and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved * * *." [12]

Section 5(4) of the 1920 Act had provided that in the division of railroads "into a limited number of

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[12] In like vein the last paragraph of Section 7 of the Clayton Act, 15 U.S.C. 18, expressly provides that "Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the * * * Interstate Commerce Commission * * * under any statutory provision vesting such power in such Commission * * *."

systems * * * competition shall be preserved as fully as possible." Significantly, the present Section 5(2)(c), in prescribing statutory standards to govern the Commission's public interest determination, does not mention the preservation of competition—a failure which is emphasized by the command of Section 5(2)(b) that the Commission shall not approve a transaction involving both a railroad *and* a motor carrier unles it finds that the transaction "will not unduly restrain competition."

In summary, since 1920, Congress in dealing with recurrent railroad problems, has deliberately developed specific policies in lieu of the general national economic policy of free and unrestrained competition.[13]

2. Asserting that acquisition of control of Western by Santa Fe-Pennsylvania would violate the antitrust laws, Minneapolis contends (1) that "Pennsylvania-Santa Fe could not sustain their application without an affirmative showing that the antitrust laws

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[13] In contrast, the Declaration of Policy in Section 2 of the Civil Aeronautics Act of 1938 (49 U.S.C. 402) provides as follows:

"In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity

* * * * * * *

"(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;"

* * * * *

See, also, Section 314 of the Communications Act (47 U.S.C. 314).

would not be transgressed" (Br. 68), and (2) that the Commission's order is invalid in the absence of an inquiry into whether the acquisition would violate the antitrust laws, findings respecting the nature and scope of the alleged antitrust violations, and findings of advantages to the public outweighing the harm attendant upon violation of the antitrust laws (Br. 48, 59–60, 70).

These contentions have already been rejected by this Court in *McLean Trucking Co.* v. *United States*, 321 U.S. 67. In that case the Commission authorized, pursuant to Section 5(2), a consolidation of seven large motor carriers to form the largest motor carrier in the United States. As the Court noted (p. 77), the chief attack was "that the Commission improperly construed the standards by which Congress intended it to determine the propriety of a consolidation; and the burden of this complaint is that it did so 'by failing to consider and give due weight to the anti-trust and other laws of the United States.'"

At the outset, the Court expressly rejected the contention that the Commission lacks power to approve a transaction which, but for that approval, would violate the antitrust laws, pointing out that such a view of the Commission's authority would render Section 5(11) meaningless. 321 U.S. at pp. 77–79, 86. The Court then noted (p. 79) that the "Commission has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contemplated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act."

After reviewing the development of Congressional policy as to transportation, including the National Transportation Policy "which is the Commission's guide to 'the public interest'" (p. 82), the Court said (p. 83):

> The history of the development of the special national transportation policy suggests, quite apart from the explicit provision of § 5(11), that the policies of the antitrust laws determine "the public interest' in railroad regulation only in a qualified way. And the altered emphasis in railroad legislation on achieving an adequate, efficient, and economical system of transportation through close supervision of business operations and practices rather than through heavy reliance on the enforcement of free competition in various phases of the business, cf. *New York Central Securities Corp.* v. *United States*, 287 U.S. 12, has its counterpart in motor carrier policy. * * *

Continuing, the Court stated, that "there can be little doubt that the Commission is not to measure proposals for all-rail or all-motor consolidations by the standards of the anti-trust laws. * * * And in authorizing those consolidations [Congress] did not import the general policies of the anti-trust laws as a measure of their permissibility." The Court concluded (pp. 85-86), "Against this background, no other inference is possible but that, as a factor in determining the propriety of motor-carrier consolidations the preservation of competition among carriers, although still a value, is significant chiefly as it aids in the attainment of the objectives of the national transportation

policy." Moreover, the Court expressly noted that, in view of the unique Congressional history of fostering railroad consolidations, the policies of the antitrust laws were, if anything, to be accorded less weight in rail than in motor consolidations. See 321 U.S. at 78, 85.[14]

To be sure, the Court made it clear that the Commission may not ignore the policy of the antitrust laws as a relevant and significant factor in its deliberations. It set forth the duty of the Commission and the function of the reviewing court as follows (pp. 87–88):

> In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the over-all transportation policy. Resolving these considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. Congress left that task to the Commission "to the end that the wisdom and experience of that Commission may

[14] Subsequently, in *Schwabacher* v. *United States*, 334 U.S. 182, 198, in passing on the relative function and authority of federal and state law respecting a railroad merger, this Court stated flatly, "We think it is equally clear that the Commission must look for standards in passing on a voluntary merger only to the Interstate Commerce Act." And, more recently, in *Federal Communications Commission* v. *RCA Communications, Inc.*, 346 U.S. 86, this Court emphasized that the effect upon competition is not necessarily the governing consideration in the resolution of the problems of closely regulated industries.

> be used not only in connection with this form of transportation, but in its coordination of all other forms." 79 Cong. Rec. 12207. "The wisdom and experience of that commission," not of the courts, must determine whether the proposed consolidation is "consistent with the public interest." Cf. *Interstate Commerce Commission* v. *Illinois Central R. Co.*, 215 U.S. 452; *Pennsylvania Co.* v. *United States*, 236 U.S. 351; *United States* v. *Chicago Heights Trucking Co.*, 310 U.S. 344; *Purcell* v. *United States*, 315 U.S. 381. If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported by evidence, it is not our function to upset its order.

Accordingly, the Minneapolis contentions which are predicated upon the absence of findings in terms of the antitrust laws are without merit. Indeed, the report sustained in the *McLean* case (*Associated Transport, Inc.—Control and Consolidation*, 38 M.C.C. 137) did not discuss the competitive effects of that extensive consolidation in terms of the antitrust laws and it made no reference to the Sherman or Clayton Acts.

3. In its report in the present case, the Commission, after a careful analysis of the effects of a Santa Fe-Pennsylvania acquisition on "competition and diversion of traffic" (R. 33–39, see also R. 25–26, 40–41, 46), concluded (R. 39):

> * * * We are convinced that the benefits to be derived from the operation of Western under the control of the Santa Fe and the Pennsylvania as proposed will be in furtherance of the

> over-all national transportation policy declared by the Congress, and its consummation will not unduly curtail competition in connection with the other carriers. Compare *McLean Trucking Co.* v. *U.S.*, 321 U.S. 67.

This determination, fully supported by numerous subsidiary findings, demonstrated to the district court that "the Commission did give due consideration to the effect of the acquisition on competing carriers and the possible curtailment of competition, and weighed such factors as against the broad question of public interest" (R. 101), and that "* * * its conclusions are not without substantial foundation" (*ibid.*).

The Commission devoted much of its long report to a discussion of the factors bearing on the competitive situation, including a detailed analysis of the effect of the proposed acquisitions on competing carriers. It described the routes, size, and importance of the railroads principally involved (R. 25–30). After referring to the competition existing between the various interested railroads, the Commission pointed out that "All the carriers endeavoring to participate in its control are in competition with Western." R. 33.) For example, the routes of Santa Fe and Pennsylvania via the Chicago gateway compete with Western's route through Peoria; Nickel Plate is in competition with the eastern half of Western; and the Minneapolis line between Nemo and Peoria competes with the western half of Western. (R. 31, 33.) However, while Santa Fe and Pennsylvania ordinarily solicit for their long hauls, they have not worked against Western; even prior to the proposed acquisi-

tion, they offered only passive resistance against Lomax and Effner, respectively, in recognition of the benefits they received from the Western route (R. 34). Indeed, as the Commission found (R. 21–22), the cooperation of Santa Fe and Pennsylvania, including the construction of the connection with Santa Fe at Lomax, played a major role in the development of the fast through service which has contributed so greatly to the success of Western. More than 70 percent of Western's interline traffic is now interchanged with Santa Fe and/or Pennsylvania (R. 22).

Continuing, the Commission pointed out that "all but a very small part of the nation's traffic is routed by the shipper" and set forth the factors which influence that routing (R. 34–35; see 477–479, 499, 723–724, 730, 778, 1483). It concluded that "These factors are operating today and are reflected in the present division of traffic among all of Western's connections, and since no change in service is contemplated with Western under the control of the Santa Fe and the Pennsylvania, the volume of traffic handled by the protesting intervening carriers should not be materially affected" (R. 35). And it found that "the self-interests of the Santa Fe and the Pennsylvania provide further assurance that the Western's present solicitation and service policies will be continued. Those policies have been responsible for the success of Western in the past, and the best way for the Santa Fe and the Pennsylvania to insure a substantial return on their investments to be made herein is to see that the Western management is left free to con-

tinue them" (R. 35; see 503, 725–726, 728, 730, 790–791, 845–846).

The Commission further found (R. 46):

> * * * No greater protection could be afforded to carriers interchanging traffic with Western than to have ownership divided equally between the largest connecting carriers in the east and the largest one in the west. Under this built-in system of checks and balances, it is inconceivable for the Santa Fe to permit impairment of service or discriminatory solicitation with respect to eastern connections, or the Pennsylvania with respect to western ones. * * *

The nature of these "checks and balances" is apparent from the undisputed testimony reflected in the findings. Located on the eastern extremity of Western, Pennsylvania receives a large volume of traffic which is bridged by Western between Pennsylvania and Western's connections on the west, such as Burlington, Rock Island, and Minneapolis; Santa Fe, on the west, receives valuable traffic via Western from such eastern connections as Nickel Plate and New York Central. (R. 371–372; Ex. H–5, R. 1649). Obviously, neither could afford to permit the other to do anything detrimental to the traffic it enjoys and the carriers which supply it (R. 371–372, 503, 575). That railroads serving east-west gateways cannot afford to favor one connection to the detriment of the others was conceded by the Freight Traffic Manager of Minneapolis (R. 1137) and is reflected in the policy of Nickel Plate (R. 1328). Should Santa Fe

attempt to prefer an eastern carrier, or Pennsylvania a western carrier, Santa Fe would antagonize all its other eastern connections and Pennsylvania would antagonize its other western connections (including their connections at other east-west gateways as well as the lines which connect with Western) (R. 484–485, 496–497). Cf. *Chicago, B. & Q. R. Co. Control*, 271 I.C.C. 63, 154.

The Commission also found (R. 46) that the agreement between Santa Fe and Pennsylvania setting forth their proposed method of operation and objectives (R. 24), together with the conditions imposed with respect to the maintenance of all existing routes and channels of trade of Western without discrimination (R. 40–41), is adequate to protect Western's connections.

Finally, the Commission examined the specific claims of diversion of traffic advanced by Minneapolis, as well as by Nickel Plate and Rock Island, and found them to be grossly exaggerated, if valid in any respect (R. 35–39). We need not discuss the matter further here, since Minneapolis has contented itself with a bare assertion that the Commission "brushed off" its "unchallenged evidence" of the loss it would suffer from the Santa Fe-Pennsylvania acquisition (Br. 30)—a statement patently at variance with the facts (see R. 35–37).

4. Minneapolis charges that control of Western by Santa Fe and Pennsylvania would permit the latter roads to strangle the Peoria gateway to the advantage of their positions in other gateways and that they have

a specific intention to do so (Br. 59–65).[15] This contention, too, was properly rejected by the Commission. It ignores the record of cooperation between Santa Fe and Pennsylvania, on the one hand, and Western, on the other, and the resulting substantial traffic interchange. It assumes that Santa Fe and Western wish to invest substantial funds to acquire Western in order to reverse their policy of cooperation and bring about Western's downfall, contrary to their own self-interest and the assurances of their responsible officers. See pp. 26–30, *supra.*

Control of Western is not control of the Peoria gateway. There are numerous competitive east-west routes through Peoria which do not include Western, formed by such railroads as Minneapolis, Rock Island, and Burlington on the west and Nickel Plate, New York Central (through its subsidiary, the Peoria & Eastern), and the Chicago & Illinois Midland-Baltimore & Ohio routes on the east (R. 728, 846; Exs. H–4,

[15] Minneapolis also contends that control of Western by Santa Fe and Pennsylvania would tend to "monopolization in the east-west gateways" (Br. 59). This vague and unsupported charge is clearly erroneous, as an examination of any comprehensive railway map will show. For example, Santa Fe serves only Chicago; Pennsylvania serves both the Chicago and St. Louis gateways, as does the Baltimore and Ohio; Nickel Plate and New York Central each serve the Chicago, Peoria, and St. Louis gateways from the east; and Rock Island and Burlington each serve all three gateways from the west. Other important railroads serve one or more of these gateways. Thus, Chicago is served by such major railroads as the Erie and Chesapeake & Ohio from the east, the Chicago & North Western and Milwaukee from the west. A similar situation prevails at St. Louis.

R. 1615, H–11, R. 1672). A substantial volume of traffic moves over these routes in which Western does not participate at all (Exs. H–126, R. 1993, H–128, R. 2002).

Moreover, contrary to Minneapolis' assumption, the movement of traffic over Western's route is not detrimental to Santa Fe and Pennsylvania. Plainly, the connection at Effner with Western is the only economic justification for Pennsylvania's line beyond Logansport, Indiana. Western provides Pennsylvania—and Santa Fe as well—with a valuable alternate route bypassing the congested Chicago gateway (R. 546, 570–571). Financially, Pennsylvania fares approximately as well on traffic via Effner and Western as by way of Chicago (R. 571). Both Santa Fe and Pennsylvania receive valuable traffic via Western from railroads which connect with Western (Ex. H–5, R. 1649). If the present service over Western's route were not maintained, much of this traffic would move over alternate routes cutting off Pennsylvania and Santa Fe entirely (R. 728–729).

Santa Fe has a strong interest in Western's route since it does not reach either the Peoria or St. Louis gateways while its western competitors, the Rock Island and the Burlington, serve the Chicago, St. Louis, and Peoria gateways directly. The movement of traffic via Western enables Santa Fe to obtain a long haul on east-west traffic, through its Lomax connection with Western, which might otherwise move through St. Louis, in which event Santa Fe would only receive a haul west of Kansas City or

lose the traffic entirely (R. 403, 479–483). This consideration explains Santa Fe's early interest in the Western route (R. 363). It was expressly recognized by the Commission in its discussion of Nickel Plate's claims of traffic diversion (R. 38–39).[16] It explains in large part Santa Fe's interest in its Lomax interchange with Western, despite the higher divisions accruing to Santa Fe at Chicago.[17]

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[16] The Commission found:

"* * * In 1954, the Nickel Plate interchanged a total of 14,497 cars with Western, of which the Santa Fe participated in the movement of 11,224 cars. Most of the Nickel Plate's traffic bridged from Lomax via the Western is perishable moving, in superior service, to points on the Nickel Plate and its connections. It provides the Santa Fe with a long haul to Lomax on traffic which otherwise might move via St. Louis. If the Western's connection with the Nickel Plate were not maintained as a service route, this traffic would be routed to the Nickel Plate at St. Louis, short-hauling the Santa Fe at Kansas City. Thus, the self-interest of the Santa Fe would assure the continuance of good service to the Nickel Plate at Peoria and prevent preferential solicitation by the Western for the Pennsylvania at Effner. * * *"

This is an illustration of the checks and balances referred to above.

[17] Minneapolis also makes a general and wholly unsupported charge that the acquisition of Western will tend to create a monopoly on the part of Santa Fe and Pennsylvania in their respective service areas (Br. 59–60) and that the Commission ignored the "over-all effect upon transportation of linking, and enlarging the sphere of influence of, two gigantic rail empires" (Br. 67). As the Commission's analysis of traffic diversion charges (R. 33–39) makes clear, the Santa Fe-Pennsylvania acquisition of Western under the terms of the plan here approved will result in little, if any, change in existing traffic patterns, and the two railroads (which are directly "linked" at Chicago) already share 70.7% of the total traffic exchanged by Western, a figure their joint ownership of Western should not substantially affect.

Minneapolis also contends (Br. 36–37, 61–62) that the Commission ignored the lesson of history to be found in Western's bankruptcy in 1917 while under Pennsylvania-Burlington control. But the Commission did not ignore the fact of Western's earlier receivership (see R. 21), and, as we have seen (*supra*, pp. 26–30), discussed in great detail the prevailing economic reasons which provide assurance that Santa Fe-Pennsylvania ownership of Western will serve the public interest. As the Commission pointed out (R. 21), the cooperative efforts between Western and the Santa Fe in constructing a connection between the two roads at Lomax in 1927 has been largely responsible for much of Western's subsequent success as a bridge line. Surely, the Commission was justified in determining the instant case upon the basis of the record before it and its current experience with similar acquisitions,[18] rather than on the basis of events occurring more than 40 years previously under totally different transportation conditions.

Finally, Minneapolis charges (Br. 64) that the Commission deviated from the standards previously applied in comparable situations. But, as might be expected with respect to matters as complex as the acquisition of railroads, the cited cases are by no means comparable to the instant one, and statements lifted from the context of those decisions are of little if any relevance here. Thus, *Interstate Commerce*

[18] See *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455; *Savannah & A. Ry. Co. Control*, 282 I.C.C. 39; *Pacific Coast R.R. Co. Control*, 282 I.C.C. 600.

Commission, v. *Baltimore & Ohio R. Co.*, 152 I.C.C. 721, cited at several places in the Minneapolis brief, was not an acquisition proceeding under Section 5 of the Interstate Commerce Act at all, but a proceeding under Section 7 of the Clayton Act voiding the joint purchase, without prior Commission approval, of 51% of the stock of the Wheeling and Lake Erie Railway Co. by three of its major competitors. Subsequently, one of the three (the "Nickel Plate") was in fact authorized to take control of the railway under circumstances similar to those involved here ("Wheeling would continue to have an organization separate from that of the Nickel Plate, under control of the latter, and no change in traffic relationships with other railroads is contemplated," *Wheeling & L. E. Ry. Co. Control*, 267 I.C.C. 163, 176, 190). Similarly, the Commission's language quoted in the cited extract from the opinion of the District Court in *Canadian Pacific R. Co.* v. *United States*, 158 F. Supp. 248 (D. Minn.)[19] was utilized in rejecting a multiple acquisition of the Spokane International Railway by carriers in parallel, point-to-point, competition with it, which, the Commission found, would have resulted in a substantial dismantling of Spokane. See *Spokane International R. Co. Control*, 295 I.C.C. 425. As we noted *supra*, p. 29, the Union Pacific Railroad, which *was* authorized to acquire control of Spokane in the very same proceeding, had, like Santa Fe and Pennsylvania here, an end-to-end connection with

[19] This three-judge district court was composed of the same three judges who, eight months later, approved the Commission's report and order in the instant case (See R. 93).

Spokane, was its most important interchange connection, and had cooperated with it for years in building up through traffic.[20]

III

SECTION 10 OF THE CLAYTON ACT DID NOT PRECLUDE THE COMMISSION FROM AUTHORIZING THE PROPOSED ACQUISITION OF CONTROL PURSUANT TO SECTION 5 OF THE INTERSTATE COMMERCE ACT

Minneapolis contends (Br. pp. 50–58) that the Commission lacked power to authorize joint acquisition of control of Western by the Santa Fe and Pennsylvania because the latter's purchase of Western shares constituted a violation of Section 10 of the Clayton Act. We show that (1) there was no violation of Section 10, and (2) that, even if there were conflict with that provision, Section 5(11) of the Interstate Commerce Act would empower the Commission to authorize the acquisition.

1. Section 10 of the Clayton Act provides in pertinent part that no carrier "shall have any dealings in securities, supplies, or other articles of commerce," aggregating more than $50,000 in any one year, with another corporation when any person who is a director of the carrier is, at the same time, a director of the

[20] *Chicago, B. & Q. R. Co. Control*, 271 I.C.C. 63, also cited by Minneapolis, is in no way analogous. It involved the proposed entrance of Santa Fe into St. Louis under circumstances in which it was clear that there would be substantial diversion of traffic from other lines, which might impair their abilities to continue to render adequate service. The Commission found no such likelihood of diversion here.

other corporation "unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission."

The alleged violation of Section 10 in the present case is predicated upon the fact that the Wilmington Trust Company, one of the trustees of the McNear estate (which owned 82% of Western stock), had four directors who were also directors of the Pennsylvania or its affiliate or subsidiary (Ex. H–73, R. 1944–5). The actual purchase of Western stock at $135 per share from the McNear estate, as well as from the remaining stock owners, was made by Santa Fe; about a month later Santa Fe entered into an agreement to sell 50% of Western stock, at the same price, to the Pennsylvania (R. 23–24). However, the trustees, in earlier negotiations, had agreed to sell 26% of the stock to each of the railroads for $100 per share (R. 174–176), and, after those agreements were repudiated,[21] it is alleged (Br. 10–11), the Penn-

[21] There is disagreement between Pennsylvania and the trustees as to the continued validity of this agreement, and litigation is pending in which Pennsylvania seeks specific performance of this earlier contract of sale, or damages for the breach of that contract. Its agreement to purchase 50% of Western stock from Santa Fe is without prejudice to its action against the trustees, and the contract provides that if the Pennsylvania eventually secures any of the Western shares at the lower figure its obligation under the contract with Santa Fe is to be reduced in an equivalent amount so that both railroads will maintain their 50% ownership in Western (R. 24).

sylvania continued to work with the Santa Fe in seeking the consummation of the joint purchase of all Western stock (which was eventually accomplished). Thus, Minneapolis urges, there were "dealings in securities" between a carrier (Pennsylvania) and a corporation (the Wilmington Trust Company) having common directors, without the competitive bidding required by Section 10 of the Clayton Act.

It is clear, however, that the dealings in securities here involved are far removed from the type of transaction to which Section 10 of the Clayton Act was directed. The plain purpose of the section is to prevent a railroad from buying at too high a price or selling at too low a price as the result of a common relationship between the carrier and the seller or the buyer. The requirement of competitive bidding where such interlocking relationships exist is phrased in terms of the "bidder whose bid is most favorable to such common carrier," and, as the court below indicated (R. 99), has no application to competitive bidding by the railroad company. The carrier is to get the benefit of competitive bidding between those who desire to purchase from or sell to it, but the section does not seek to protect the interests of competing carriers who seek to purchase the same commodities.[22]

[22] The legislative history of Section 10, though meager, supports the view that it was intended solely for the protection of the particular common carrier involved in the transaction. Indeed, the language of the several drafts of Section 10, together with the types of abuses cited in support of its enactment, strongly suggests that the words "dealings in securities" were intended to cover only a common carrier's dealings with related persons in its own securities. See H. Rep. 627, 63d Cong., 2d

Obviously, such a provision has little, if any, bearing upon an acquisition of control of one carrier by others under the provisions of Section 5 of the Interstate Commerce Act. Both the Santa Fe purchase agreement with the McNear trustees and the subsequent agreement by which Pennsylvania acquired a 50% interest in the Western stock were expressly made subject to Commission approval. This approval necessarily entailed a determination both that the transaction as a whole was in the public interest and that the price paid for the stock was reasonable. If the price paid for Western stock in the instant case was high, the factor determinative of this price was the competition for the stock between appellant and Santa Fe-Pennsylvania, rather than any relationship between the trustee and the Pennsylvania.

Moreover, as the court below pointed out (R. 98–99), the Wilmington Trust Company was acting not on its own behalf but as one of the two trustees of the McNear estate and "[w]e do not have a situation where interlocking directors may be enriched by reason of dealings in their securities and thus should be re-

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Sess., p. 3; S. Rep. 698, 63d Cong., 2d Sess., pp. 47–48; Sen. Doc. 585, 63d Cong., 2d Sess., pp. 8–9; 51 Cong. Rec. 15943. *In Re Missouri Pacific R. Co.*, 13 F. Supp. 888 (E.D. Mo.), cited by appellant, while expressing the view that securities other than the carrier's are covered by Section 10 of the Clayton Act, is not pertinent here; it involved a situation where the carrier was buying the controlling securities in a land development corporation from another subsidiary of its parent, the typical kind of transaction at which the section was aimed and one which, of course, was not subject to the approval of the Commission under Section 5 of the Interstate Commerce Act.

quired to sell securities only to a bidder whose 'bid is most favorable to the common carrier' ". Also, the direct purchaser of the stock from the McNear estate was the Santa Fe Railroad, which admittedly had no interlocking relationship with the Wilmington Trust Company or Western. It is true that the Santa Fe had had previous dealings with the Pennsylvania concerning a joint purchase of Western stock and that it later sold a 50% interest in Western to a Pennsylvania affiliate. It is clear, however, that the Santa Fe did not agree to pay more for the Western stock than it believed it was worth because of any relationship between Pennsylvania and the Wilmington Trust Company. On the contrary, as the Commission found (R. 44) "the Santa Fe * * * had no commitments to sell any of it to any other railroad. Before offering to sell a portion of the stock to Pennsylvania several other joint control possibilities were considered and rejected." (See R. 367–368; Exs. H–80, H–81, H–82, H–83, R. 1964–1969.)

2. Apart from its conclusion that Section 10 of the Clayton Act had not been violated, the Commission ruled that Section 5(11) of the Interstate Commerce Commission Act, makes the "authority" over acquisitions conferred by Section 5 "exclusive and plenary" and relieves carriers participating in an approved transaction from the operation of the antitrust laws (R. 44). That section specifically provides that:

> The authority conferred by this section shall be exclusive and plenary, * * * and any carriers or other corporations, and their officers

> and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for * * *.[23]

Minneapolis contends that Section 5(11) operates only *in futuro* and confers "no authority to purge the taint of a transaction illegal at the time it was brought to the Commission." (Br. 58). This may be true in the limited sense that Commission approval of an acquisition proposal might not bar a subsequent criminal prosecution—the only sanction provided—for a violation of Section 10 occurring during the negotiations leading to the application. But, insofar as the acquisition itself is concerned, both the language of the section and the relevant court opinions make clear that Commission approval of the transaction, under Section 5 of the Interstate Commerce Act, is "exclusive and plenary" regardless of whether the acquisition would otherwise be in violation of the antitrust laws. See *McLean*

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[23] It is clear that Section 10 of the Clayton Act (15 U.S.C. 20) is included in the "antitrust laws" referred to in Section 5(11). Section 1 of the Clayton Act, 15 U.S.C. (1952 ed.) 12, provides that "'Antitrust laws', as used in sections 12, 13, 14-21, and 22-27 of this title, includes sections 1-27 of this title." And, in any event, Section 5(11) avoids any ambiguity by including "all other restraints, limitations and prohibitions of law, Federal, State or municipal."

Trucking Co. v. *United States*, 321 U.S. 67. Perhaps, the most dramatic example of this is *United States* v. *Southern Pacific Co.*, 290 Fed. 493 (D. Utah), sustaining the Commission's authority, after the adoption of what is now Section 5(11) as part of the Transportation Act of 1920, to approve the Southern Pacific's acquisition of the Central Pacific, an acquisition which this Court had previously held violative of the Sherman Act. See *United States* v. *Southern Pacific Co.*, 259 U.S. 214. What is true of acquisitions which themselves would otherwise violate the antitrust laws is certainly true of negotiations leading to proposals which are subject to the requirement of Commission approval.

This Court's decision in the *McLean* case, *supra*, at p. 86, indicates that the Commission probably could not "ignore" the policy embodied in Section 10 of the Clayton Act. But it is quite clear that the Commission did not do so. It gave particular attention (R. 42) to the reasonableness of the price paid by the Santa Fe and Pennsylvania for the Western stock. Under the circumstances, the Commission would have been remiss if it had made its determination on the basis of what was, at most, a technical breach of Section 10 rather than on the major issues of transportation policy committed to its expert judgment.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be affirmed.

Respectfully submitted.

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OCTOBER 1959.

APPENDIX

National Transportation Policy (54 Stat. 899, 49 U.S.C., note preceding section 1):

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, co-ordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 5(2) of the Interstate Commerce Act (24 Stat. 380, as amended, 54 Stat. 905, 49 U.S.C. 5 (2)):

> (2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

"(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

"(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto."

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205(e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that

a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(d) The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such

inclusion, and upon a finding that such inclusion is consistent with the public interest.

(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph (2) except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Commission that such increase would not be contrary to public interest.

(f) As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Section 5(11) of the Interstate Commerce Act (24 Stat. 380, as amended, 54 Stat. 908, 49 U.S.C. 5(11)):

> The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority, and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section

to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

Section 1 of the Sherman Act (26 Stat. 209, as amended, 15 U.S.C. 1):

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1–7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1–7 of this title to be illegal shall be deemed guilty of a misde-

meanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 7 of the Clayton Act (38 Stat. 731, as amended, 15 U.S.C. 18):

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning

and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under

section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Secretary, or Board.

Section 10 of the Clayton Act (38 Stat. 734, 15 U.S.C. 20):

No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding, or shall do any act to prevent free and fair competition among the bidders or those desiring to bid, shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall, within thirty days after making the same, file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions, it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section, it shall be fined not exceeding $25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation, or who shall have aided or abetted in such violation, shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000 or confined in jail not exceeding one year, or both, in the discretion of the court.

Section 8(b) of the Administrative Procedure Act (60 Stat. 242, 5 U.S.C. 1007(b)):

In cases in which a hearing is required to be conducted in conformity with section 1006 of this title—

* * * * *

(b) Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to

the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

Section 10(e) of the Administrative Procedure Act (6 Stat. 243, 5 U.S.C. 1009(e)):

Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

* * * * *

(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6)

unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

U. S. GOVERNMENT PRINTING OFFICE 1959

PETITION FOR REHEARING

SPECIAL [illegible]

[illegible]

COMPANY

FILE COPY

Nos. 12, 27, 28

In the
Supreme Court of the United States
OCTOBER TERM, 1959

No. 12

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
Appellant

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, ET AL.
Appellees

No. 27

STATE OF SOUTH DAKOTA and PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA
Appellants

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, ET AL.
Appellees

No. 28

STATE OF MINNESOTA and MINNESOTA RAILROAD AND WAREHOUSE COMMISSION
Appellants

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, ET AL.
Appellees

On Appeals from the United States District Court
For the District of Minnesota

PETITION FOR REHEARING OF APPELLANT, THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

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On Appeals from the United States District Court
For the District of Minnesota

PETITION FOR REHEARING OF APPELLANT, THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

Appellant, The Minneapolis & St. Louis Railway Company, respectfully petitions for a rehearing of the decision and judgment of this Court, dated December 14, 1959, affirming the District Court and sustaining the Interstate

Commerce Commission. The grounds for the petition are stated below:

I.

This Court's opinion strikes a death knell for the statutory requirement of adequate, evidence-supported findings of fact. Complete paralysis of judicial review is demonstrated by the Court's ready acceptance, without examination of the proof, of findings made contrary to all the evidence, and by its overlooking the total absence of findings measuring an application against the statutory criterion. To this is added the statement in the Court's opinion (p. 19) that the law requires no more than consideration and discussion—that findings which may be tested against the statutory standards are not required.

A. The Santa Fe Traffic Vice President admitted, on cross-examination, a deliberate scheme to degrade service at the Nemo connection with Minneapolis in order to divert traffic to Lomax (R. 496). We showed that a loss of $1.1 million in revenue—5% of our total—would result. (R. 1027, 1104, 1112-8, 1254, 1356-7, 1410-1) The Commission found that the traffic would not be lost because Minneapolis schedules were slower and the traffic "does not move on a competitive service basis". (R. 36) This finding ignores the timetable exhibit establishing the principal Peoria-Nemo service by Minneapolis as 15 minutes *faster* than the competitive Western run. (Ex. H-121, R. 1983-4) And this is the major movement, accounting for the principal part of the imperiled traffic. (R. 1355-7) The testimony that Western trains moved at 49 miles per hour compared to 30 miles per hour on Minneapolis was exposed as being the *maximum* in the former instance and

the *average* in the latter. (R. 1579, 1597) This Court has now sustained a central finding shown by the evidence to be mathematically false. We are here concerned not with judgment, or opinion, or interpretation or inference, but with a matter of cold mathematics. On that the Commission was simply wrong. And this Court has refused to look at the simple underlying numbers appearing in three brief record references.

B. The Minneapolis application proposed significant improvement in transportation service in terms of accelerated schedules and new service routes. No finding of any kind was made as to whether, or to what extent, the "public interest" would be advanced or the National Transportation Policy (*49 U. S. C.* preceding § 1) to promote "efficient service" would be enhanced by the proposed improvements.

The Commission's obligation to enter findings on this basic issue is not discharged by the generalization, cited in this Court's opinion (p. 8), that direct interchanges designed to eliminate inordinate switching delays "would be extremely harmful to other carriers". The statutory standard is "public interest" and the legislative goal is "efficient service"; injury to other carriers does not, as such, equate with either. If increased efficiency in transportation is to be rejected in the public interest, it must be upon a showing that the *harm to the public* flowing from adverse effects on other carriers outweighs the transportation improvement. No such balance was offered and the record facts deny its support for the ultimate result.

Indeed, the finding of harm rests on the flimsy claim of the Wabash that some undefined part of 6,500 cars per year (compared with a total volume of some 850,000 cars) could be "influenced" to Western. (R. 1270-1, 1292)

And even this possibility could occur only by improvement of the Forrest interchange (R. 1292, 1182), which could not occur without the voluntary cooperation of the Wabash. That the risk of this minute diversion from the huge Wabash System could be "extremely harmful" or wipe out the "public interest" in the comprehensive plan of Minneapolis for improvement of service is an absurdity at best. At the least it was incumbent upon the Commission to make a direct finding on the public interest issue, so that the reviewing court could see how this gadfly effect on the Wabash justified denial to the public of the new, improved service inherent in the Minneapolis application.

C. Basic to the denial of the Minneapolis application is the finding that its plan contemplated "the disappearance of Western as an *independent* and *neutral* connection". (emphasis supplied) That Western would cease to be independent whether sold to Minneapolis or to Pennsylvania-Santa Fe is self-evident. But there is not an iota of evidence that the *neutrality* of Western would be impaired by Minneapolis. The only evidence is to the contrary:

1. All the witnesses agreed that failure to respect neutrality would be "suicidal"—regardless of ownership of Western. (R. 483-4, 546, 572) Reprisal and retaliation render any favoritism self-defeating. This is a particularly effective economic sanction as to Minneapolis—a small carrier dependent exclusively on the Peoria gateway and, in a large measure, on bridge traffic.

2. Minneapolis would double the number of solicitation agencies for Western and add service routes and faster schedules. (R. 1185-7, 1179-82) Of necessity, carrier connections into and from Western would be enhanced by the enlarged volume.

3. The two men most keenly aware of the need for, and the scope of, the neutrality—the President of Western and the President of Pennsylvania—had endorsed the Minneapolis program for acquisition of Western. (R. 537-8, 977-8)

Coupling "neutrality" with the obvious matter of "independence" served to obscure the vast difference between them in fact and in the proof. Neither the court below nor this Court separated this coupled finding to look at the evidence as to each. As to any departure from neutrality, there is no proof whatever: all the evidence is to the contrary.

D. Neither Pennsylvania's competition-stifling motive nor the fiasco attendant upon its prior ownership of Western was subjected to either scrutiny or findings. The corrupt purpose was not mentioned by the Commission or this Court in purporting to test the "public interest". The prior ownership is recited without a word to suggest that the competitive self-interest of Pennsylvania, cited by McNear as the cause of Western's failure, has diminished in the slightest degree. Could anything be more material in judging "public interest" than the applicant's grossly destructive purpose or its prior misuse of the very same property?

Judicial review is robbed of meaning and the Congressional command for disclosure of findings and reasoning by administrative agencies is frustrated by the Court's opinion. If the public benefit from improved service need not be evaluated, if findings shown to be mathematically erroneous must be accepted, then this Court is saying that any decision by the Interstate Commerce Commission where it "considered" the issues, is conclusive.

II.

The Court failed to notice that the Commission made no effort to accommodate the interest of employees, on the one hand, with the National Transportation Policy to foster economy and efficiency in transportation, on the other hand.

With one-half of railroad revenues today expended in wages, economies are necessarily accompanied by curtailment of employment. A proper "weighing" as directed by the statute requires

> (1) an appraisal of the public benefits to be derived from the elimination of duplicate facilities and operations,
>
> (2) the number of employees—not positions—to be displaced and the extent of protection afforded them, and
>
> (3) the effect of the program on stability of employment.

Not one of these factors received consideration by the Commission. All that the report shows is the discontinuance of 256 excess positions. Whether 200 persons or only 2 would actually be displaced—after the absorption of excess employees in other positions—the Commission did not determine. Minneapolis had carried out a similar major readjustment with only 2 or 3 employees displaced—and they found ready employment by other carriers. (R. 1032-3) The Commission should have exercised its expertise function to determine the number of employees—not positions—that would be affected and to balance that number, with full consideration of the cushioning plans for absorption and compensation, against the public interest in economy and efficiency.

This Court notes, with satisfaction, that the Commission "did consider and discuss" the cushioning plans, and, accordingly, that findings on such items were unnecessary. But that easy disposition ignores the Commission's duty at least to evaluate the number of employees who might be displaced against the relative advantages of the large transportation economies. To discard the economy policy because it requires abandonment of positions would be like banning all surgical operations because they involve the loss of some blood. Like the surgeon, the Commission is obliged to strike a balance on a rational basis—and this must be disclosed for the scrutiny of the reviewing courts.

The failure of the Commission to discharge its statutory "weighing" function or to deal with public interest in efficiency and the elimination of waste condemns the report as contrary to law. The relationship of economies to employment is involved in every merger. If mere reduction in positions can block integration, then neither elimination of duplication nor consolidation of operations can have a meaningful future in the railroad industry, which so desperately needs just that relief.

III.

The opinion overlooks the use by the Interstate Commerce Commission of three different yardsticks to measure the effect of traffic diversions. The standard is conveniently altered to sustain a conclusion in line with the Commission decision.

1. The possible diversion of traffic on Western under Pennsylvania-Santa Fe ownership, the Commission found, "would not jeopardize the maintenance of adequate transportation service by the objecting interven-

ing carriers". (R. 34) That statement conforms to the statutory standard of "public interest".

2. However, the diversion of traffic on Western by the Minneapolis improvement program was condemned as "extremely harmful to other carriers". (R. 32) The public interest concern not to jeopardize the maintenance of adequate transportation could hardly have been applied to the flimsy Wabash claims, so the Commission simply changed the yardstick.

3. Similarly, a further shift in criteria was made in considering the deliberate degrading of the Nemo connection to divert traffic from Minneapolis. Here a destruction of more than 5% of the Minneapolis revenues which would wipe out 35% of its net profit was brushed aside on the theory that Minneapolis could get the business without being competitive. The Commission took refuge in the assumption that the vulnerable traffic moved on Minneapolis for considerations other than service. (R. 36) And to warrant that theory, the Commission simply tore up the time schedules in the record.

The issue of traffic diversion provided an ideal setting for the application of a single, uniform yardstick. The adoption of differing yardsticks, each fashioned for the occasion, spells an utter lack of fairness and an absence of a truly comparative hearing.

IV.

The legislative history of section 10 of the Clayton Act (*15 U. S. C.* § 20) is misconceived in the Court's opinion. Moreover, no transaction tainted by a section 10 violation should be blessed with administrative and judicial sanction save under the most compelling circumstances.

The opinion reads into the section 10 legislative history a narrow purpose to protect the carrier against excessive price payments. This is at odds with the much more comprehensive aims expressed by the President and the Congress. Both saw the attack on interlocking directorates as striking at the concentration of economic power. Both hoped that the statute "will bring new men, new energies, new spirit of initiative, and new blood into the management of our business enterprises". By discouraging interlocking directors, the Congress sought to "open the field of industrial development and origination to scores of men." The goal was to "enrich the business activities of the whole country". (H. R. Rep. No. 627, p. 20, 63rd Cong. 2d Sess. (1914)) These quotations do not permit the limited, parsimonious application of the statute made by this Court. The Congress was seeking, not safeguards for individual carriers, but a dissolution of the hard core of concentrated power in our whole economy.

Nor does the impression that the Act was designed "to cover only a carrier's dealing with related persons in its own securities" (Opinion, p. 16, ftnt. 13) square with the legislative record. The initial House Bill did limit the restraint to dealing in the carrier's own securities. (H. R. Rep. No. 627, p. 3, 63rd Cong. 2d Sess. (1914)) The Senate Bill changed the phrase to the present comprehensive language which the conference report adopted. (S. Rep. No. 698, p. 64, 63rd Cong. 2d Sess. (1914)) That history leaves no doubt that the Congressional objective went well beyond the limits circumscribed in this Court's opinion.

Nor is it a mere "legal abstraction" to urge that condonation of a transaction condemned by law is not readily to be inferred. This Court has repeatedly denied to wrongdoers the fruits of their illegal conduct. A lesser respect

for law in determining "public interest" should not be expected from the Commission. And if sanctioned, it ought to be only for the most compelling considerations of public benefit. The issue is not solely, or even primarily, one of the Commission's power under section 5(11) of the Interstate Commerce Act (*49 U. S. C.* § 5(11)). Rather it is one of morality. It reaches the problem of when immunity should be granted and what showing the Commission must make to sustain such a grant of immunity when exposed to judicial review.

A re-examination of the section 10 issues is particularly appropriate in view of the lack of authoritative review by the District Court. That court so completely rewrote the statute that the government could not bring itself to defend that unfounded position. A hospitable consideration of the statute, with the broad-gauged legislative objectives, is called for in this Court, and for such consideration, a rehearing is required.

V.

This Court failed to notice two major areas in which the Commission did not even attempt to accommodate the antitrust policy to the transportation policy.

A. The Commission did not consider, and this Court makes no reference to, the competitive gateway problem. That problem exists wholly apart from the question of the competitive effects on individual carriers. What is involved is the basic competition between the Peoria gateway and the principal gateways in Chicago and St. Louis. There is, in this respect, not the slightest conflict between the national policy promoting competition and the National Transportation Policy seeking to strengthen our trans-

portation system in the interest of commerce and national defense.

Building up the Peoria gateway, in competition with Chicago and St. Louis, assures to the nation the added facilities that by-pass the congestion and delay of the larger gateways. The more effective the competition, the stronger the Peoria route.

The issue requires a simple determination of which of the competing applicants has the greater incentive to foster Peoria routings in preference to Chicago and St. Louis. Is it Pennsylvania-Santa Fe who derive the long haul and much larger revenue from Chicago and St. Louis, or is it Minneapolis which is dependent solely on the Peoria gateway? Should Western again be entrusted to Pennsylvania, its St. Louis and Chicago competitor, under whose prior ownership that strategic line fell into almost three decades of receivership?

What the Court failed to see was that both antitrust and the transportation policies support the wisdom of strengthening Western to compete most effectively with the Chicago and St. Louis gateways. Economic self-interest provides the greatest assurance in that respect. And Minneapolis can be expected, in its own interest, to maximize solicitation and service through Peoria, the only gateway to which it has access. A like incentive could hardly be attributed to Pennsylvania-Santa Fe, whose economies are in the contrary direction.

B. The promotion of the Peoria gateway by Pennsylvania-Santa Fe is inferred from their announced plan to place Chicago and Lomax and Chicago and Effner "on a parity—from a solicitation standpoint." (R. 34, Opinion, p. 14) What this Court overlooked is the fact that the successful applicants intend neither parity nor solicitation.

President Symes of Pennsylvania explained the situation and his intentions in the following words (R. 521-2):

> "Q. Does the Pennsylvania solicit traffic via Effner [its connection with Western] as against St. Louis?
>
> "A. No, we do not.
>
> "Q. As against Chicago?
>
> "A. Effner as against Chicago?
>
> "Q. Yes.
>
> "A. No, we do not.
>
> * * * * *
>
> "Q. Mr. Symes, would your solicitation policies be changed in the event you acquire a 50 per cent interest in the T. P. & W.?
>
> "A. Well, I prefer that Mr. Carpi answer that, but as president of the company I wouldn't think they would substantially change * * * If somebody asked me in Philadelphia, I am going to ship a car of freight to California, I would say St. Louis, if you couldn't do it there but could at Chicago I'd say do that, if you couldn't do that at Chicago, give it to us at Effner, I'd say give it to us, I don't think it would change very much."

That authoritative testimony effectively gave the lie to any semblance of parity for the Western connection at Effner.

President Coulter of Western, the last witness for the successful applicants, similarly admitted that (1) Pennsylvania-Santa Fe would not solicit at all for Western through either Lomax on the West or Effner on the East (R. 1601, 1609), and (2) the new "parity" policy meant no help or assistance, but was synonymous with "a benevolent attitude." (R. 1609)

We respectfully submit that the entire assurance of parity of solicitation is a semantic hoax designed to mislead

the Commission. Pennsylvania-Santa Fe sold the Commission a program that, in truth, spells no change in actual solicitation or service. Western will survive only to the extent that it fights successfully for its traffic against Chicago and St. Louis solicitation by its owners. This returns Western to the roller coaster headed right back to the impossible position of competing with its owners for traffic—a condition which McNear bluntly described as the cause of its hopeless failure. How this squares with the national policy for a strong transportation system or with the public interest is not revealed in the Commission report or the opinion of this Court. If this Court will recognize the significance of an available alternate course, it cannot allow this gamble with a strategic carrier's well-being to stand.

Much, much more than inequitable curtailment of the natural expansion of a small carrier and monopolistic enhancement of the power of two huge railroads is here involved. To permit this injustice in the name of the public interest, this Court must abandon the traditional restraint on arbitrary administrative action which systematic findings impose. At a time when the reputation of administrative agencies for even-handed justice has, under the glare of Congressional exposure, sunk to a new low, such judicial insistence upon administrative conformity to Congressional standards should not be relaxed. Nor should conclusions be afforded the gloss of untouchable expert opinions without systematic findings with at least some support in the record. In these circumstances the Court ought not to refuse to look at the record.

Wherefore, the plaintiff prays that a rehearing be gran
ed and that upon such rehearing the judgment of the Di
trict Court be reversed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned does hereby certify that the foregoi
Petition for Rehearing is presented in good faith and n
for delay.

JOHN G. DORSEY

SUPREME COURT OF THE UNITED STATES

Nos. 12, 27 and 28.—October Term, 1959.

The Minneapolis & St. Louis Railway Company, Appellant, 12 v. United States of America, et al.	On Appeals From the United States District Court for the District of Minnesota.
State of South Dakota, et al., Appellants, 27 v. United States of America, et al.	
State of Minnesota, et al., Appellants, 28 v. United States of America, et al.	

[December 14, 1959.]

Mr. Justice Whittaker delivered the opinion of the Court.

These appeals present questions arising out of rival applications by several rail carriers to the Interstate Commerce Commission under § 5 (2) of the Interstate Commerce Act [1] for authority to acquire control of Toledo, Peoria & Western Railroad Company.

[1] Section 5 (2) of the Interstate Commerce Act, 24 Stat. 380, as amended, 54 Stat. 905, 49 U. S. C. § 5 (2), provides, in pertinent part, that:

"(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) of this paragraph—

"(i) for . . . two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise . . .

"(b) Whenever a transaction is proposed under subdivision (a) of this paragraph, the carrier . . . seeking authority therefor shall pre-

"Western" is an independent, short-line "bridge carrier"[2] of through east-west traffic by-passing the congested Chicago gateway. Its line is about 234 miles long, extending from its connection with the Pennsylvania Rail-

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sent an application to the Commission and thereupon the Commission shall notify [designated parties], and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) of this paragraph and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable . . .

"(c) In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

"(d) The Commission shall have authority in the case of a proposed transaction under this paragraph involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

. . . . . .

"(f) As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected . . . ."

[2] The term "bridge carrier" appears to mean a short-line carrier which transports through traffic from one long-line carrier to another

road Company ("Pennsylvania") at Effner, on the Illinois-Indiana state line, westward, through Peoria, to its connection with the main line of the Atchison, Topeka & Santa Fe Railway Company ("Santa Fe") at Lomax, Illinois, and thence southwesterly a short distance to Keokuk, Iowa. Its headquarters, shops and yards are located in East Peoria where it has 24 executives and where, and elsewhere along its line, it has about 225 other employees. It has connections for the interchange of traffic with 16 railroads, the principal ones being with the Pennsylvania at Effner, with the Santa Fe at Lomax, and with the New York, Chicago & St. Louis Railroad Company ("Nickel Plate"), the Illinois Terminal Railroad Company, the Chicago, Burlington & Quincy Railroad Company ("Burlington") and the Minneapolis & St. Louis Railway Company ("Minneapolis") at Peoria. Its interchange connections with the other 10 railroads are at 17 other towns along its line.

Western has outstanding 90,000 shares of common capital stock, 82% of which is owned by the testamentary trustees of the estate of George P. McNear—Wilmington Trust Company and Guy Gladson—and the remaining 18% is owned by members of the McNear family, a bank and the president of Western. In 1954, the trustees determined to sell their Western stock, and rival efforts were commenced by Minneapolis, on the one hand, and by the Santa Fe and Pennsylvania, on the other hand, to purchase it. (Four of Wilmington Trust Company's directors were also directors of Pennsylvania.) Those negotiations culminated in a contract between the trustees and the Santa Fe, dated May 26, 1955, providing for the sale by the former and purchase by the latter of the stock at a price of $135 per share, subject to the Commission's approval.[3] Soon afterward, like agreements

[3] During the negotiations, Minneapolis first offered $69.50, and later $80, per share for the stock. On April 15, 1955, the Santa Fe

were made by the Santa Fe with the holders of the remaining 18% of the Western stock.

On June 28, 1955, the Santa Fe entered into a contract to sell to the Pennsylvania Company, a wholly owned subsidiary of Pennsylvania, 50% of the outstanding capital stock of Western at $135 per share,[4] subject to approval of the Commission.

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and Pennsylvania each obtained letter commitments from the trustees for the sale to each of them of 26% of the Western stock at a price of $100 per share. (Near the same time the Rock Island made a like offer to the trustees for 26% of the Western stock, but that offer was not accepted.) But a dispute arose—and apparently still exists between the trustees and Pennsylvania—with respect to the validity of those commitments. Thereupon, Minneapolis offered the trustees $133 per share for the Western stock, but that offer was not accepted, and on May 26, 1955, the Santa Fe, acting, as the Commission found, "on behalf of that carrier alone," agreed with the trustees for the sale by the former and purchase by the latter of all of the Western stock held by the trustees at a price of $135 per share, and those parties on that date entered into a contract accordingly, subject to approval of the Commission.

[4] The contract of June 28, 1955, between the Santa Fe and the Pennsylvania Company provided that it was without prejudice to any claims, causes of action or rights, which Pennsylvania may have against the trustees of the McNear estate with respect to the letter commitment of April 15, 1955, for the sale by the trustees to Pennsylvania of 26% of the Western stock; and that, in the event Pennsylvania should acquire from the trustees, under that letter commitment, all or any part of such shares, the obligation of the Santa Fe under the contract to sell Western shares to the Pennsylvania Company was to be reduced accordingly. It appears that litigation was then and is yet, pending by Pennsylvania against the trustees for the enforcement of the letter commitment of April 15, 1955.

The contract also contained a covenant which, in essence, provided that (1) "Western will continue to be operated as a separate and independent carrier with responsible management located along its line in order to preserve to shippers and communities the present direct access to its officials," (2) that Western's properties will be maintained and improved, (3) that Western "will continue to maintain its own solicitation forces and will be entirely free to solicit

On July 8, 1955, the Santa Fe and Pennsylvania Company and its parent, Pennsylvania, applied to the Commission under § 5 (2) of the Act[5] for approval of those stock purchase agreements and the consequent joint control of Western. The Minneapolis intervened and objected to the application, as did also the States of Minnesota and South Dakota and their respective public service regulatory commissions.

Thereafter, on October 13, 1955, the Minneapolis applied to the Commission, under the same section of the Act, for authority to acquire sole control of Western, expressing its willingness to enter into contracts with Western's stockholders to purchase their stock at the same price and on the same terms as set forth in their existing contracts with the Santa Fe. The Santa Fe, the Pennsylvania Company and Pennsylvania intervened in the latter proceeding and objected to the Minneapolis application.

On motion of Minneapolis, the Commission consolidated the two proceedings. Thereafter, seven other railroads having interchange connections with Western's line intervened. Two of them sought authority, at all events,[6]

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traffic in such manner as best to serve the interests of Western," (4) that all "existing routes and channels of trade via Western will be maintained and kept open without discrimination between connecting lines of railroad," and (5) that the Board of Directors of Western shall consist of 11 members, of whom one shall be the president of the company, two shall be officers of the Santa Fe, two shall be officers of the Pennsylvania Company, or Pennsylvania, or both, and the remaining six shall be prominent citizens not connected with either of the parties but selected by them through mutual agreement.

[5] See note 1.

[6] The New York, Chicago & St. Louis Railroad Company ("Nickel Plate") and the Chicago, Rock Island & Pacific Railroad Company ("Rock Island") sought authority, under § 5 (2) (d) of the Act (see note 1), to be included in the acquisition of Western's stock on an equal basis with the successful applicant or applicants.

and two others of them sought authority, under stated conditions,[7] to participate, under § 5 (2)(d) of the Act, in the acquisition of the Western stock on an equal basis with the successful applicant. The State of Illinois, 18 cities or towns and seven chambers of commerce located on or along Western's line, two labor organizations representing Western's employees, and a large number of shippers over Western's line, intervened in support of the Santa Fe-Pennsylvania application and in opposition to the Minneapolis application.

After an extended consolidated hearing before him, the Commission's examiner issued a proposed report recommending approval of the Santa Fe-Pennsylvania application and dismissal of the Minneapolis application. Thereafter, upon exceptions, and briefs and arguments in their support, Division 4 of the Commission issued its report. It was confronted, as it said, with four alternative proposals, (1) for authorization of joint control of Western by the Santa Fe and Pennsylvania, (2) for

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[7] The Chicago, Burlington & Quincy Railroad Company ("Burlington") and the Wabash Railroad Company ("Wabash") did not object to approval of the Santa Fe-Pennsylvania application, provided the order required continuation of present routes and channels of trade via existing junctions and gateways and of all existing traffic and operating relations and arrangements, but they asked, in the event any railroad other than the Santa Fe and Pennsylvania be authorized to acquire an interest in Western's stock, that they, too, be authorized to participate therein to the same extent as any such other railroad.

The Illinois Central Railroad Company ("Illinois Central"), the Gulf, Mobile & Ohio Railroad Company ("Gulf") and the Chicago & North Western Railway Company ("North Western") asked that, if either application be approved, the order be conditioned to require the maintenance of all routes and channels of trade via existing gateways. The Monon Railroad Company asked that if the Santa Fe-Pennsylvania application be approved, the order contain a requirement that Pennsylvania shall grant to it certain trackage rights, and, if not done, that the Santa Fe-Pennsylvania application be denied.

authorization of sole control by the Minneapolis, (3) for authorization of two other railroads, at all events, and of two more railroads, under stated conditions, to participate in the acquisition of the Western stock on an equal basis with the successful applicant,[8] and (4) denial of both applications.

The Commission observed that "[t]hese proceedings represent a new and more complicated phase in the administration of § 5, since [they involve] 2 applications for authority to control the same property, and petitions by 4 other carriers for inclusion in the transaction under varying circumstances." It recognized that, under § 5 (2) of the Act and the National Transportation Policy,[9] it was required to "weigh whether each application is consistent with the public interest, with or without inclusion of other railroads, considering not only other intervening petitions seeking such inclusion but also the other applicant and nonparticipating railroads as well." It thought that the burden of proof was "most heavy for an applicant in a proceeding like this, because it must not only overbalance the claims of those seeking to share in the control but also of those seeking to exclude it from the transaction." It conceived it to be its duty, under the Act and the National Transportation Policy, to "arrive at a standard of public interest and determine which of the various plans of control most nearly approximates it."

The Commission found that the Santa Fe-Pennsylvania plan contemplates that Western "will continue to be operated as a separate and independent carrier with responsible management located along its line"; that it "will continue to maintain its own solicitation forces and will be entirely free to solicit traffic in such manner as best to serve the interests of Western," and that all

[8] See notes 6 and 7.

[9] 49 U. S. C., n. preceding § 1, 49 Stat. 543.

"existing routes and channels of trade via Western will be maintained and kept open without discrimination between connecting lines of railroad." It found, on the other hand, that the Minneapolis plan "unequivocally contemplates the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works; that "[f]or all practical purposes Western would be integrated, consolidated and merged into the Minneapolis for ownership, management and operation"; that features of the Minneapolis plan "would be extremely harmful to other carriers"; that Western's headquarters office at Peoria would be eliminated, leaving only a trainmaster and a roadmaster at that point, and that the employment of most of Western's 24 executives and 225 other employees would be severed.

The Commission further found that "[o]nly the Minneapolis and its supporting interveners, the States of Minnesota and South Dakota, advocate the disappearance of Western as a separate and independent operating carrier," and that all other parties to, and intervenors in, the proceedings "insist that the separate and independent operation of Western under its present local management is a public necessity." It then found that the "[p]ublic interest demands that the present policies of Western in all respects be continued." It thereupon made the ultimate finding, required by § 5 (2)(b) of the Act, that the acquisition and plan of operation by the Santa Fe and Pennsylvania, subject to stated conditions, was "within the scope of § 5 (2) of the Interstate Commerce Act, as amended; that the terms and conditions proposed [by them] are just and reasonable; and that the transaction will be consistent with the public interest." The Commission then entered its order approving the Sante Fe-Pennsylvania application, dismissing the Minneapolis application, and denying the petitions of the several inter-

vening railroads which sought to participate in the acquisition of the Western stock. 295 I. C. C. 523.

Thereafter, Minneapolis petitioned the whole Commission for a reconsideration, and alternatively requested that, if the approval of the Santa Fe-Pennsylvania application be permitted to stand, it be authorized to participate equally with those railroads in the purchase of Western's stock on the same terms. That petition was denied.

Minneapolis then timely filed a complaint in the District Court for Minnesota against the United States and the Interstate Commerce Commission to vacate the Commission's order. The States of Minnesota and South Dakota and their respective regulatory commissions, being interested in strengthening the Minneapolis which operates in those States, intervened in support of the complaint. The defendants answered, asserting the full legality of the Commission's order. The Santa Fe, the Pennsylvania, the Pennsylvania Company, the State of Illinois, the 18 cities and seven chambers of commerce and the numerous shippers who were intervenors before the Commission, intervened in opposition to the complaint. The Nickel Plate intervened, complaining that the Commission had improperly denied its request to participate in the purchase of the Western stock.

A three-judge court was convened and, after hearing, rendered its opinion and judgment sustaining the Commission's order. 165 F. Supp. 893. On separate appeals by the Minneapolis, the State of Minnesota and its regulatory commission, and the State of South Dakota and its regulatory commission, the case was brought here and we noted probable jurisdiction. 359 U. S. 933. All of those who were defendants and intervenors in opposition to the complaint in the District Court, except the Nickel Plate, are appellees in this Court.

Minneapolis, supported by the States of Minnesota and South Dakota, contends, first, that the Commission improperly adopted at the outset of its report the standard of "separate and independent management" of Western as the criterion governing the comparative merits of the rival plans, which was antithetic to its application, and thereby deprived it of "fair comparative consideration," and that the District Court erred in approving the Commission's action.

The record does not support that contention. Rather, it shows that the Commission's governing standard was the "public interest," although it ultimately did find that the public interest would be best served by Western's continued operation as a "separate and independent carrier." We believe that the recited findings show that the Commission carefully "weighed" and considered "each application" in its labors to determine which, if either, of them was "consistent with the public interest." Its subsidiary findings (a) that the Minneapolis plan "unequivocally contemplates the disappearance of Western as an independent and neutral connection for the other 15 carriers with which it presently works," (b) that certain features of the Minneapolis plan "would be extremely harmful to other carriers," (c) that the Minneapolis plan contemplates the elimination of Western's office and the separation of its employees and (d) that numerous witnesses insisted "that the separate and independent operation of Western under its present local management is a public necessity," fully support its conclusionary finding that the "[p]ublic interest demands that the present policies of Western in all respects be continued." That finding, though antithetic to Minneapolis' application, did not deprive it of "fair comparative consideration," but, on the contrary, it seems to us, was made by the Commission after full and fair consideration, and the District Court did not err in so holding.

Appellants' principal contention appears to be that acquisition of control of Western by Santa Fe and Pennsylvania will create a combination in restraint of commerce in violation of § 1 of the Sherman Act [10] and will lessen competition or tend to create a monopoly in violation of § 7 of the Clayton Act,[11] and that the Commission's approval of their application was an abuse of power.

On their face these contentions would seem to run in the teeth of the language and purpose of § 5 (11) of the Interstate Commerce Act. That section, in substance, provides that "The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in . . . any transaction approved by the commission thereunder, shall have full power . . . to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction . . . and any carrier . . . participating in a transaction approved or authorized under the provisions of this section shall [be] and [it is] hereby relieved from the operation of the antitrust laws and all other restraints, limitations, and prohibitions of law . . . insofar as may be necessary to enable [it] to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction." 24 Stat. 380, as amended, 54 Stat. 908, 49 U. S. C. § 5 (11).

Section 5 (11) is both a more recent and a more specific expression of congressional policy than § 1 of the Sherman Act and § 7 of the Clayton Act, and in terms relieves the acquiring carrier, upon approval by the Commission of the acquisition, "from the operation of the anti-

[10] 15 U. S. C. § 1, 26 Stat. 209.
[11] 15 U. S. C. § 18, 38 Stat. 731

trust laws . . . ." Although § 5 (11) does not authorize the Commission to "ignore" the antitrust laws, *McLean Trucking Co.* v. *United States*, 321 U. S. 67, 80, there can be "little doubt that the commission is not to measure proposals for [acquisitions] by the standards of the antitrust laws." 321 U. S., at 85. The problem is one of accommodation of § 5 (2) and the antitrust legislation. The Commission remains obligated to "estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed [acquisition] and consider them along with the advantages of improved service [and other matters in the public interest] to determine whether the [acquisition] will assist in effectuating the over-all transportation policy." 321 U. S., at 87.

Even though such acquisitions might otherwise violate the antitrust laws, Congress has authorized the Commission to approve them, if it finds they are in the public interest, "because it recognized that in some circumstances they were appropriate for effectuation of the national transportation policy. It was informed that this policy would be furthered by 'encouraging the organization of stronger units' in the . . . industry. And in authorizing those [acquisitions] it did not import the general policies of the anti-trust laws as a measure of their permissibility. It in terms relieved participants in appropriate [acquisitions] from the requirements of those laws. § 5 (11)." 321 U. S., at 85. It must be presumed that, in enacting this legislation, Congress took account of the fact that railroads are subject to strict regulation and supervision. "Against this background, no other inference is possible but that, as a factor in determining the propriety of [railroad acquisitions] the preservation of competition among carriers, although still a value, is significant chiefly as it aids in the attainment of the objectives of the national transportation policy." 321 U. S., at 85–86.

As respects railroad acquisitions, the Commission is not so bound by the antitrust laws that it must permit them to overbear what it finds to be in "the public interest." A contrary view would, in effect, permit the Commission to authorize only those acquisitions which would not offend those laws. "As has been said, this would render meaningless the exception relieving the participants in a properly approved [acquisition] of the requirements of those laws . . . ." 321 U. S., at 86. Resolution of the conflicting considerations "is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. Congress left that task to the commission 'to the end that the wisdom and experience of that commission may be used not only in connection with this form of transportation, but in its coordination of all other forms.' 79 Cong. Rec. 12207. 'The wisdom and experience of that commission,' not of the courts, must determine whether the proposed [acquisition] is 'consistent with the public interest.' Cf. *Interstate Commerce Commission* v. *Illinois Central R. Co.*, 215 U. S. 452; *Pennsylvania Co.* v. *United States*, 236 U. S. 351; *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344; *Purcell* v. *United States*, 315 U. S. 381." 321 U. S., at 87–88.

Here, the Commission gave extensive consideration to the anti-competitive contentions advanced by appellants, devoting more than five pages of its report to that matter. It found that "[a]ll the carriers endeavoring to participate in its control are in competition with Western"; that the "important thing is not whether there is competition, but whether there is probability of existing or potential competition being diminished or strangled by the Western under the control of the Santa Fe and the Pennsylvania." After an extended analysis of the complex facts and conflicting evidence, the Commission found that control of

Western by the Santa Fe and Pennsylvania would not result in any significant lessening of competition. It pointed to the fact that although the Santa Fe's "long haul" is to Chicago and the Pennsylvania's "next to longest haul" is also to Chicago (its longest haul being to St. Louis) the Santa Fe has agreed, and is bound, "to place Lomax on a parity with Chicago from a solicitation standpoint, and . . the Pennsylvania will recognize Effner as one of its principal interchanges along with Chicago and St. Louis"; that "there may be some diversion of traffic but such diversion would not jeopardize the maintenance of adequate transportation service by the objecting intervening carriers."

The Commission also pointed to the fact that Western had been in a prolonged receivership until 1927 when George P. McNear acquired its stock at a receiver's sale, *Toledo, P. & W. R. Co. Acquisition*, 124 I. C. C. 181. It further found that Western's modern existence began at that time and, under the guidance of McNear, was built into a fine railroad; that since McNear's death, in 1947, the present management has continued with much success, the policies he established. Those policies, the Commission found, were, and are, "to maintain strict neutrality between all connections, and to participate in any haul of traffic no matter how slight [as a bridge] carrier through Peoria, an alternative route bypassing the congested terminals of Chicago and St. Louis," and that those policies are to be continued under the Santa Fe-Pennsylvania plan.

We think it is clear from this summary of its analysis and findings that the Commission fully estimated the scope and appraised the effects of any curtailment of competition which may result from the acquisition of Western by the Santa Fe and Pennsylvania, and, after having done so, concluded that their acquisition and plan of operation of Western would not result in any significant lessening

of competition. Congress has left the task of making that determination to the wisdom and experience of the Commission. The determination it has made rests upon adequate findings which are, in turn, supported by substantial evidence and is well within the limits of its discretion under the Act.

Appellants argue that the Pennsylvania, in actuality, contracted to purchase 50% of the Western stock from Wilmington Trust Company, a co-trustee of the McNear trust, and that, since four persons were directors of both companies, that proposed stock purchase violates § 10 of the Clayton Act; that the Commission was without power to approve it; that, in any event, its action in "condoning" it was an abuse of power; and that the District Court, for those reasons also, erred in upholding the Commission's order.

The Commission found that the Santa Fe in entering into the contract of May 26, 1955, with the trustees of the McNear trust was "acting on behalf of that carrier alone." But even if we assume, for present purposes, that it was acting as well for the Pennsylvania the result must be the same. Section 10 of the Clayton Act prohibits a common carrier engaged in commerce from having "any dealings in securities" of more than $50,000, in the aggregate, in any one year, "with another corporation, . . . when the said common carrier shall have upon its board of directors . . . any person who is at the same time a director [of] such corporation . . . , except such purchases [as] shall be made . . . by competitive bidding under regulations to be prescribed by [the] commission." 38 Stat. 734, 15 U. S. C. § 20.

Section 10 of the Clayton Act is, of course, an antitrust law,[12] and much of what we have just said relative

[12] It is clear that § 10 of the Clayton Act is included in the "antitrust laws" referred to in § 5 (11) of the Interstate Commerce Act. Section 1 of the Clayton Act, 15 U. S. C. (1952 ed.) § 12, provides

to the problem of accommodation of § 5 (2) of the Interstate Commerce Act and the antitrust laws is equally applicable to this contention. The evident purpose of § 10 of the Clayton Act was to prohibit a corporation from abusing a carrier by palming off upon it securities, supplies and other articles without competitive bidding and at excessive prices through overreaching by, or other misfeasance of, common directors to the financial injury of the carrier and the consequent impairment of its ability to serve the public interest.[13] But, even if this purchase of securities might, under other circumstances, violate § 10 of the Clayton Act, Congress, by § 5 (11) of the Interstate Commerce Act, has authorized the Commission to approve it if it finds that so doing is in the public interest. And Congress has expressly said that, upon such approval, the carrier shall be relieved "from the operation of the anti-trust laws . . . ." A contrary view would, in effect, permit the Commission to authorize only those stock purchases which would not, in the absence of § 5 (11), offend the antitrust laws. "As has been said, this would render meaningless the exemption relieving the participants in a properly approved [acquisition] of the requirements of those laws . . . ." *McLean Trucking Co.* v. *United States*, *supra*, at 86.

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that "'anti-trust laws,' as used in sections 12, 13, 14–21, and 22–27 of this title, includes sections 1–27 of this title." Moreover, § 5 (11) avoids any ambiguity by including "all other restraints, limitations and prohibitions of law, Federal, State or municipal."

[13] The legislative history of § 10 of the Clayton Act, though meager, supports the view stated in the text. In fact, the language of the several drafts of § 10, together with the types of abuses cited in support of its enactment, suggest strongly that the words "dealing in securities" were intended to cover only a carrier's dealings with related persons in its own securities. See H. R. Rep. No. 627, 63d Cong., 2d Sess., p. 3; S. Rep. No. 698, 63d Cong., 2d Sess., pp. 47–48; S. Doc. No. 585, 63d Cong., 2d Sess., pp. 8–9; 51 Cong. Rec. 15943.

Here, the Commission fully considered the contracts under which the Pennsylvania proposes to acquire a 50% interest in the Western stock and all other factors bearing on that matter and, after doing so, approved them. That action by the Commission did not exceed the statutory limits within which Congress has confined its discretion.

Minneapolis contends that § 5 (11) operates only *in futuro* and confers "no authority to purge the taint of a transaction illegal at the time it was brought to the commission." Whether there is merit in that contention, as a legal abstraction, we need not decide, for here the existing contractual arrangements through which Pennsylvania asks authority to acquire 50% of the Western stock look entirely to the future. Neither the stock sale and purchase contract between the trustees and the Santa Fe nor the one between the Santa Fe and the Pennsylvania Company are consummated transactions, but both are expressly subject to, and will become effective only upon, approval by the Commission. Apart from criminal prosecutions with which we are not here concerned, it seems plain that approval of an acquisition by the Commission operates under § 5 (11), as that section says, to relieve the acquiring carrier "from the operation of the anti-trust laws . . . ."

Appellants next contend that the Commission violated § 8 (b) of the Administrative Procedure Act by failing to make findings which, they think, were compelled by the evidence.

There can be no doubt that the Administrative Procedure Act applies to proceedings before the Commission, *Riss & Co., Inc.*, v. *United States*, 341 U. S. 907, and see *Chicago & Eastern Illinois R. Co.* v. *United States*, 344 U. S. 917.

The last sentence of § 8 (b) provides:

> "All [administrative] decisions . . . shall become a part of the record and include a statement of (1) find-

ings and conclusions, as well as the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof." [14]

Upon the basis of that language, appellants argue that the Commission should have found that the price which the Santa Fe agreed to pay for the Western stock of $135 per share was excessive. Though the Commission made no express finding upon that matter it did discuss it, pointing out that the certified value of Western's properties for ratemaking purposes was more than $13,500,000; that it has no outstanding preferred stock and is relatively free of debt; that it has a fine earning record; that the transaction was at arm's length; that Minneapolis had offered $133 per share for the stock within a few days of the time when the Santa Fe contracted for its purchase at $135 per share, and that the Minneapolis sought authority in this proceeding to acquire the stock at the same price. The Commission concluded that if $135 per share was a fair price for the one it was also for the other.

Upon the same basis, appellants also argue that the Commission should have found that the Minneapolis application was in the public interest in that its acquisition of Western would greatly strengthen both Minneapolis and Western by eliminating many duplicating facilities and by reducing operating expenses by more than $1,770,000 annually. The Commission did not make a specific finding upon that matter, but it did give consideration to it and found that most of that saving—more than $1,300,000 annually—would be at the expense of Western's employees—a matter which, because of the express command of clause 4 of § 5 (2)(c) of the Interstate Commerce Act (see note 1), it evidently thought was not consistent with the public interest. Appellants

[14] 60 Stat. 242, 5 U. S. C. § 1007 (b).

further argue that the Commission should have found that the Minneapolis plan afforded adequate protection to Western's employees by providing for their absorption into the Minneapolis as attrition among its own employees permitted. Again, although the Commission made no specific finding upon that contention it did consider and discuss it, and we think the law required no more.

Appellants challenge the Commission's failure to make a number of other subsidiary findings, all of which have been considered, but we find that they relate to contentions that are so collateral or immaterial that the law did not require specific findings upon them. By the express terms of § 8 (b), the Commission is not required to make subordinate findings on every collateral contention advanced, but only upon those issues of fact, law, or discretion which are "material." From a thorough examination of the record we are persuaded that the Commission has made adequate subsidiary findings upon all material issues and has made the ultimate findings required by § 5 (2), that they support the Commission's order, and are, in turn, supported by substantial evidence.

Finally, appellants' contend that the District Court, because of inadequate subsidiary findings by the Commission, was unable to, or at least did not, afford it a proper judicial review, and merely "rubber stamped" the Commission's order. Whether or not we approve all of the reasons and legal conclusions of the District Court, it is clear that it fairly considered and decided all of the issues raised by appellants, accorded to them a full and fair judicial review, and reached a right result. Accordingly the judgment is

Affirmed.

MR. JUSTICE DOUGLAS dissents.